Legislative Services Agency

MINUTES

FREEDOM OF INFORMATION, OPEN MEETINGS, AND PUBLIC RECORDS STUDY COMMITTEE

September 6, 2007 — First Meeting

MEMBERS PRESENT:

Senator Michael Connolly, Co-chairperson
Senator Daryl Beall
Senator Jeff Danielson
Senator Mary Lundby
Senator Pat Ward

Representative Vicki Lensing, Co-chairperson
Representative Carmine Boal
Representative Elesha Gayman
Representative Bruce Hunter
Representative Libby Jacobs

MEETING IN BRIEF

Organizational staffing provided by: Rachele Hjelmaas, Legal Counsel (515) 281-8127

Minutes prepared by: Ed Cook, Senior Legal Counsel (515) 281-3994

I. **Procedural Business.**

II. **Opening Meetings and Public Records Laws Issues Overview — Professor Arthur Bonfield.**

III. **State Government Presentations.**

IV. **Interest Groups Presentations.**

V. **Public Comments.**

VI. **Committee Discussion — Action.**

VII. **Materials Filed With the Legislative Services Agency.**

I. Procedural Business.

Call to Order. The September 6, 2007, meeting of the Freedom of Information, Open Meetings, and Public Records Study Committee was called to order by temporary Co-chairperson Senator Connolly at 9:01 a.m., Thursday, September 6, 2007. The meeting was held in Room 22 of the State Capitol.

Adjournment. The meeting was adjourned at 4:26 p.m.

Committee Business. The Committee adopted rules and elected Senator Connolly and Representative Lensing co-chairpersons of the Committee.

Next Meeting. The second meeting of the Committee is scheduled for October 19, 2007, in the Supreme Court Chamber at the State Capitol at 9:00 a.m.

II. Open Meetings and Public Records Laws Issues Overview — Professor Arthur Bonfield.

Professor Bonfield, University of Iowa College of Law, addressed the Committee relative to various issues and concerns about the current statutory language in many provisions of Iowa's open meetings and public records laws as well as the State Archives and Records Act. Professor Bonfield's presentation outlined several, but not all, of his concerns and problems with Iowa's current laws. Ultimately, Professor Bonfield noted that it will be up to the General Assembly to decide how to best address the various issues and concerns raised.

A. Overview.

Professor Bonfield provided the following overview and outlined issues and concerns set out below. Sunlight or openness in government is essential for democratic government because it deters unwise or improper government action and permits citizens to monitor and assess the effectiveness of government. Where there is no sunlight, mold grows. However, problems can arise if there is too much sunshine in government. Government needs to be effective, efficient, economical, and protective of certain aspects of personal privacy. If there is too much sunlight, one can get cancer. Any change or modification of open meetings and public records laws need to strike a balance between these competing goals, recognizing, however, that government should be as open as possible.

B. Issues and Concerns About Iowa's Open Meetings and Public Records Law.

1. Comprehensive reconsideration needed.

Iowa's current open meetings and public records laws are badly in need of repair. Since the open meetings law was enacted in 1978 and the public records law was subject to major amendments in 1984, the statutes have been significantly amended, technological advancements have created new issues, and societal values have changed. As a result,

the current open meetings and public records statutes are inconsistent, unclear, and in need of a comprehensive reexamination.

2. **Terms and definitions used to describe the different types of access to government information should be made more accurate and clear.**

The current definitions of "public record" and "confidential record" in Code chapter 22 are inadequate to deal with various types of governmental information and are unclear, confusing, imprecise, and misleading. Confidential records under Code section 22.7 are not entirely confidential because the law permits the courts or a custodian of such a record the discretion to release it. A possible solution to this issue would be create four new terms to describe governmental records or information: government record, public record, optional public record, and confidential record. Government record would be defined to include all information stored in any medium that is owned, possessed, controlled, or in the custody of a government. Public record would refer to government records that are generally open for public inspection. Optional public record would be a government record that is considered confidential unless a court or custodian of the record decides the record can be released. Finally, confidential record would be a record that is not disclosable to the public.

