Proposed Interim Study Committee Policymaking Framework
October 19, 2007

1. Should the existing means of enforcing Iowa's sunshine laws be strengthened?

   A. Should an administrative enforcement scheme be added to the existing civil enforcement scheme currently provided in Iowa's sunshine laws?

      I. Should a single purpose state official, located either inside or outside of the Ombudsman's Office, be created and specially authorized by law to receive individual complaints of noncompliance with Iowa's sunshine laws, to investigate the merits of such complaints (including authority to view withheld records and to examine the minutes and tapes of closed meetings), to issue public reports on the merits of such individual complaints, to mediate disputes between complainants and government bodies on this subject, to issue annual reports on general compliance with these laws and recommendations for their improvement, and to ensure adequate training for complying with these laws by all relevant government officials in this state?

      OR

      II. Should an independent state public information agency be created and authorized to issue advisory opinions on the applicability of Iowa's sunshine laws to particular cases (§17.A9), to issue rules calculated to improve compliance with these laws, to receive complaints from individuals about alleged violations of Iowa's sunshine laws, to investigate the merits of such complaints with full subpoena power, to prosecute alleged violations of these laws before the agency in Chapter 17A contested cases, to issue legally binding orders enforceable in the courts requiring violators to comply with these laws and to impose civil penalties where warranted, and to ensure adequate training for complying with these laws by all relevant government officials in this state?

   B. In addition to adding an administrative enforcement mechanism or in the alternative to such an administrative enforcement mechanism should the existing civil means of enforcement be strengthened by increasing the civil fines for violation or providing other monetary remedies?

   C. Should the criminal sanctions for violation of the Public Records Law be repealed because they weaken the enforceability of Chapter 22?

D. Should all state and local officials with responsibilities under Chapters 21 or 22 and their lawyers be required to attend on a periodic basis approved educational programs about the requirements of these laws?

2. Should the statutory terms describing the various levels of public access to government information be made more accurate and clear?

   A. Should the term "government record" be used to describe all records owned by, created by, in the possession of, or under the control of, state or local government or their officials or employees in the course of the performance of their respective duties?

   B. Should the term "public record" be used to describe "government records" as to which members of the public have an unqualified right to access and copy?

   C. Should the term "confidential record" be used to describe "government records" as to which a statute prohibits access and copying by members of the public?

   D. Should the term "optional public records" be used to describe "government records" as to which a statute prohibits access and copying by members of the public unless the custodian or a court provides otherwise (§22.7)?

3. Should the term "information" be substituted for the term "record" in Chapter 22 making the drafting focus on **content** rather than on the **medium** in which content is preserved? If the answer is in the affirmative should content unqualifiedly available for public inspection be called "public information," content for which public inspection is prohibited by statute be called "confidential information," and content for which public inspection is prohibited unless the custodian or a court orders otherwise be called "optional public information"?

4. Should the definition of "public record" (or "public information") be changed to mean all "government records" (or "information") that are not determined by statute to be either "confidential" or "optional public" (§22.7)?

5. In order to deal with the significant current ambiguities in the §22.1(3) definition of "public record" and its relationship to §305.13, should "government records" (or information) containing the following information be classified as "optional public records" or information (§22.7): very tentative ideas, opinions, or drafts, used only as part of an early and preliminary deliberative process and that are created prior to the proposal of any final recommendation for the making of an authoritative decision by the relevant decisionmaker?

6. Should government information that may be withheld from public disclosure be made consistent under both Chapters 21 and 22?

7. Should the identity and qualifications of all applicants for public positions be information available for public inspection and copying?

   A. Should there be a distinction in any right to applicant anonymity between applicants for a government position inside government and applicants outside of government?

   B. Should some or all applicants for government positions have a right to anonymity if they request such anonymity in writing?

   C. Should any right to applicant anonymity depend on the type of job in question? Should applicant's right to anonymity extend to applicants for all government jobs or only to applicants for high level executive positions, or only to applicants for specified designated positions enumerated in the statute?

   D. Should any right to anonymity of applicants for government employment operate only until a specified number of final candidates for the position have been selected from among all the applicants for the position and at that point the anonymity of the final candidates must be disclosed?

   E. Should reports from references and background checks about applicants for public positions be available for public inspection?

8. Should the §22.7 exemptions from mandatory public disclosure of specified government information be redrafted to provide more general exemptions for specified types of information or to avoid specified evils resulting from public disclosure of information, rather than providing for the exemption of specific identified information in a particular agency or in a particular program? That is, would it be desirable to have many fewer, more generally applicable exemptions from mandatory disclosure of government information than are currently contained in §22.7?

9. Should the §22.7(10)-(11) exemption from mandatory public disclosure for "personal information in confidential personnel records" be redrafted to clarify its precise scope?

