

GOVERNMENT OPENNESS TASK FORCE
Notes
Meeting #4 / Matthew Training Center
March 7, 2003

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Task Force Members Present:

Diane Best, Attorney General's Office
Larry Long, Attorney General
John Brown, City Attorney
Bob Sahr, SD Public Utilities Commission
Mike Leidholdt, Hughes County Sheriff
Lynn Sudbeck, SD Supreme Court
Patrick Callahan, SD Broadcasters Association
Vince Foley, SD State's Attorneys Association
Mark Roby, SD Press Association
Anne Plooster, SD Education Association
Doug Schmitt, SD Police Chiefs Association
Linus Storms, Associated School Boards
Bernie Ripperger, Association of County Commissioners
Dave Bordewyk, SD Newspaper Association
Jack MaGee, SD Department of Revenue
Dale E. Froehlich, City of Sioux Falls
Kim Dohrer, SD Press Association
Tena Haraldson, Associated Press
Kevin Thom, Division of Criminal Investigation
Terry Lohr, Watertown Police Chief

Staff Members Present:

Lynell Erickson

Members of the Public:

Carson Walker, Associated Press
Lisa Chamley, Capitol Journal

Larry Long: Long brought the fourth meeting of the Government Openness Task Force to order. Thanked all for coming and advised a fair number of members could not attend today because of the legislative matters going on. Asked David Bordewyk for a legislative update.

Dave Bordewyk: Bordewyk gave a rundown of bills introduced in the 2003 legislative session that were relative to the task force. Asked other members to advise him if other bills needed to be included. See "2003 Legislative Session" review attached.

Tena Haraldson: Tena asked if there was any discussion about the work of the task force in session.

Bordewyk: There was discussion during HB 1179 about "what the task force can come up with" and "let the task force do its work."

Long: In what fashion did SB 18 modify existing statutes?

Bob Sahr: Advised the PUC exempted itself from the gag law because there are times that his office wants to be able to disseminate information about a company to consumers.

Diane Best: Gave scenario if she had complaint about her telephone bill, would her name be part of record and would public be entitled to look at her bills?

Sahr: Believe PUC would have ability to redact portions from the record under SDCL 1-26-2. May not be too much interest in someone's phone records; it generally never comes up in consumer complaints.

Long: Brought the task force up to speed on the pardons bill. Lawsuit has been started and a hearing is set for April 1 on a Writ of Prohibition in Minnehaha County by 3 unnamed individuals who are asserting that the Secretary of State is exceeding his authority if he releases the pardon information in his possession. Issues are same as in the February Attorney General opinion with the exception of an issue pertaining to SDCL 1-26-2. Briefs will address issues important to the group regarding separation of powers. Governor's power to pardon is broad. This case may address federal and state right to privacy.

Long asked if there were any corrections to the minutes of the January 31st meeting. It was agreed that the term "Republican" should be deleted with the reference to the member of the State's Attorney's Association.

Best: Advised that the entire list of research within the Task Force binder was placed on the website. Had 283 hits for one week in mid-February. Asked others to contact her if they see additional statutes that should be included to help get a comprehensive list. Have received inquiries and letters from the public and if agreeable with the task force will make them part of the record during the meetings. Introduced a letter for the record from Dixie Tomek in Box Elder regarding open meetings. Discussed another contact regarding open meetings laws. This contact advised that the quorum in SDCL Ch. 1-25 ought to be changed to allow telephone participation by members. This is important due to the blizzard issues when some members can meet regularly in person but one or more addition members may need to call in.

Has viewed other websites. Federal websites have a lot of information. Encouraged others to look at other sites for ideas. Brought up the issue of whether the public can submit their comments on the website whether via e-mail to all task force members or in a repository on the webpage. Consensus was that

all approved of allowing approved notes of task force meetings and the list of issues on the webpage.

Long: Introduced Terry Lohr and Doug Schmitt and asked for their thoughts on open government from their perspective.

Terry Lohr: As Watertown Chief of Police and President of SD Police Chiefs Association concern is that criminal investigations may become public. Need to keep good dialogue with media and be a friend, not a foe. Here to listen and offer input.

Doug Schmitt: Agreed with Lohr's comments.

Long: Long asked for their take on logs sheets in their jurisdiction.

Lohr: A log is read by the media and supervisors are there with them to go over any questions they might have.

Schmitt: Beadle County is similar as in a good rapport with the media. They provide media with a separate police log that doesn't contain names. Believes media is sensitive to that.

Mike Leidholdt: Hughes County differs in that he reads from the log to the media to keep sensitive information closed.

Discussion continued on different methods of law enforcement keeping logs books and the sensitivity of being identified as the person who places a call to the police department. A fear of being identified may stop someone from calling.

Carson Walker: Advised that the media isn't that concerned about those details involving the identity of the caller and that the public shouldn't be alarmed.

Haraldson: Why can't a cleaned up version of the logs be available to the public?

Jack Magee: Uniformity and consistency is needed for what can be given out to the public so they know exactly what they can get and it won't depend on the person receiving the request.

Dale Froehlich: Government has certain exposure. If name is released, officer could be hurt and city would be liable for improper release.

Schmitt: Once there is an arrest, per criminal discovery rules, the Defendant gets a complete copy of the report.

Lohr: Would not be good to compromise rapport with media. Likes idea of giving redacted version to the media.

Discussion continued on the audit of public records made last summer by the Press Association where copies of logs were requested from law enforcement throughout the state. Leidholdt

didn't believe audit was carried out effectively as some of those requesting information didn't identify themselves and this is an issue in the post 911 atmosphere. Release of information to others could post a serious problem. Creation of a minimum standard of information to the public on crimes logs was explored.

Pat Callahan: If it's spelled out in black and white, it may become the maximum that some agencies would put out. May restrict flexibility with reporter as well.

Vince Foley: Trust and rapport between agencies and media cannot be codified. The key to the standard is the balance of the public's right to know and the privacy issue.

Discussion also involved the possibility on giving the media access to mug shots. Due to courthouse logistics, Pennington and Minnehaha Counties give little opportunity of pictures for the media.

Long: In the absence of other task force members, believed there was a consensus on giving media access to photos of arrestees and that there be a minimum standard of information gathered in log sheets for the public and media. Not addressed at this meeting was the task force members who were appointed to discuss the storage, retrieval and access of electronic records. Long called for volunteers to address the topic of log sheets and photographs. Leidholt, Lohr, Haraldson and Callahan agreed to serve. Long intends to have LRC/code-counsel here or at least consult with code counsel when drafting of statutes begins. Also code counsel will be consulted regarding a separate publication of open records and open meetings laws.

Next meeting date is April 3rd at 10:00 a.m. with a location to be determined. Open meetings will be the topic of discussion.