

MARYLAND RESULTS OF NATIONAL AUDIT (Revised 3/7/07 at 2:10 p.m.)
(AUDITMAIN)

w/ Auditside, Auditboxes, Results, Gansler Q&A

By Jim Lee
Carroll County Times

In Kent County, people can find out in a matter of minutes how their officials would react in the event of an emergency.

In Wicomico County, people asking for the same documents are told releasing the information is against county policy.

Across the state, auditors asking for their community's Comprehensive Emergency Response Plan - a document that by federal law should be readily available to the public - were met with distrust, disorganization and denials.

Of 23 Maryland jurisdictions surveyed, only six auditors were able to immediately obtain the document. Eight were denied outright. The remainder encountered myriad difficulties in their attempts to get the information.

"That's disappointing," said Eric Lieberman, chairman of the Government Affairs Committee for the Maryland-Delaware-D.C. Press Association and deputy counsel and director of government affairs for *The Washington Post*. "It makes me wonder what kind of training public officials are getting in their responsibilities under the law."

The audit was part of a nationwide project coordinated by several news agencies to test public record access as part of Sunshine Week, an annual event designed to highlight open government and the public's right to know.

By law, states are supposed to designate Local Emergency Planning Committee districts. Among their responsibilities, the LEPCs are supposed to maintain community response plans that identify facilities using hazardous materials, describe emergency procedures, and outline evacuation plans and emergency notification procedures. The plans are supposed to be updated annually and LEPCs are supposed to notify the public each year about the plan's availability.

Debra Gersh Hernandez, Sunshine Week audit project coordinator, said the emergency response plan was chosen because it is supposed to be public, and it is something that is relevant across many communities.

"I think citizens have a right to know what hazardous materials are in their community," she said. "This is basic information that people need to know."

A range of responses

Sue Willits, director of the Kent County Office of Emergency Services, said **the county's** basic plan is available on a CD and also on the county's Web site.

"I feel our plan is policy, policy is public," she said. "The step-by-step procedures to follow that are private."
Keeping details of the plan out of public view is allowable under the federal Emergency Planning and

Community Right to Know Act of 1986. The two-tier access is designed to ensure that the public is informed of potential dangers in their community, but officials can keep more sensitive information private.

Many jurisdictions, however, don't make that distinction.

In Wicomico County, LEPC Management Agency Deputy Director David Shipley said **Wicomico's** policies are different from other communities.

Shipley originally said the plan was not public. Later, he said the plan could be viewed but could not be copied.

"Nobody was ever prohibited from viewing it," he said. "In my mind, reviewing and copying are two different things."

Bob McDonald, **Chief, Opinions and Advice** for the state attorney general's office, said he was not aware of any such distinction. **Should this be "chief of opinions and advice"? - no title is cq as is**

"As a general rule, any record that is open to public inspection is also open to copying," he said. Lieberman of the *Washington Post* agreed.

"It doesn't make common sense that you can read the document but can't make a copy of it," he said.

Denials and delays

Officials in several jurisdictions forwarded the request to their county attorneys, many of whom denied or delayed access to the plans.

Ernest Crofoot, county attorney in Caroline County, sent a reply to the requestor indicating that he would have to review the entire document - at a cost of \$195 an hour - and that the total cost would be in the range of \$1,200 to \$1,600 plus \$114 for copying.

"To proceed with the handling of your request, the county must receive an advance against the costs in the amount of \$1,200," Crofoot wrote in a response to the requester.

Lieberman said receiving incorrect information from county attorneys is especially troubling.

"The lawyers have an obligation to research the law before they give advice to county employees about what they can and can't release," he said.

Crofoot said later that the initial request was unclear and he thought the auditor wanted the entire plan instead of just the public portion.

"We interpreted the request to be something much more significant," he said.

McDonald said the attorney general's office recommends that people requesting public documents do so in writing, even though it is not required by law.

"It's important that you make clear what you are asking for," he said. "Especially when it is something that people may not ask for every day or that could be misinterpreted."

Agencies denying access to a document must do so in writing, and they must cite specific sections under the law that allow the denial.

In many cases, however, that didn't happen, either.

In Dorchester County, officials made a vague reference to the Department of Homeland Security and said the plan was not a public document.

In Queen Anne's County, officials cited an exemption in the federal law that they say allows them to deny access.

McDonald said he was not familiar with the exemption, and would have to do further research to see if it applied.

"I did notice, however, there is a related section that says it doesn't pre-empt any state law," he said. Auditors encountered other difficulties as well, including: reaching the person responsible for the document; not receiving a response after several attempts; not being given the document until after they identified themselves as reporters; and being told the document was unavailable because it was being updated.

Alarms raised

In order to avoid the possibility of being treated differently, auditors were asked to not identify themselves as reporters. Despite that, in Anne Arundel County, access to the document was denied until the reporter's credentials were verified.

Audit coordinator Hernandez said it doesn't make sense to allow reporters access but not the public. "In essence, they are really denying the information to the public, which is the bottom line," she said. After that initial contact, Arundel refused to release the document anyway. In Carroll County, Office of Public Safety director William Martin said the plan wasn't available because it was being updated.

Martin has since retired. Vivian Laxton, Carroll County Public Information Office administrator, later contacted the reporter to say the plan was available.

"I know that whoever it was ultimately should have gotten a copy of the plan," she said. Auditors were asked to conduct their surveys between Jan. 8 and Jan. 19. As auditors fanned out, word of the multiple requests got back to the Department of Homeland Security, which sent e-mails to emergency management agencies across the nation.

"Just wanted to give you a heads up in case you haven't heard," wrote Niki Edwards, external affairs officer for the Department of Homeland Security in an e-mail sent Jan. 19 to the Maryland Emergency Management Agency.

The e-mail subject line was "Emergency Plans being sought by newspapers." "You may want to alert your leadership and counties, as other states appear to be doing," Edwards wrote. The same day, MEMA forwarded the e-mail to counties across the state. In his e-mail, MEMA's Jeff Welsh wrote "Our position at MEMA is that this would be treated as a public information act request and we would forward it to our assistant AG."

Since the e-mail went out, more agencies have responded to the initial requests. Dick DeVore, director of the Allegany Office of Emergency Management, said he didn't know it was a reporter when he sat down with the auditor, explained the document and offered to make copies.

"I did not put two and two together until much later," he said. Regardless of the audit, DeVore said, he knew the document requested was public and said his job is to help inform residents.

"Our approach here as far as emergency management services is that it is a cooperative venture between government and the citizens," he said.

Willits, in Kent County, said she didn't know it was a reporter making the request, either. But, she said, e-mails going around after the audit foretold that the results would not be good.

"The consensus was most Maryland counties did not relinquish their plan," she said. Better training could help, she said, and the upcoming directors' conference in May would be the perfect venue.

"You could have a whole panel discussion," she said.

McDonald said the attorney general's office conducts training for municipalities through such organizations as the Maryland Association of Counties and Maryland Municipal League.

"The AG's office would be happy to send someone to participate in any training for which MEMA requested our assistance," McDonald wrote in an e-mail.

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