

## OPEN RECORDS & MEETINGS TASK FORCE

**April 14, 2016**

- Meeting called to order: 1:31 PM
- Meeting adjourned: 4:02 PM

**Members present:** Attorney General Wayne Stenehjem, Steve Andrist, Timothy Austin, Aaron Birst, Blake Crosby, Sandy DePountis, Lisa Feldner, Mary Kae Kelsch, Jack McDonald, Mike Ressler, Sen. Mac Schneider, Chief David Todd, Terry Traynor, Matt Von Pinnon, Charlie Whitman. Dave Maring attended via phone.

After calling the meeting to order, Attorney General Wayne Stenehjem asked for comment on the draft minutes. Hearing none, Stenehjem called for a motion. Terry Traynor moved to approve the minutes of the September 22, 2015, meeting, and Lisa Feldner seconded. The motion was approved unanimously.

The committee discussed several suggested changes to N.D.C.C. §44-04-18, access to public records and electronically stored information. Much of the discussion related to database requests, when a requester then repackages the public entity's database and sells for profit. In many instances the public entity has expended a considerable amount of taxpayer funds to create the database, but is not able to recoup costs when providing these types of electronic records. The committee also discussed whether to raise the hourly rate for locating/redacting records, authorize an entity to require a request be made in writing, require a public entity to notify a requester if there are no responsive records, and for records relating to litigation, whether to require the identity of the requester.

- Based on the discussion, Attorney General Stenehjem made a motion to:
  - Draft proposed language authorizing public entities to provide access to a database by way of a subscription service (along the same lines as the county recorders) and requiring a public entity to notify a requester if there are no records; and
  - Take no further action on the other issues discussed.
- The motion passed unanimously.

The committee discussed several suggested changes to N.D.C.C. §44-04-18.1, to provide protection for an employee's date of birth and records relating to an employee's leave hour (by type) and engaged in a lengthy discussion about the proposals to create an exemption for information in applications for employment and changes to the exemption for legislative records.

- Based on the discussion, Attorney General Stenehjem made a motion to:
  - Draft proposed language providing an exemption for the employee's date of birth, with an alternative proposal to exempt an employee's date and month of birth but not the year of birth; and also to leave open the total amount of employee's leave but exempt records breaking down the leave by type; and

- Take no further action on the proposal to exempt information in applications for employment or the exemption for legislative records.
- The motion passed unanimously.

Next the committee discussed proposals for changes to N.D.C.C. § 44-04-18.7 for criminal intelligence information and criminal investigative information, and N.D.C.C. § 44-04-18.21 relating to electronic mail addresses and telephone numbers. The discussion covered expanding the exemptions to protect addresses and phone numbers for private individuals and the personal information of individuals interviewed during an investigation, expanding the exemption for crime scene images to include a detailed description of crime scene photographs contained in an officer's report, expanding the exemption for images to include images of any fatality, and clarifying whether the exemption for medical condition of victims of a crime includes information that is included in an officer's investigation report. The committee also had a lengthy discussion about whether to further define the exemption for body camera images.

- Attorney General Stenehjem made a motion to:
  - Draft language providing an exemption for an individual's street address (but not the city) and telephone number, and an exemption for the personal information of an individual interviewed during an investigation other than the individual's name, city/state of residence, and year of birth; and
  - Take no further action on any of the other issues discussed.
- The motion passed unanimously.

The committee discussed several changes proposing to expand exemptions for attorney work product, attorney consultation and negotiation records. Members from public entities provided specific examples of the types of problems the proposed changes seek to address.

- Attorney General Stenehjem made a motion to:
  - Draft language to protect the notes taken during the meetings that are already exempt.
- The motion passed unanimously.

The committee discussed that schools and institutes of higher education work on school years rather than calendar years. The proposed change to remove the requirement to file an annual meeting schedule in January and replace it with a requirement to file it at least annually met with no objections but two additional suggestions were received: to clarify that filing an annual schedule does not relieve an entity of its obligation to file meeting notices and agendas, and that when a public entity has to post the meeting notice at the time it sets the date and time of a meeting, even if it does not have details for the agenda.

- Attorney General Stenehjem made a motion to:
  - Draft language to make all proposed changes to N.D.C.C. 44-04-20 for the committee's review at the next meeting.
- The motion passed unanimously.

There was a lengthy discussion about ideas for changes to N.D.C.C. §44-04-21.1, the administrative review procedures, including imposing financial penalties. Several members were concerned that attempts to impose financial or other penalties may have unintended consequences and may make it even more difficult to find people willing to serve on boards and commissions, particularly in rural communities. There was no consensus so the issue was tabled for further discussion, but McDonald offered to draft a proposal for a “summary opinion” process, for review at the next meeting. There was a short discussion about the proposal to provide protections for the identifying information about victims and witnesses and to protect the interviews and statements of a child witness or victim, in N.D.C.C. §12.1-32-02 and §12.1-35-03. There was a longer discussion about the records held by emergency services communications systems records, because there are several combined communications centers in the state that handle calls for multiple jurisdictions. These centers do not have the ability to determine whether a record from a particular agency can be released. The proposed change would allow the communications center to identify the entity from which the response originated and refer the requester to that agency.

- Attorney General Wayne Stenehjem made a motion to:
  - Draft language providing protections for victim or witness identifying information and exempting the interviews and statements of a child witness or victim; and
  - Draft proposed language regarding emergency services communications systems records, for the committee to review and make a final decision about at the next meeting.
- The motion passed unanimously.

The committee discussed the proposals to exempt the terms of a settlement agreement or contract if disclosure would result in adverse fiscal effect to public entity, exempting records relating to human resource investigations of employee misconduct and/or discipline, methods for dealing with requests that are designed to harass the public entity, and how the open records and meetings laws apply to a public entity’s social media accounts. While the committee agreed there were situations when disclosure of the terms of a settlement might have an adverse fiscal effect, members also weighed the effect of exempting entire categories of records, before considering a proposal to exempt the records only until all associated negotiations concluded. There was a lengthy discussion about methods to handle requests that are designed to harass the public entity rather than obtain records, and some members provided examples of this type of situation and the difficulties creates for the entity. Other states have addressed this situation in statute. The committee also briefly discussed the proposal to exempt the disciplinary records and the suggestions for additional exemptions for University foundations but felt there was insufficient time to consider it.

- Attorney General Stenehjem made a motion to:
  - Have his office research other state’s laws relating to handling human resource disciplinary complaints, public entity social media, settlement agreements, and

requests designed to harass the entity, and present the information at the next meeting for the committee's review and consideration; and

- Continue the agenda item proposing additional exemptions for University Foundations until the next meeting and ask Maring to make a presentation to the committee explaining his proposed changes.
- The motion passed unanimously.

Attorney General Stenehjem invited committee members to submit any additional items to his office for inclusion on the next meeting agenda. The meeting adjourned.