3. **A harmonized definition of a public record is needed.**

Code section 22.1 defines public record as those records that belong to the state or a political subdivision of the state. The State Records and Archives Act, codified in Code chapter 305, includes a very broad definition of a public record. In some cases, the definition of a public record may be too broad including, for example, all information even if trivial, in draft form, or notes, created by a state employee or official. In other cases, the current definition of a public record may be too narrow, for example, not covering the correspondence of a retired public university employee utilizing university resources who may be providing advice on university matters. The definitional provisions of Code chapter 22 and Code chapter 305 regarding public records should be harmonized and the breadth of the definition of a public record should be examined.

4. **Very tentative or preliminary ideas or opinions could be shielded from public disclosure.**

Requiring mandatory disclosure of preliminary notes and opinions can impair the effectiveness of government and current Iowa law could be interpreted to require such disclosure. One solution that many states have adopted is to create a deliberative privilege exemption that shields from mandatory public records disclosure very preliminary and tentative ideas or opinions before they are finally proposed for consideration. The idea would be to shield ideas or opinions only, not facts.

5. **Public records law and open meetings law should be consistent regarding government information that may be withheld from public disclosure.**

Current public records law does not incorporate all of the exemptions found in the open meetings law and the exceptions in both laws are not consistent. For example, each law deals differently with contested case proceedings and the hiring of applicants for government employment.

6. **Clear legislative direction is needed concerning the extent of information that must be disclosed relative to public employment applications and discussions accompanying the consideration of those applications.**

Tension exists between disclosure and confidentiality relative to the hiring of government employees. Some high-quality applicants may not apply for government employment unless there is some degree of confidentiality regarding an applicant's name and qualifications. However, too much confidentiality makes it difficult for information about applicants to be made available and the appointing body will not receive the benefit of adequate public input on potential applicants. Current law, though, is confusing and not consistent as to the applicable standards relative to this issue for public records and open meetings laws. For example, public records law makes a distinction as to whether the applicant is from inside or outside government, while no such distinction exists in open meetings law.

Any solution in resolving this issue should aim to make the law consistent under both public records and open meetings laws, and to provide the maximum openness balanced with the need of government to receive the best applicants. The distinction in public records law between applicants from inside and outside government should be eliminated. One solution would be to keep the hiring process open unless an applicant requests confidentiality in writing. Then the hiring agency would have to make a finding that confidentiality is necessary for the applicant before confidentiality would be provided. Even if the process is initially confidential, information should be made public once the small group of finalists is determined. In addition, the ability of an applicant to request and receive confidentiality could be applied to all, some, or only certain designated government positions. Many states provide that information pertaining to individual applicants for government employment and their consideration by the appointing authority is closed.

7. **Many current exemptions from mandatory disclosure of public records information need to be reconsidered and rewritten.**

Many of the current 59 confidential records exemptions in Code chapter 22 are too broad, too narrow, too vague or unclear, or too agency or program specific and should be consolidated and rewritten. Current exemptions in need of examination and redrafting include but are not limited to exemptions relating to personnel records, social security numbers, and peace officer investigative reports.

8. **Additional exemptions from mandatory disclosure need to be considered.**

Personal information about identified persons that would lead to undue invasion of privacy should be exempt from mandatory disclosure. An example of an area that needs consideration relates to personal information of state licensees. Public records law in Code chapter 22 does not specifically bar release of such information, but many of the licensing statutes include some type of confidentiality. While some confidentiality is appropriate, the need for confidentiality should be balanced with the need of the public to be informed about licensed professionals in this state. However, the law may go too far in granting a person the right to examine every government record that may identify that person. A possible

solution would be to allow the subject of a government record to have access unless the government body can show that the release would frustrate the accomplishment of an important public purpose.

