**PUBLIC RECORDS EXEMPTIONS ACCOUNTABILITY COMMITTEE**

**(Sunshine Committee)**

**Meeting Minutes**

**February 3, 2015**

**Members Present:** Nicholas Brown, Hon. Pete Holmes, Lynn Kessler, Nancy Krier, Ramsey Ramerman, Michael Schwab, Rep. Larry Springer,David Zeeck

**Members Absent:** Sen. Maralyn Chase, Rep. Jeff Holy, Sen. Pam Roach, Rowland Thompson

**Staff Present:** Assistant Attorney General Dionne Padilla-Huddleston, Committee counsel; Rebecca Podszus, Committee staff

**Additional Staff Present:** Gary Smith, Seattle City Attorney’s Office

**1) Call to Order**

**1.1) Introduction/Roll Call and Establishment of Quorum**

Chair Michael Schwab called the meeting to order at 9:05 am, February 3, 2015 at the John A. Cherberg Building, Conference Room ABC, Olympia, WA. Seven out of thirteen members (there is one vacant position) were present at the beginning of the meeting. Brown arrived during the discussion of Agenda Item 3.3; Krier was absent during Agenda Item 3.3 and returned during Agenda Item 3.4.

**1.2) Adoption of Agenda for February 3, 2015**

**Motion:** To adopt the February 3, 2015 agenda. Moved by Ramerman, seconded by Holmes. Approved unanimously.

**1.3) Review and Approval of October 28, 2014 Meeting Minutes**

**Motion:** To approve the October 28, 2014 meeting minutes. Moved by Zeeck, seconded by Kessler. Approved unanimously.

**1.4) Annual Report 2014**

Chair Schwab noted this was the first Committee meeting since the annual report was released to the Legislature. The annual reports are due to the Legislature each November 15. Copies of the annual report were available at the meeting for further review and comment.

**2) Old Business**

**2.1) 911 Privacy Issues: Amending** [**RCW 42.56.230**](http://apps.leg.wa.gov/rcw/default.aspx?cite=42.56.230) **and adding new sections to**

[**RCW 38.52**](http://apps.leg.wa.gov/rcw/default.aspx?cite=38.52)

Ramerman introduced a proposal which has been discussed and considered in various forms at several prior Committee meetings. Ramerman explained that the proposal allows information collected and entered into 911 systems to be private. He noted that E-911 collects considerable data, including sensitive medical information people would be reluctant to provide if they knew if was disclosable. He said the proposal addresses requests for a whole database. The Committee discussed legislative interest in the issue, including that a bill providing a blanket exemption failed to pass last legislative session. Krier noted that Sec. 4(7)(e) and Sec. 4(8) of the proposal should also be underlined as new language and that there should be a new Sec. 9 added to the proposal to include what is Sec. 8 of the current statute regarding individual claims resolution structured settlement agreements.

Public Comment:

Andy Leneweaver, Washington State E-911 Office, said his office strongly supports the proposal. It is essential to the future of E-911 that citizens feel confident their information is secure from disclosure.

Keith Flewelling, Thurston County 911, said his office supports the proposal, which protects vulnerable populations who submit their information when they need help.

Toby Nixon, Washington Coalition for Open Government (WCOG), said that WCOG is neutral on the proposal while the City of Kirkland is supportive.

The Committee received written comment in support of the proposal from Barb Graff, Director of the City of Seattle Office of Emergency Management.

**Motion:** To approve the proposal adding new sections to chapter 38.52 RCW and amending RCW 42.56.230, as modified to underline Sec. 4(7)(e) and Sec. 4(8) and to add a Sec. 9 to include what is Sec. 8 of the current statute. Moved by Ramerman, seconded by Springer. Unanimous.

**2.2) Personal Information Involving Child Victims and Witnesses RCW 42.56.240(5)**

Ramerman introduced a proposal. Ramerman explained that the current statute provides limited protection for victims of child sex assault against disclosure of identifying information. However, other victims and witnesses are not afforded the same protection. For example, the 911 agency felt they needed to release the call information from the Marysville Pilchuck High School shooting. This proposal offers clarity while providing open-ended language.

Public Comment:

Tammy White, City of Kent, explained that this agenda item addresses police criminal records. Such records contain information about juvenile witnesses, victims, and their parents. Under current law, offenders are afforded more privacy than victims, witnesses, or their families. Following up from last meeting in which concern was expressed regarding not disclosing the name of a school, White said she accepts leaving that language out of the proposal.

Toby Nixon, WCOG, said he has not reviewed the proposal with the WCOG board, but believes there will be concerns. The proposal significantly broadens the exemption and does not specify what offenses are covered. For instance, Nixon asks if traffic accidents would be included.

Kathy George, WCOG, said there are instances when there is a legitimate public interest in what happens to children. For example, the assault of a special needs child in the locker room in the Lake Washington School District. The Kirkland newspaper has been unable to find out what happened to the perpetrators or other information about the incident. The plaintiff’s attorneys, as well as child advocates, should be able to find other victims when there is a pattern of incidents.

Committee Discussion: Ramerman discussed adding language to give authority to parents to consent to release unless they are the accused. Krier pointed out a drafting correction to add “witness” to the last reference to “child victim.” Krier also suggested the Committee look at FERPA rules when considering the school name question. Springer asked if the proposal language matched language regarding perpetrators. Ramerman said the RCW 13.50.050 has been interpreted as a blanket exemption and is broader than the proposal. Ramerman will continue to work on the proposal. The agenda item was tabled until the May meeting.

