

A JoePa plan for meaningful open-records reform in Pa.

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On Dec. 29, Joe Paterno coached his 500th game as Penn State came from behind to win the Alamo Bowl. It was the coach's 381st victory and record-setting 23rd in a bowl game — numbers that prove that JoePa is a legendary coach.

When the state Supreme Court ruled last year that Coach Paterno's salary is public information, it helped prove that the legendary coach is also one of college football's greatest bargains.

Now that the college football season is over, and the General Assembly is set to tackle open records reform, legislators ought to take a closer look at the Supreme Court's ruling. While the current reform bills contain some dramatic changes, they don't go far enough.

The Paterno case offers a four-step playbook for more meaningful reform:

1. Exceptions to public access should be narrowly tailored. The current reform bills bar the public from ever accessing certain records under any circumstances.

For example, the bill forbids the public from ever seeing autopsy records, and the Senate bill bars access to 911 tapes.

In most cases, these records should be open to the public. Autopsy reports have helped prove that several Pennsylvanians were wrongly convicted

of murder, and 911 tapes provide the public with a powerful check on one of the government's most vital services — emergency response.

The bill's blanket exceptions cloak these records in secrecy based on the mere possibility that disclosure of some records might be harmful in some cases.

Why not address the potential harm directly and restrict access only if revealing specific information would actually invade a person's right to privacy or hinder an ongoing criminal investigation? That's the approach the Supreme Court took in the Paterno case.

When Penn State argued that revealing the coach's salary would violate his right to privacy, the court weighed that right against "the public's interest in governmental transparency." The court ruled that JoePa's privacy interest pales in comparison to the public's "right to know how the Commonwealth spends its money."

The General Assembly ought to follow the Supreme Court's lead and require the same common-sense approach for autopsy reports and 911 tapes — those records should be publicly accessible and only specific information that would

actually violate a person's right

by directing cases to proceed through the courts more quickly. Many states — such as Illinois, Maryland, Maine and Vermont — mandate that open-records cases proceed on a faster track. Pennsylvania should do the same.

3. The government should bear the cost of protecting the public's right to know. Litigation is expensive. In the Paterno case, the Patriot-News was forced to pursue its claims in agency hearings, before the Commonwealth Court, and then in the Supreme Court.

The Patriot-News undoubtedly spent tens of thousands of dollars on lawyers, all to obtain information that should have been publicly disclosed from the beginning.

The average citizen cannot afford to fight protracted legal battles to vindicate his right to public records. Nor should he be required to do so.

The pending bills provide that courts "may" award attorney's fees to people who win their appeals. The problem is the law already includes this same provision, and it has

proven meaningless. Courts have awarded attorney fees in only two cases.

The potential cost of litigation continues to deter citizens from appealing wrongful denials of their Right to Know requests in violation of the law. The Act ought to require the government to foot the legal bill if it loses on appeal. That is the law in many states.

Without a similar requirement, the cost of winning a Right to Know appeal will continue to stand as a very real obstacle to achieving true government transparency.

4. "Our government exists for the people." This simple statement in the Paterno decision sums up the push for reform and should guide legislators as they finalize Right to Know legislation this month.

The Commonwealth's Constitution makes clear that "all power is inherent in the people, and all free governments are founded on their authority." Without access to government records, the people cannot ex-

ercise their authority.

The Paterno case revealed information football fans yearned to know. It also laid out a game plan for protecting the public's right to know.

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