9. **The scope of existing judicial authority to restrain the examination of government information needs to be reexamined.**

A court injunction to restrain the examination of a particular public record currently requires a finding that the examination would not be in the public interest and would likely cause substantial and irreparable injury to any person or persons. The law should be changed to allow an injunction preventing disclosure of a record if the examination would not be in the public interest, disclosure would substantially and irreparably invade the privacy of the subject of the record and this harm is not outweighed by the public interest in disclosure, or the record is not a government record subject to disclosure.

10. **The precise scope of the discretion of a custodian of a public record to release information otherwise exempt from mandatory public disclosure needs clarification.**

Iowa's public records law authorizes custodians of public records to release confidential records. However, Code chapter 22 does not contain a standard for custodians to decide whether a confidential record should be released. The Iowa Administrative Procedures Act, applicable to state but not local government, provides that custodians act fairly and not unreasonably. Code chapter 22 should be amended to provide that custodians give advance notice, if feasible, when the custodian exercises its discretion to release confidential records that identify a particular person to allow such a person an opportunity to seek an injunction and prevent the release.

11. **Disclosure status upon transfer of government records.**

Code chapter 22 should be amended to ensure that government records not lose their disclosure status when they are transferred to the custody of another official, agency, institution, or person.

12. **The public availability of final settlement agreements between an agency and another person should be clarified.**

Iowa's public records law and the Iowa Administrative Procedures Act allow the release of final settlement agreements. However, many state agencies desire to keep these agreements secret. Agencies argue that secrecy is needed to encourage settlements, that agreements often contain confidentiality agreements, and that settlement agreements are not final orders under the Iowa Administrative Procedures Act and are therefore not required to be disclosed. However, confidentiality agreements cannot override a state statute, settlement agreements should be considered a final order and disclosable, and measures can be taken to allow release of these agreements while not disclosing the particular parties involved. The public should have access, in some manner, to these agreements so as to understand agency law and how the agency reached the decision to settle.

13. The timeline within which government information must be made available needs reconsideration.

Some specificity may be beneficial to eliminate some complaints that agencies are not timely in releasing public information. The timelines need to be based on what action the agency will need to take to comply.

14. The specificity of requests for public information should be considered.

Current public records law does not require particular precision in making a request and does not take into account the potential burden on government bodies of broad and extensive requests for records.

15. Harmonizing public records law in the Code.

Code chapter 22 should provide that its provisions do not prevail if another provision of the Code expressly provides otherwise. Ideally most public records law would be located within Code chapter 22, but that may be practically unworkable.

16. Time limits on confidentiality.

For historical reasons, government information that may be treated as confidential should be made available for public inspection after a specified number of years.

17. The definition of government body under the open meetings law needs to be reexamined.

Generally, open meetings law does not apply to bodies without policymaking duties, such as advisory bodies. However, some advisory bodies are covered and some confusion exists as to when a body is considered advisory.

18. The definition of meeting in the open meetings law needs to be reexamined.

Current law does not adequately deal with when e-mail communications between a quorum of the members of a government body are subject to open meetings requirements. Should a quorum exist only when the members are simultaneously online with a majority of the members? However, requiring openness with less than a quorum could stifle the needed interaction between members of a government body. One possible solution would be to require members of a government body to explain, on the record, why they are taking a particular action during a public meeting.

In addition, open meetings law should be clarified to prevent the ability of a government body to continually recess and reconvene a meeting for several days and thereby avoid providing the public notice before the meeting is resumed.

19. Enforcement mechanisms should be strengthened.

The mechanisms available for enforcement of public information requirements should be strengthened by designating a state official to investigate open meetings and public records complaints or establishing an independent regulatory administrative body to enforce such laws.

III. State Government Presentations.

A. Citizens' Aide/Ombudsman Office — Mr. William Angrick, Citizens' Aide/Ombudsman.

1. Overview.

Open meetings and public records are important for democracy by inspiring trust and confidence in government. In 2001 a freedom of information audit found several areas of concern related to governmental compliance with freedom of information laws. As a result, training efforts were increased by organizations such as the Iowa League of Cities, the Iowa State Association of Counties, and the Iowa Freedom of Information Council, and a new position was created in the Ombudsman's Office to respond to public records and open meetings complaints. In 2005 another freedom of information audit was conducted and while some improvement had taken place, several areas of concern remain. Despite the efforts taken, reports of noncompliance with both public records and open meetings laws have increased with "frequency and audacity."

