

PUBLIC RECORDS EXEMPTIONS ACCOUNTABILITY COMMITTEE

Minutes of Meeting
July 8, 2008
Olympia, Washington

Members Present: Chair Tom Carr, Ramsey Ramerman, John Hughes, Senator Adam Kline, Senator Pam Roach, Representative Jay Rodne, Roselyn Marcus, Representative Lynn Kessler, Patience Rogge, Frank Garrad

Members Absent: Tim Ford, Ken Bunting, Candy Jackson

Staff Present: Kathleen Drew, Office of Financial Management; Ruthann Bryant, Staff Support

Opening: Chair Tom Carr called to order the meeting of the Public Records Exemption Accountability Committee at 9:05 a.m. on July 8, 2008, at the John L. O'Brien Building, Hearing Room A., Olympia, WA.

- 1) Approval of July 8, 2008 agenda.** Mr. Ramerman proposed moving agenda items that could be completed quickly to the top of the agenda. However, since the majority of people on the sign in sheets were interested item 3, it was agreed to leave the agenda as written.

Chair Tom Carr briefly summarized a letter submitted by Mark Emmert, President of the University of Washington, asking the committee to consider inviting representatives of the University of Washington to make a presentation regarding a potential exemption that would permit the University to protect certain private proprietary investment information from disclosure.

Following discussion, the committee concluded that the request is not within the scope of its mandate to recommend a new exemption. Chair Carr will respond to Mr. Emmert on the committee's behalf.

- 2) Approval of Final Minutes for June 10, 2008 Sunshine Committee Meeting.** *Mr. Hughes moved to adopt, seconded by Ms. Marcus. Passed unanimously.*
- 3) Exemptions for records relevant to a controversy and attorney-client privileged records.**

Public Comment:

Attorney Don Austin commented that Washington law has hammers and teeth in it that California law does not. As a result, those hammers do a great job of protecting the public, school districts and children by only exempting very specific privileged documents from disclosure. He added that getting rid of the exemption in order to prevent public entities from covering up things is not a problem that exists.

John Manix, attorney representing Stevens, Clay & Manix, provided extensive background on the Soter case, adding that the case reaffirmed the exemption. He said to restrict the controversy exemption to something lesser in scope or effect would be devastating to all.

Jonathan Bechtle, Evergreen Freedom Foundation, stated that the exemption is being construed too broadly and is being used as a default. Too much redaction is being used to keep citizens in the dark. He requested that the Committee limit the scope of the exemption or ensure that the burden is on the agency to justify the exemption; such clarification may assist the requestor in better understanding the reason for the redaction.

Paul Telford, Commissioner, Port of Olympia, expressed his concern with major problems in the interpretation of the exemptions. He noted that the current law is unworkable and not in the best interest of citizens or agencies.

Tom Brubaker, City Attorney, City of Kent, said that the act is effective and successful as currently written. There are many educational opportunities to learn the law and how to properly apply the exemptions and he urged the committee to retain it in its current form.

Discussion:

- *Mr. Ramerman – recommends leaving the controversy exemption as it is and that the Public Records Act should formally incorporate the attorney-client privilege as it appears in .560. He added that if the issue is clarity, the Attorney General issued a 10 page letter clarifying the attorney-client privilege after the Hangartner case that outlines when the exemption may be applied.*
- *Mr. Garred – expressed concern since confusion suggests there is a problem. He would like to see a recommendation that narrowly defines when the exemption is satisfactory and applicable and when it is not.*
- *Senator Kline – there needs to be a more specific justification for a potential recommendation than that has been given thus far as to why this exemption is somehow unjustified.*
- *Senator Roach – perhaps other states have developed the same exemption that helps clarify, a preamble, for example. She would like to see good government advocates facilitated and not hindered.*
- *Represented Rodne – believes it an issue of education. A resolution is better education and training of elected officials and voter awareness.*
- *Representative Kessler – public entities are held to a higher level. They are entrusted by citizens to do the best job possible while keeping the public interest in mind. There is no compelling reason to change.*
- *Ms. Marcus – concurred, stating there does not appear to be an issue that warrants a change in the exemption.*

Senator Kline moved to recommend no action be taken on either the controversy or attorney-client privilege exemptions. Seconded by Ms. Rogge. Following extensive discussion, no vote was taken and it was decided that Mr. Ramerman and Senator Kline would draft a recommendation to be disseminated to the public and set for discussion and possible vote at the September meeting.

Chair Carr thanked all of the people who testified in both Spokane and Olympia. The comments were very helpful in assisting the committee to ensure a well informed decision.

- 4) Exemptions for lists of candidates – RCW 28C.18.020 and RCW 79A.25.150.** This agenda item was held over until the September meeting to allow sufficient time to review the recommendation.
- 5) RCW 42.04.364 – Personally identifiable information in state employee wellness program.** Ms. Marcus presented a recommendation at the June 10, 2008 meeting. Mr. Ramerman worked on that recommendation to incorporate local as well as state government, and move the exemption to chapter 42.56 RCW. A revised draft recommendation was presented as follows:

The substance of the exemption should be retained and clarified. First, the exemption should be moved to chapter 42.56 RCW in that the program is no longer administered by DOP and it should apply to all local as well as state government administered wellness programs. Second, it should be clarified so that it expressly exempts all documents, including completed forms, submitted by participants. Third, it should expressly provide that statistical information that does not identify any individual, including reports, are not exempt from disclosure.

Mr. Hughes moved to adopt the recommendation as written. Seconded by Mr. Ramerman. The motion passed unanimously.

6) RCW 42.56.250 (3) – Address, phone numbers, email addresses, SSNs, etc. of public employees or volunteers held by public agencies.

Public Comment:

Christina Drummond, Technology and Liberty Project Director of the ACLU of Washington, commented that the ACLU generally agrees with Mr. Ramerman's recommendation but urges that the Committee not propose a limited definition of "personal information," but rather one that protects public employees' right to privacy. She also requested the Committee consider broadening the definition to exempt categories of information as opposed to specific types of information. She added that she would provide written comment that would include category examples.

Discussion:

Ms. Marcus – would like to have further information on Mr. Ford's definition of "employee" as well how "volunteer" is applied.

Mr. Ramerman – questioned whether a general definition makes sense when some Committee members may think the term "employee" has a different meaning in different sections of the Act ?
Mr. Garred – recommended putting exact statutory language relating to RCW 42.56.070(9) into the recommendation.

Mr. Huges moved to adopt Mr. Ramerman's recommendation and Mr. Ford's definitions as proposed. Seconded by Mr. Ramerman. Following discussion, the portion of the motion regarding Mr. Ford's definitions was withdrawn. With the amendment to add exact statutory language from RCW 42.56.070(9), and correct a typo in line two "personal information" the motion passed unanimously.

7) RCW 42.56.330 (3) – Personal information in vanpool, carpool, ride-share programs.*

8) RCW 42.56.330 (4) – Personal information of current or former participants or applicants in transit services operated for those with disabilities or elderly persons.*

9) RCW 42.56.330 (5) – Personal information of persons who use transit passes and other far payment media. *

*Agenda items 7, 8 and 9 were discussed together.

Public Comment:

Christina Drummond, Technology and Liberty Project Director of the ACLU of Washington, stated that personal and sensitive information must be protected in order to protect the privacy of users. Records could be viewed by the public by releasing information in redacted or aggregate information. She also requested that the exemptions be combined. Written comment will be submitted for the Committee's review.

Following discussion, the Committee will review written testimony provided by the ACLU and discuss the items again at the September meeting.

Chair Carr adjourned the meeting at 12:40 p.m.

APPROVED: September 9, 2008