

**PUBLIC RECORDS EXEMPTIONS ACCOUNTABILITY COMMITTEE
(Sunshine Committee)**

Minutes of Meeting
March 23, 2010
Olympia, Washington

Members Present: Chair Tom Carr, Senator Adam Kline, Tim Ford, Patience Rogge, Rowland Thompson; Ken Bunting; Frank Garred; Rep. Lynn Kessler; Ramsey Ramerman

Members Absent: Representative Jay Rodne, Senator Pam Roach, Roselyn Marcus

Staff present: Mary Tennyson, legal counsel; Tammy Teeter, support staff

1) Call to Order

Chair Tom Carr called to order the meeting of the Public Records Exemptions Accountability Committee at 9:08 a.m. on March 23, 2010, at the John A. Cherberg Building, Rooms ABC, Olympia, WA.

Chair Tom Carr invited committee members and staff to introduce themselves.

2) Adoption of Agenda

Motion:

- Add item #3: Correct reference to August 31, 2009 minutes.
- Add item #13: Ramsey Ramerman requested time at the end of the meeting seeking interest of the Committee to discuss an initiative at a future meeting.
- Adopt **March 23, 2010** Sunshine committee agenda as amended.

Moved by Frank Garred, seconded by Ramsey Ramerman. Approved unanimously.

3) Final Minutes for August 31, 2009 Sunshine Committee Meeting

Motion: Approve the August 31, 2009 minutes with the amendment to reflect that the meeting date was August 31, 2009 and not 2010 as shown on the agenda. Moved by Patience Rogge, seconded by Rowland Thompson. Approved unanimously.

4) Final Minutes for October 13, 2009 Sunshine Committee Meeting

Motion: Approve the October 13, 2009 minutes with the amendment to item #8 to reflect "Recommendation submitted by Patience Rogge" instead of "Resolution submitted by Patience Rogge." Moved by Ms. Rogge, seconded by Ramsey Ramerman and Rowland Thompson. Approved unanimously.

5) Update on Legislation

- Legislation to adopt the unanimous recommendations of the Committee passed with only one change
- Several amendments to SB5295
- Amend 4256 to modify two to three sections (6, 7 and 8), dealing with agricultural and financial exemptions. 4256 amended.

6) Recommendation Submitted by Senator Roach (Court Appointed Special Advocates)

Motion: Table for future meeting because Senator Roach was not in attendance. Moved by Rowland Thompson, seconded by Patience Rogge. Approved unanimously.

7) Recommendation by Tom Carr (Business information submitted by Government)

Chair Carr asked Tim Ford to take over as chair for this item.

Recommendation is to replace 83 exemptions related to business information submitted by government with one exemption.

Public comment:

Chris Rose: Relating to a March 31, 2009 letter re: UTC exemptions related to business information. UTC wants to keep the current process; system keeps businesses responding quickly; consumer costs are kept down. The cases that have gone to court have found the requested sought to be protected by the exemption.

Following Committee discussion, Tom Carr was reluctant to go further with his recommendation because not all stakeholders were available or fully notified. He proposed to rework the proposal and ask for/seek robust public comments. Some suggestions were to simplify, but not combine into just one exemption and to cross reference the exemptions. Possibly propose five categories: bidding information; public safety, trade secrets, banks, and tax information.

Motion: Table this item until a new recommendation is drafted and brought to a future meeting. Moved by Tom Carr, seconded by Representative Kessler. Approved unanimously.

8) Recommendation submitted by Frank Garred (Amend RCW 42.56.280 – Recognize an executive privilege for advice and counsel to the Governor)

Tim Ford recused himself from the discussion on this item. Proposal language recommended putting the executive branch into the same position as other agencies. The Governor's counsel wants to comment, but was unable to make the March 23, 2010 meeting.

Public Comment:

Mike Reitz, Evergreen Freedom Foundation, member of WACOG: Referenced the *West v. Gregoire* case that is not yet final. He has been on the receiving end of the assertion of executive exemption and his observations are:

1. The Governor's Office has asserted executive privilege as an exemption from 2007 to present 421 times through 35 requests. Two times requestors challenged the exemption.
2. Other exemptions can be used instead of executive such as attorney/client privilege, terrorism, etc.
3. A legislative fix is necessary. In the two cases where the requestors challenged the exemption by threats to sue, the Governor's Office produced the records.

Jason Mercier, Board member of WCOG: Rather than codifying this in law, the same rules should apply for all elected officials. He wouldn't support codifying the issue the courts have refused to address.

Motion: Following Committee discussion, Rowland Thompson moved that he research the examination of executive privilege; number of times asserted; responses to requestors seeking the Governor's testimony or other executives at any level of government to see how often the exemption is used and its effective or non-effective use. Frank Garred seconded with a request that the research extend to other levels, such as legislative and judicial. Also, research any case law at less than the state level. Approved unanimously.

9) Recommendation submitted by Rowland Thompson (RCW 70.48.100 – Amend statute as proposed in SHB 2115 to include booking photographs in the jail register)

History: *City of Spokane v. Cowles Publishing Co.*, Milt Rowland, Assistant City Attorney, arrested for DUI. He resisted arrest and the newspaper requested a booking photo that previously was routinely released. RCW 70.48.100 is ambiguous. Washington is the only western state that does not disclose booking photos. State Supreme Court ruled that booking photos are not disclosable. Recommendation is to see if there is community backing behind this statute being changed. Not consistent statewide as some police agencies still disclose the photos while others do not.

Motion: Mr. Thompson moved to have the committee recommend booking photos be disclosed pursuant to SSB 2115. Senator Kline seconded.

After further discussion, Mr. Thompson **withdrew his motion** to perform a larger, more broad examination that would possibly include suggestions made by Committee members (ACLU inclusion, better clarification, bail bond information, provide online, etc.). Senator Kline agreed.

10) Recommendation submitted by Frank Garred (Constitutional amendment relating to government transparency)

Motion: Frank Garred moved that the Committee request a constitutional amendment of the Legislature that refocuses on the purpose of transparency in government and offer new language for consideration. Ken Bunting seconded.

After Committee discussion, Tim Ford asked Mary Tennyson, in her capacity as legal counsel for the Committee, if this item was within the statutory authority of the Sunshine Committee. She advised that it was not within the scope of the Committee's authority. Mr. Garred **withdrew his motion**, with Mr. Bunting's agreement.

11) Recommendation submitted by Frank Garred (Public records related to attorney/client privilege)

Motion: Frank Garred moved that the Committee discuss proposing new language to better define attorney/client privilege. Patience Rogge seconded.

After Committee discussion, Ken Bunting moved that the **motion be tabled until the next meeting**, allowing for public input. Representative Kessler seconded. Approved unanimously.

12) Revisions/additions to Schedule of Review

Chair Tom Carr noted that the Committee will return to insurance exemptions – from the present on - at the next meeting.

13) Proposal to Discuss Legislative Exemption to Initiative submitted by Ramsey Ramerman

After a short Committee discussion, the question arose about whether this issue was within the scope of the Committee. It was determined that the Committee will request an informal opinion from the Public Disclosure Commission.

Next meeting: Tuesday, May 18, 2010

Chair Carr adjourned the meeting at 11:35 a.m.