**3. New Business**

**3.1) Conflict of Interest Rules**

Chair Schwab explained this agenda item is in response to Arthur West’s concern about Committee members’ abilities to raise issues in the Committee that they are involved with that they are involved with professionally outside the Committee. Following legal research on the issue, Chair Schwab concluded that traditional conflict of interest rules do not apply to this committee. The Sunshine Committee does not have the authority to change laws, and its membership should represent a wide range of views and advocacy on public disclosure laws.

**3.2) Cost Recovery Proposals**

The Committee discussed whether the body should address the issue of cost recovery for electronic records. Ramerman asked if it was within the Committee’s mandate and said that costs affect whether people request records. Zeeck wondered if the Committee can express a formal opinion on an issue which impacts the public’s ability to access records, regardless of whether the issue is specifically addressed in the exemptions list. Legislation has been proposed this session. The Cities of Puyallup, Redmond, and Everett are putting together a cost recovery proposal.

**3.3) Code Reviser Drafting Services, (RCW 1.08.027) (Number 213 on Schedule of Review); and Bill Drafting Records of the Code Reviser’s Office, (RCW 40.14.180) (Number 324 on Schedule of Review)**

Chair Schwab said that the Code Reviser’s Office annually reviews and provides to the Sunshine Committee a list of public disclosure exemptions. Two exemptions, numbers 213 and 324 on the Schedule of Review, relate to that office.

Public Testimony:

Kyle Thiessen, Code Reviser, provided an overview of the history and responsibilities of the Code Reviser’s Office. Since 1953, the Office’s bill drafting services have been confidential by statute. Also by statute, when an initiative is filed, it is sent to the Code Reviser’s Office for comments and recommendations. The Office had assumed those records would also be confidential. However, about 15 years ago, a judge ruled in a lawsuit that drafting files on initiatives were not exempt from disclosure. He described that there would be benefits of confidentiality for the initiative proponents, just as legislators benefit from confidentiality in the drafting process. Behavior of initiative proponents did change after the ruling. In his years at the office since the ruling, there has been 2-3 times in which someone has asked to review initiative records.

Toby Nixon, WCOG, said a lack of confidentiality would cause people to not work with the Code Reviser’s Office, which would affect drafting quality. He suggested a compromise position of confidentiality until the initiative is filed with the Secretary of State’s Office.

Committee Discussion: The Committee discussed whether the current statute has raised concerns for any groups, and concluded the statute has not been problematic. After reviewing the initiatives, the Committee concluded that no changes were needed.

**3.4) Body Camera Video**

Ramerman mentioned two proposals currently before the Legislature: HB 1910 and HB 1917.

Public Comment:

Toby Nixon, WCOG, said he was most familiar with the Washington Association of Sheriffs and Police Chiefs (WASPC) proposal. WCOG believes the proposal goes too far in a number of aspects. These include the requirement to specifically identify an individual, case number or location eliminating the possibility to do random checking. The idea that only certain people can access the records violates the PRA principal of not distinguishing amongst requestors. That a person must argue in court why they would like access the records and that a law enforcement agency can compel a requestor to identify themselves also violates PRA principles. Also, the idea that a requestor cannot display the records is unconstitutional. Also, providing direct 3rd party notice before using to all who are in the recording may be impossible. Nixon also said that it would be a violation of PRA principles to force a requestor to pay for the cost of redaction. Also, the destruction of records means that potentially exculpatory evidence could be destroyed. WCOG has adopted a statement of principals supporting the use of body cams and the accessibility of body cam records. Nixon added that policies should respect privacy while honoring transparency.

Kathy George, WCOG, said she understands the requestor of all body cam videos in Seattle has been working with the city on proactive strategies to manage the request and improve public access. She added that the purpose of releasing videos is to both deter and vindicate officers, and officers should know that it’s possible their videos may end up on YouTube.

Committee Discussion: The Committee discussed municipal considerations to using body cams, including privacy, cost, public records issues, and when cameras are turned on or off. Holmes said that the City of Seattle is working on promulgating rules. Ramerman mentioned allowing records to be reviewed but limiting when copies are produced, which addresses privacy concerns.

The Committee discussed voluminous requests, such as received by City of Seattle, and associated redaction difficulties. For the pilot program in Seattle, 10 officers have generated 2,000 videos. Each record had to be individually redacted. Smith confirmed the city is working with the requestor. Zeeck suggested better subject tagging of videos to make redaction easier.

Chair Schwab said the Committee will continue studying the issue.

**4) Legislative Report**

Rep. Springer introduced a bill, HB 1980. Like last legislative session’s bill, this bill seeks to implement Sunshine Committee recommendations. Sen. Chase is willing to sponsor a bill in the Senate.

Also this session are bills addressing other Sunshine Committee recommendations:

* HB 1431/SB 5395- Modifying exemptions relating to real estate appraisals
* HB 1554 and SB 5396- Exempting information of guardians or family members of children enrolled in child care, early learning, parks and recreation, after-school, and youth development programs

The City of Kent, which is promoting HB 1554 and SB 5396, is representing to legislators that the Sunshine Committee vetted the issue.

**5) Public Comment**

David Koenig asked why the Committee wants to create new exemptions rather than scaling back existing exemptions. Koenig said the Committee should look at whether child perpetrators’ identities should be protected.

Schwab reviewed the Sunshine Committee’s mandate, which includes modifying ambiguous exemptions. Schwab invited Koenig to share his suggestions on exemptions the Committee should review. Ramerman said that RCW 13.50 was expanded last year and it should be reviewed.

**6) Adjourn**

The Sunshine Committee adjourned at 11:05 am.