The key to improvement is an aggressive commitment to investigate and prosecute violators. One possibility would be to allow the awarding of treble damages when citizens and organizations prevail in civil actions involving open meeting and public records violations. Other enhanced penalties may also be needed.

2. Issues for Legislative Consideration.

a. **Applications for government employment.** The General Assembly should balance the public's right to know with an applicant's right to privacy. At a minimum, certain basic information about all applicants should be made available, such as the applicant's name, city of residence, employment history, and educational history. However, a provision limiting this disclosure to finalists for the position could be considered.

b. **Walking quorums.** The practice of "walking quorums" by members of a governmental body where less than a majority of members rotate in and out of a meeting to avoid the requirements of the open meetings law should be prohibited.

c. **Public records definition needs review.** What public records should be released under both the public records and the State Records and Archives Act needs clarification. Consistency is also needed regarding the release of information in peace officer investigative reports.

d. **Iowa Fair Information Practices Act.** Code section 22.11 requiring state agencies to have policies and procedures in place to ensure compliance with the public records law should be extended to local governments.

B. Attorney General's Office — Attorney General Tom Miller.

1. Walking Quorums and E-mail Meetings.

The practice of having less than a quorum of a governmental body rotated in and out of a gathering or of using e-mail communication intentionally to avoid open meetings law requirements should be prohibited. These practices are the functional equivalent of a meeting and should be subject to open meetings law requirements.

2. Settlement Agreements.

Settlement agreements should be accessible to the public.

3. Enforcement.

Open meetings and public records issues can currently be enforced through an action filed by the Attorney General, county attorneys, or by private individuals. The current mix of enforcement options is adequate. Still, civil penalties should be sufficient and the criminal penalties could be removed.

At the state level the complaints tend to be over public records issues. If the issue of disclosure is unclear, the Attorney General's Office will represent the affected agency and let the courts decide. At the local level the Attorney General's Office has generally not taken cases, but has relied on local county attorneys for enforcement of open meetings and public records issues. Local enforcement is generally a more efficient and less heavy-handed approach to enforcement than reliance on the Attorney General's Office.

However, the current approach of leaving enforcement of local government open meetings and public records violations to the applicable county attorney may not be effective in ensuring open government. The Attorney General's Office is now willing to consider prosecuting violations of Iowa's open meetings and public records laws at the local government level instead of automatically deferring to local county attorneys. In addition, the Attorney General's Office will try to enhance its problem solving role in dealing with these issues and is willing to review complaints forwarded to the office from the Citizens' Aide/Ombudsman Office for possible prosecution. In addition, increased use of mediation could be used to better resolve open meetings and public records issues. This increased role for the Attorney General's Office will require additional funding.

C. State Archives — State Archivist Gordon Hendrickson.

1. State Archives Role.

The State Records and Archives Act provides the methodology for determining the length of time state records should be retained and at what point it is appropriate to transfer state government records from agency offices to the State Records Center or to dispose of such records either by destruction or transfer to the State Archives.

2. **Confidential Record Disclosure — Period of Confidentiality.**

Current open records law provides little guidance as to when, or if, a confidential record can be disclosed. Consideration should be given for limiting the period of confidentiality for individual records to an appropriate length of time. For example, Iowa's vital records statute does provide for the release of birth, death, and adoption records after a set period of time. However, determining the appropriate length of time before confidential records can be made public is difficult and should vary from document to document.

3. **Multijurisdictional Consistency.**

Confidentiality provisions for public records should be consistent with other states and the federal government. An executive privilege provision and a clear definition of personal information should be considered to provide additional guidance to the State Archives and staff of executive offices.

4. **Lawful Custodian Definition.**

The definition of lawful custodian under Code chapter 22 should be clarified. A government agency should not be able to transfer the legal custody of public records to a private agency.