   A. Should §22.7(10)-(11) be redrafted to exempt from required disclosure all information about a particular identified government employee except the person's 1) name, 2) salary, 3) when they were employed, 4) the government positions they hold and held, 5) their general qualifications for the job, and 6) any disciplinary action involving discharge, suspension,

or loss of pay once appropriate procedures have been exhausted and such disciplinary action taken?

10. Should a qualified exemption (§22.7) be added to the Public Records Law for personal information about identified individuals if the disclosure of such personal information would constitute an "undue invasion of personal privacy"?

    A. Should an "undue invasion of personal privacy" for this purpose be defined as the release by government of personal information about an identified individual in situations where the public interest in its release does not clearly outweigh the loss to the individual involved from the public disclosure of that information?

11. If no general undue invasion of personal privacy exemption is added to Chapter 22.7, should a qualified exemption (§22.7) be added for personal information about identified parties in court records that would authorize courts to restrict general public access to specified types of such information when necessary to protect against undue invasions of personal privacy, identity theft, or the commission of other criminal conduct?

    A. Should it matter for this purpose whether personal information in court records are stored in print or electronic formats?

12. In light of the Gannon case and §22.7(52), should §22.2(2) be clarified to indicate exactly when, and which types of, nongovernment organizations are subject to Chapter 22, which types of information of such organizations that act solely to support a state or local government body are to be treated as public under Chapter 22, and who is the custodian of any information to be treated as public under Chapter 22 that is owned by or in the possession of a nongovernment organization?

13. Should §22.7 be amended to exempt from mandatory public disclosure research data, research designs, and research reports, prior to the time the research becomes final and is either published or released for public consumption by the researchers involved?

14. Should the discretion of courts to enjoin the public inspection of government information that would otherwise be subject to public inspection under Chapter 22 be broadened? That is, should the scope of the existing judicial authority to restrain the examination of government information subject to public inspection under the requirements of the Public Records Law or under the discretion vested in the custodian under §22.7 of the Public Records Law be modified so that a court may restrain such inspection **if any one of the following** is proven by "clear and convincing evidence"?

A. Such examination would clearly not be in the public interest; or
B. Such examination would substantially and irreparably invade the privacy of the subject of the record and the harm to that person from such disclosure is not outweighed by the public interest in its disclosure; or
C. The record at issue is not a government record.

15. Should the custodian of optional public information (§22.7) about identified individuals be required, before releasing such information to any members of the public, to make reasonable efforts where feasible to notify the subjects of that information (unless there is good cause to omit such efforts) so that they will have an opportunity to challenge its release?

16. Should a provision be added to Chapter 22 to ensure that government records do not lose their disclosure status when they are transferred to the custody of another official, agency, institution, or person?

17. Should the Public Records Law and §17A.3(1)(e) of the Iowa Administrative Procedure Act be further clarified to ensure that all written authoritative binding final settlement agreements between an agency or other government body and another entity or person are made available for public inspection?

    A. Should the agency or government body that is the custodian of such a written final settlement agreement be authorized to remove those details of such an agreement that identify the exact identity of the nongovernment party to the agreement upon a written finding that the removal of such identifying details is necessary to avoid an undue invasion of personal privacy?

    B. Should the agency or government body that is the custodian of such a written final settlement agreement be authorized to remove those details of such an agreement that identify the exact identity of the nongovernment party to the agreement upon a written finding that the removal of such identifying details are necessary to secure such a settlement of the underlying controversy at issue?

18. Should the Public Records Law be amended to add a series of specific maximum timelines, subject to good cause explained extensions, within which the custodians of public records must to respond to requests for the inspection of or copies of such records?

19. Should a very close in time series of separate *in personam* gatherings or telephone conversations, each of which involves less than a quorum of the members of a body subject to the Open Meetings Law, be covered by the Open Meetings Law if collectively the whole series involves a quorum of the members of the body discussing its business?

A. Should a very close in time series of separate email exchanges each of which involves less than a quorum of the members of a covered body, be covered by the Open Meetings Law if collectively the whole series involves a quorum of the members of the body discussing its business, even though the content of any such emails is currently available to the public under the Public Records Law unless the content is exempt from disclosure by some provision of §22.7?

20. Should email exchanges that are simultaneously addressed to a quorum of the members of a covered body discussing its business be subject to the provisions of the Open Meetings Law even though the content of any such emails is currently available to the public under the Public Records Law unless that content is exempt from disclosure by some provision of §22.7?

21. Should every member of a body subject to the Open Meetings Law voting in an open meeting on any substantive matter before the body be required to state for the record at the time of a vote the exact reasons for his or her vote on that matter?

22. Should the Open Meetings Law be amended to impose express limits on the right of a covered body to recess a properly called open or closed meeting to another time or place without providing a new notice of that reconvened meeting at the other time or place?