

GOVERNMENT OPENNESS TASK FORCE
Notes
Meeting #1 / LRC Conference Rm 1 & 2
December 10, 2002

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Task Force Members Present: Larry Long, Diane Best, Mark Roby, Curt Everson, Dave Borderwyk, Tena Haraldson, Jack Magee, Bill Dougherty, John Brown, John Pedersen, Jerry Wheeler, Yvonne Taylor, Ed Anderson, Bob Sahr, Pat Callahan, Bernie Ripperger, Kevin Thom, Anne Plooster

Staff members present: Lynell Erickson and Roxy Everson

Members of the Public: Betty Breck, Terry Woster, Mark Millage, Julie Johnson, Joe Kafka, Dave Ortbahn, Lisa Chamley

Larry Long: The first meeting of the Government Openness Task Force was called to order by Attorney General elect Larry Long. Larry reminded all that during the course of the campaign, he agreed to review the entire openness of government and had asked for volunteers. Thanked all those who agreed to serve. Asked that each member proceed to relay problem areas from their perspective.

Diane Best: Diane Best, Assistant Attorney General, presented a binder to each of the members present. Advised it was a compilation of general public record laws. Explained the makeup up the binder was in 5 parts beginning with federal open records, South Dakota open meetings, South Dakota General open records laws, state statutes and Attorney General opinions. Advised intent was to go through everything required to be held confidential as well as the general open records laws. She requested all members to submit anything she may have not included.

Mark Roby: Would like to see uniformity and application of laws regardless of location and organization. Should have consistency in application of laws from county to county, city to city.

Curt Everson: Asked as a banking institution to be treated properly and equally in judicial process. Is the privacy of

financial institutions and the sharing of that information outside the scope of this task force?

Dave Bordewyk: As for open meetings, we need improvement in the laws as well as better enforcement and penalties of violators. As for open records, many gray areas on what are open. Suggested that all documents held by government should be open unless stated in statute. Long added that while there are some clear areas there is also a vast area of unclear areas that need to be addressed. Bordewyk added to address electronic records as well.

Pat Callahan: There needs to be consistent level of enforcement so the public believes there is an actual penalty.

Tena Haraldson: Main concern was that there is way too much information and not logically organized for the general public. Need more user friendly remedy or procedure to follow when records are denied. Perhaps we look at models of other states. Believe the open meeting penalty should **be civil penalty rather than criminal.**

Jack Magee: As a revenue agent, he has different perspective and denies the public many times for records. Laws are very clear for him to say no. Ask that task force keep in mind many of the valid reasons for keeping records confidential.

Bernie Ripperger: Stated it was important to keep a good balance between government and public.

John Brown: Wears many hats so has lots of views. Agreed with Tina that research was voluminous. Simplification for public is important. Doesn't believe criminal enforcement is good idea. Unlikely anyone will be ever be prosecuted. Cautions that too much information available may put the public at risk in today's world.

Bill Dougherty: Agreed with views of Magee and suggest "gag law" violations change from felony to misdemeanors. Need to consider both sides as citizens have right to privacy but if convicted they should lose that right.

John Peterson: Believe all have vested interest in education. While records should remain open and share what schools are doing, we can't share everything. Personnel files need to be protected. Defends executive session as it falls under personnel issues. Isn't fair to do away with it. Legal issues

should always remain in executive session. Executive session can easily be abused but need to keep it.

Jerry Wheeler: Advises he has been on both sides and agrees personnel issues need executive session. Comes with no agenda and is here to help.

Yvonne Taylor: Agrees with much that was said but feels laws are clear. Penalty should be left as is as over 10,000 meetings a year with little violation. Agrees records are complicated but simplifying may not be needed. Records retention manuals is also another state government requirement in the binder.

Ed Anderson: From a business standpoint, agrees with simplification suggestion. It is incumbent to make sure all is in the interest of security. While we disclose more and more to the government, make sure we don't compromise privacy.

Bob Sahr: There's a challenge alone in understanding the law. Agrees with reduction. As a watchdog for consumer, does not want problem with closed records. Need balance while protecting consumers and protecting national security. Was amazed at what is available to public regarding national security. Also should discern what meetings are open to public and have available through technology.

Diane Best: Added that will have to consider federal laws when dealing with many agencies. Suggesting maybe a central registry or cross referencing more approaching to public.

Kevin Thom: Reviewed impact on law enforcement. In addition to investigations also routinely do back ground checks. Files used closed to public until in the court process. Intelligence files are strictly confidential to comply with federal regulations. Law Enforcement Training hearing that review law enforcement complaints are open to public but need ability to review penalty confidential. Proponent to getting info of criminals such as sex offenders. Need to bridge gap between law enforcement and the media.

Long: Need to address state's electronic media. How do you inspect it. Need consistency in providing log sheets and police photos as they better serve public. Log sheets can contain juvenile or CI information. Opens door to identity theft. Many documents will have info embedded within and need to be cognizant of that. Benefit to disclosure as Bennett County cleared up bad check writers when they were published in paper.

Anne Plooster: Focus would be on teacher records available to parents, board members, etc.

Long: Ask committee to consider solutions - should there be a plan to be completely change or revise laws or look at other states.

Everson: Advised federal privacy statues constantly changing and goal should be to standardize but may not ever finalize.

Roby: Approach should be to simplify specific areas.

Dougherty: Look at why laws were passed when approaching them regarding possible changes.

Taylor: Exceptions can be disasters. Perhaps answers are different in each county because the questions are different there. Need consistency.

Borderwyk: Bring consistency to electronic documents, costs. Maybe only revise 1-27.

Haraldson: Approach would be to make everything open and list exceptions.

Long: 1-27 was basic statute. If consensus is okay we will look at other states.

Magee: Where is problem. Address that problem only.

Long: Consensus system on what is open and what isn't. Modify statutes from criminal to civil.

Sahr: Need uniformity in enforcement.

Wheeler: Approach from two angles. First to list laws that need to be changed and second to draft booklet similar to others states and distribute to each county for the public.

Haraldson: 1-27 needs elaboration.

Callahan: Focus should be on better tool for the public to know their actual rights.

Long: Meet again on January 14th. Will focus on the list discussed and the Iowa and North Dakota samples.

Breck: Introduced herself and volunteered to be a member of task force on behalf of public. Has experience in many of the violations.

Next meeting to be held on January 14, 2003, at the Visitor Center.