5. **Research Agreements.**

Clear authority should be given for the State Archives to enter into research agreements with researchers to allow access to confidential records as long as the researcher agrees to keep the confidential material confidential.

D. Judicial Branch Perspective.

The Honorable Robert Hutchison, Fifth Judicial District Judge, and Ms. Rebecca Colton, Counsel to the Chief Justice, Iowa Supreme Court, addressed the Committee about the proposed electronic data management system (EDMS) the judicial branch will be implementing to enable the use of electronic filing and the use of and access to electronic files in the Iowa Court System. The Supreme Court's goal is to implement electronic filing in two counties and the appellate courts this year and all courts statewide in five years.

Although a paperless court system will allow more efficient court operations and public access, there are concerns about information security and sensitive and personal information contained in court documents. Court records contain a substantial amount of personal information that is open for public inspection, but the current paper system makes it difficult to find and access this information. Once the information is available electronically, many of the current barriers to obtaining and accessing these records are removed. Proposed rules of practice and procedure have been developed to address implementation of this electronic filing and recordkeeping system and include personal privacy protection measures to assist in protecting certain information from widespread dissemination. Legislation was also introduced during the 2007 Legislative Session to grant the judicial branch authority to prescribe rules to protect confidential information in court records.

In discussing the proposed electronic data management system, Judge Hutchison noted that there will be three levels of access through the new system by noncourt personnel to court documents and files not deemed confidential: general public access for nonconfidential files or documents; registered user access to view and download nonconfidential files or documents; and registered filer access to file, view, and download all documents in cases in which the registered filer is a party to the case. There will be no cost to view a nonconfidential file or document, but registered users and registered filers will pay a fee as determined by the Technology Governance Board.

E. Department of Administrative Services — Information Technology Enterprise.

Mr. Tom Shepherd, an executive officer with the Information Technology Enterprise of the Department of Administrative Services, discussed recommendations relating to open meetings, public records, and state records and archives laws.

1. Updating the Requirement to Tape Record Closed Meetings.

The statute should utilize language that is technologically neutral and not specify the manner by which a closed-door session is recorded.

2. Documents Distributed at Meetings.

Iowa's open meetings law should provide that documents distributed at a government meeting be made immediately available if prepared by a government body, or after the meeting if prepared by another person.

3. Maintain the Distinction Between Public Records and Value-Added Services.

A distinction should be made between the fees charged for access to public records and fees charged for specialized or packaged services that provide access to electronic services and products, i.e., value-added services.

4. Promote Efficiency and Simplify Access to Public Records.

Information technology solutions can be important in determining the best strategy for the management of public records.

5. Exemption for Document Copies.

The National Archives and Records Act exempts extra copies of documents maintained solely for convenience or reference purposes from the definition of public record and Iowa law should mirror this exemption.

6. Miscellaneous Issues.

Consideration needs to be made relative to when electronic collaboration by members of a government body may constitute a meeting. Some guidance would be helpful on the question of whether rough drafts, notes, and dictation tapes should be disclosable as a public record.

IV. Interest Groups Presentations.

A. Iowa Newspaper Association and the Iowa Broadcasters Association — Mr. Keith Luchtel, Lobbyist.

Both the Iowa Newspaper Association and the Iowa Broadcasters Association support the comments and recommendations of the Iowa Freedom of Information Council and allowed the Council to address the Committee on their behalf.

B. Iowa Freedom of Information Council — Ms. Kathleen Richardson, Executive Secretary, Iowa Freedom of Information Council.

1. Open Meetings and Public Records Laws Problems.

The following issues and concerns can be dealt with legislatively by amending open meetings and public records laws:

- The practice of utilizing walking or roaming quorums to avoid open meeting law requirements needs to be stopped.
- The process of hiring public employees is increasingly done in secret.
- The confidentiality of personal information in personnel records is too broad and can hide misconduct of public employees.
- The definition of what constitutes a meeting and which government entities are covered by the open meetings law causes confusion and invites abuse. The law is not clear about whether subcommittees and advisory bodies are subject to open meetings law requirements.
- Electronic communications creates public records and open meetings law issues. For example, does a series of e-mails between members of a government body create a meeting subject to open meetings law requirements?

2. Institutional Concerns.

a. Overview. Two fundamental issues stand in the way of ensuring truly open and accountable government: sufficient training of government officials about access to government laws and the will to enforce those laws.

b. Independent access counselors. Iowa should create independent access counselors to conduct training for public officials, answer public access questions from both government officials and citizens, and attempt to resolve complaints through mediation and informal opinions. The following state models for creating independent access counselors were identified.

i. Connecticut — Freedom of Information Commission. The largest freedom of information agency in the nation, the commission has an extensive staff and has significant statutory authority. In addition to an informal mediation process to resolve complaints, the commission has quasi-judicial powers and can render advisory opinions, investigate grievances, hold hearings, and impose penalties.

ii. New York — New York Committee on Open Government. The committee has a full-time staff and responds to open government inquiries and provides both formal and informal opinions on open government issues. Opinions issued by the committee are not given legal weight. The committee makes an annual report to the legislature summarizing its work and making recommendations for changes in the law.

iii. Indiana — Office of Public Access Counselor. The counselor is appointed by the governor and the office is an independent office within the executive branch. The office can provide both informal oral advice and formal written advice and intervenes with agencies in attempts to resolve disputes. The public is provided an incentive to use the office since the law provides that a plaintiff may lose the ability to collect attorney fees if they do not contact the office prior to filing suit.

c. Common themes favoring the creation of independent public access counselors.

- Having one entity in state government responsible for open government issues serves both the public and government officials well.
- To be successful, any access office must be seen as independent and nonpartisan.
- Sufficient resources must be made available to the access counselor.
- A public access counselor has the ability to resolve issues quickly prior to protracted litigation.
- A public access counselor can be a needed resource for government agencies and the public in dealing with open government issues.

C. Iowa State Association of Counties — Mr. David Vestal, General Counsel, Iowa State Association of Counties.

1. Overview.

Transparency and sunshine is key to open government. Still, open government laws need to be tempered with common sense. Local public officials want to do the right thing and needed reforms in open government laws are not expensive. The concept of a public access counselor has some merit.

2. Public Records Law Suggested Changes.

- The definition of public records should be made narrower. By narrowing the scope of public records, some of the current confidentiality exceptions could be eliminated. Professor Bonfield's suggestion to rework government record definitions has merit.

- Repeal the 2006 amendment providing that certain information in a peace officer confidential investigative file is no longer confidential if the statute of limitations has expired on the crime being investigated.
- A definite time limit for public officials to comply with public records requests needs to be established.
- Local governments should be allowed to charge a commercially reasonable rate for copies of public records to be used for commercial purposes. California, Arizona, and Kentucky currently have laws authorizing such a charge.

3. Open Meetings Law Suggested Changes.

- The language on advisory committees being subject to open meetings law needs to be clarified.
- Twenty-four-hour posted notice requirements need to be adjusted to account for Monday meetings.
- The General Assembly should define a "closed session" under open meetings law.
- The General Assembly should eliminate the requirement that a local government can only close a session to discuss a personnel matter if the individual employee involved requests a closed-door session.
- E-mails sent from one elected official to another on their private computers, even if concerning government business, should not be a public record.
- Predecisional discussions by members of a government body should be permitted without being subject to open meeting requirements. Board retreats and discussions with employees should not trigger open meetings law requirements so long as decisions are neither contemplated or imminent. Too much openness can hinder the functioning of government.

D. Iowa League of Cities — Mr. Terry Timmons, Associate General Counsel, Iowa League of Cities.

1. Overview.

Openness in government should be supported, but needs to be balanced by effective government. While most of the legal issues involved in open government laws have been worked out, the lack of knowledge by government officials regarding these laws remains a concern. Creating a state public access counselor would be acceptable, even if the position was given some mediation authority.

2. City Attorney Concerns.

a. A closed-door session should be allowed both to interview job applicants and to evaluate employees for possible discipline or discharge, without having to first show harm or injury to the applicant or person subject to possible discipline or discharge and without the requirement that the applicant or person request a closed-door session.

b. A closed-door session should be permitted for a government body to give directions to staff regarding the negotiation of contracts.

c. Drafts of contracts and staff reports about contracts should be confidential until negotiations are complete and the contract is presented to the governmental entity for approval.

d. Open records law should be amended to provide that appraisals or appraisal information on property a governmental entity is attempting to acquire under eminent domain be confidential until the governmental entity makes an offer on the property.

e. Bid tabulations and proposal evaluation reports prepared by staff for consideration by a governmental body should be confidential until staff makes a recommendation as to the best proposal.

f. Documents provided to a governmental body to aid in a closed-door session discussion of a matter should be exempt from disclosure.

g. Current public records law making confidential Iowa Department of Economic Development information on an industrial prospect should be extended to other governmental entities with similar information.

h. The confidentiality of personal information in personnel files needs to be clarified.

i. Government bodies should not be required to publish minutes of a work session of the government body in which no action is taken.

j. Disclosure of a confidential record or content of a closed-door session to a third party should be prohibited and the party disclosing the information should be subject to sanction.

E. Iowa Association of School Boards — Ms. Mary Gannon, Attorney, Iowa Association of School Boards.

1. Overview.

A massive overhaul of open government laws is not needed. The primary problem is implementation of the laws, which generally fail because of lack of knowledge about open government requirements, deliberately ignoring the law, or an inability to enforce the law. The Association emphasizes training on open government issues and has a manual to deal with open meetings and public records laws issues.

2. Open Government Issues.

a. The reference to student records in Iowa's public records law should reflect that federal law controls the release of student records.

b. Enforcement of open government laws should be primarily a civil, not criminal, matter.

c. Walking quorums should not be allowed and the association has advised school boards against using this practice.

d. Confidential discussions related to personnel issues should be allowed. Making information on school superintendent applicants open would have a chilling effect on attracting good candidates.

e. The issue of whether teacher quality committees should be subject to open government laws is not clear.

f. If a student expulsion hearing is done in a closed-door session, then the deliberations regarding that hearing should also be closed.

g. Information on the sale of property should be private.

h. Clarity is needed on whether the names and addresses of parents of students are disclosable as a public record.

F. Iowa Civil Liberties Union — Mr. Marty Ryan, Legislative Director.

1. Open Meetings Issues.

a. Formulating policy by circulating a decision memorandum among members of a government body to avoid open meetings law requirements should be changed. A possible solution would be to redefine a meeting to include such a series of organized communications or to require decision making to be done at an open meeting.

b. A standardized method of posting notices of meetings should be created. An internet website could be created for this purpose.

c. The current definition of government body for purposes of open meetings law should include all gambling establishments, not just those establishments that are supported by property tax dollars.

2. Public Records Issues.

Certain confidential record exceptions to public records disclosure are overly broad. The confidentiality exception for personnel records can be used to hide the results of investigations into official misconduct and abuse committed by public employees. The need for the exception cloaking the identity of sellers of livestock is unclear. The confidentiality provision in Code chapter 22 concerning the information collected by the Commissioner of Insurance conflicts with public records provisions of the Uniform Securities Act.

G. Iowa Genealogical Society — Mr. Dennis Allen, Vice President.

Access to vital records is important for genealogical research. While many vital records are open after a period of time, determining the proper length of time before access to birth, death, and other vital records is difficult. Increased electronic access to records also raises some security concerns, but there is no evidence that this increased access has led to identity theft.

V. Public Comments.

Ms. Lauris Olson, an interested citizen and independent newspaper publisher, addressed the committee relating to concerns over the actions of the Ames Community School District. Current open government law is fine, but enforcement needs to be improved. Citizens should not be charged for the retrieval of public records, and any hourly charge staff can assess to review and research public records requests should be limited.

Ms. Tammie Picton, an interested citizen from Riverdale, Iowa, addressed the Committee relating to several open meetings and public records laws concerns that have occurred in Riverdale. While citizens have been successful in filing lawsuits challenging the actions of government officials in Riverdale, enforcement of open government violations needs improvement.

VI. Committee Discussion — Action.

A. Committee Discussion.

Co-chairperson Connolly. The goal of the Committee is to address the abuses occurring in government that prevent openness and develop a bill for consideration during the next session of the General Assembly.

Co-chairperson Lensing. The open meetings and public records laws need to be consistent with each other. Education and enforcement are critical in ensuring open government.

Senator Beall. Government business, at any level, should not be done behind closed doors.

Senator Danielson. The issue of when, or if, open meetings and public records laws should apply to nongovernmental organizations, nonprofit entities receiving government money, and entities created under Code chapter 28E needs to be examined.

Representative Gayman. Public input is needed on public access to government issues. Nonprofit entities need accountability.

Representative Jacobs. Current open government laws provide a good framework for dealing with issues that have arisen. Still, the laws need to take into account changes in technology. An examination of what is truly confidential and should not be subject to disclosure needs to occur.

B. Committee Action.

1. The Committee agreed to establish an internet link on the General Assembly's website to solicit public comment on open government issues.

2. The Committee indicated the need to hold an additional meeting beyond the three meetings authorized by the Legislative Council and to be allowed to hold the final meeting of the interim Committee in December.

VII. Materials Filed With the Legislative Services Agency.

The following materials listed were distributed at or in connection with the meeting and are filed with the Legislative Services Agency. The materials may be accessed from the <Additional Information> link on the Committee's internet page:
http://www.legis.state.ia.us/aspx/Committees/Committee.aspx?id=216

1. University of Iowa Law Professor Arthur Bonfield Presentation (Suggested Revisions to Code Chapters 21, 22, and 305).
2. William Angrick, Citizens' Aide/Ombudsman Presentation.
3. Statement of Gordon O. Hendrickson, Ph.D., State Archivist.
4. Marsha Ternus, Chief Justice of the Iowa Supreme Court, State of the Judiciary, Jan. 10, 2007.
5. Proposed Court Rules for Electronic Filing and Electronic Files in Iowa Courts, Jan. 11, 2007.
6. Tom R. Shepherd, DAS, Information Technology Enterprise: Iowa Code Chapters 21, 22, and 305 Comments and Recommendations.
7. Kathleen Richardson, Executive Secretary, Freedom of Information Council (IFOIC), Iowa's Access Laws: Problems and Solutions.
8. Kathleen Richardson, Executive Secretary, IFOIC, Proposed Amendments to Chapters 21 and 22.
9. Kathleen Richardson, Executive Secretary, IFOIC, Presentation to Senate and House State Government Committees - Feb. 5 and 6, 2007.
10. Kathleen Richardson, Executive Secretary, IFOIC, State Access Counselors - In Search of a Responsive Government (Oct. 2, 1999).
11. Harry Hammit, Editor/Publisher, Access Reports, Mediation Without Litigation.
12. David Vestal, General Counsel, Iowa State Association of Counties, Comments.
13. Terry Timmons, Associate General Counsel, Iowa League of Cities, Open Meetings/Open Records Issues.
14. Mary Gannon, Attorney, Iowa Association of School Boards, Comments on Iowa's Open Meetings and Public Records Laws.
15. Mary Gannon, Attorney, Iowa Association of School Boards, Additional Comments.
16. Marty Ryan, Legislative Director, ACLU of Iowa Problems to be Addressed in Iowa's Open Meetings and Open Records Laws.
17. Dennis Allen, Vice President, Iowa Genealogical Society, Comments.
18. Dennis Allen, Vice President, Iowa Genealogical Society, Presentation Notes.
19. Background Information, Rachele Hjelmaas, LSA Legal Services.

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