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State Government in the Sunshine: Chapters 21 and 22 of the Code of Iowa

Presentation
to
Joint Interim Study Committee
on
Freedom of Information, Open Meetings, and Public Records
Iowa General Assembly

by

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INTRODUCTION

Thank you for inviting me to talk to you today about Iowa's Sunshine Laws. I have been on the Iowa Law School Faculty for 45 years and am a specialist in Administrative Law – the procedures by which government agencies and officials operate. Those procedures include all of the issues relating to open government with which you are now concerned. As a professor at the **state** law school, the University of Iowa Law School, I have repeatedly assisted the Iowa General Assembly during the last 45 years by giving it independent, nonpartisan, expert academic advice on Administrative Law matters. In that capacity I acted as the principal draftsman of the 1965, 1967, and 1978 Acts creating the Iowa Civil Rights Commission and its procedures; the 1974 Iowa Administrative Procedures Act and the 1998 Amendments to that Act; the 1978 Iowa Open Meetings Law; and a 1984 revision of some provisions of the Iowa Public Records Law. I also served as Chair of the 1984 Governor's Committee on the Iowa Public Records Law.

There are many urgently needed revisions of Iowa's government in the sunshine legislation, Chapters 21 and 22 of the Code of Iowa. Any effort that you may make to deal with the many obvious problems with the current Open Meetings Law and the Public Records Law will inevitably result in conflicting pressures on you by various interest groups. As a result, wise and balanced reform of these statutes – **which is very badly needed** – will not be easy.

I tell my Administrative Law students that where government operates in the dark mould grows. Sunlight or openness in government is essential for democratic government because it deters unwise or illegal government action, permits citizens to monitor effectively and assess the performance of the government officials who work for them, ensures more careful consideration by government officials of the wisdom and lawfulness of their action, permits the people to understand the reasons and justifications for government action and evaluate its desirability, and permits the people for whom government works to

monitor the effectiveness of government actions. On the other hand, when there is too much sunshine in government, serious practical problems may emerge. We want our government to be effective, efficient, economical, and to protect certain aspects of personal privacy. At some point, desirable sunshine in government may conflict with each of these values. Consequently, it makes sense to approach any consideration of our existing Open Meetings Law and Public Records Law with a strong bias in favor of openness, but coupled with a realization that at some points conflicts will have to be resolved between ensuring the many benefits of open government and the achievement of important conflicting goals desired by the people of this state such as effective government, economical government, efficient government, and the protection of certain aspects of personal privacy.

Today I will outline briefly for you some of the many problems with the current Iowa government in the sunshine statutes. There are big problems and small problems with the current Iowa Public Records Law and Open Meetings Law. There are also technical drafting problems and policy problems with each of these laws. I have not attempted in this **very partial and incomplete list of problems** with these statutes to separate out the big problems from the small problems, and the technical drafting problems from the policy problems, because the proper characterization of these as "problems" at all, or as "big" or "small" problems, or as involving "technical drafting" or "policy" issues, may well lie in the eyes of the beholder – and that is what you are elected to decide. There are also problems that need to be resolved of inconsistency between these two laws even though they have a common purpose. I would be happy to discuss with you in much greater detail than I provide today, however, each of the issues I outline below and other issues that I have not included in this preliminary list of problems with Chapters 21 and 22. For each of these issues I can identify for you the policy choices involved, the conflicting interests and values involved, and suggest for your consideration possible solutions to the problems presented.

I have not provided you in this document with any drafts of proposed statutory language to deal with each of these problems because it is premature at this time for me to do so. Each of these

issues needs to be explained to you in much more detail and you need to discuss each of them and make some preliminary policy decisions before I could submit to you a draft of possible statutory language to implement your conclusions. So, today, I seek only to identify some of the many problems with these two statutes which are very badly in need of serious and comprehensive reconsideration.

1. A FEW REPAIRS OR COMPREHENSIVE RECONSIDERATION?

In dealing with the open government problems currently facing you, two different legislative approaches are possible. The first is an approach which would seek only to cure a small number of defects or problems in the existing legislation that have engendered much recent publicity. The second approach is a much more comprehensive reconsideration of the Open Meetings Law and Public Records Law. Although they have been amended in a piecemeal fashion many times during the last 25 years, these two statutes have not received serious and comprehensive legislative study since the 1978 Open Meetings Law was enacted and the Public Records Law was subject to major amendments in 1984. Such a serious and comprehensive reconsideration of these two statutes is long overdue. There are many very serious defects in the existing Chapter 21 Open Meetings Law and the Chapter 22 Public Records Law; these defects cannot be fixed by a few minor amendments; and the defects in these statutes can be remedied only after a full consideration by you of a large number of important and controversial policy issues so that you can deal with the unfortunate consequences of many unsatisfactory piecemeal amendments of these statutes and unsatisfactory policy compromises embodied in their terms over the years.

It should also be noted that the General Assembly has never considered these two statutes together even though they have common objectives – to ensure as much government in the sunshine as is prudent in light of other important conflicting values. It is time you gave careful consideration to these two statutes together and also to a number of other related laws because despite their common objectives, from a drafting and policy point of view they do not fit together well, they are often inconsistent in

their demands, and they sometimes leave those who must follow them justly bewildered because of their unclarity.

Piecemeal changes to a few provisions of these statutes will not remedy all their deficiencies and will inevitably create, as they have in the past, inconsistencies and other problems because the statutes as a whole are not being reconsidered. Some people may be nervous about a full reconsideration of these statutes because they fear their interests will end up worse off. However, I think their fears are unjustified because I am confident you will neither reduce the openness of our government, nor impair its effectiveness, efficiency, economic operation, or its respect for justifiable personal privacy, in any unacceptable manner. On the other hand, a full reconsideration by the General Assembly of these two laws will enable you to create a clearer, more rational, more effective and enforceable, more consistent, and more fair scheme of open government for Iowa that properly accommodates the competing values involved. I would be happy to assist you in such a serious and comprehensive study.

2. THE DEFINITIONS DESCRIBING THE DIFFERENT TYPES OF PUBLIC ACCESS TO GOVERNMENT INFORMATION SHOULD BE MADE MORE ACCURATE AND CLEAR.

A. The Problem

For purposes of public access, the Public Records Law, Chapter 22, does not have adequate definitions of the various types of government records **currently recognized** by Iowa law. Some of the labels used in the current statute are also misleading and very confusing both to the public bodies that must follow the requirements of the statute and members of the public who wish to ascertain their rights under the statute.

B. The Solution

For much greater clarity and precision, the General Assembly should redraft Chapter 22 using the term "**government record**" to describe all records, papers, documents, electronic databases or communications, tapes, films, books, correspondence,

or other information, stored in any medium, that is produced by, or that is owned by the government as a matter of property law, or that is lawfully in the possession, custody, or control of the government or any of its officials or employees in the course of their government duties or employment. [The term "government records" is already used in §22.8(4), §22.10(2), and §22.11(1)(d) without defining it. The term should be defined in Chapter 22 and consistently used throughout that law where relevant.]

The term "**public record**" should be used in Chapter 22 to describe all "government records" to which members of the public have a general right of access. The term "**confidential record**" should be used to describe all "government records" to which a statute **prohibits** general public access. (See, for example, the similar approach of Indiana in Ind. Code 5-14-3-4(a).) Finally, the term "**optional public record**" should be used in Chapter 22 to describe all "government records" as to which the lawful custodian has some discretion to determine whether or not some or all members of the public have a general right of access. (See, for example, the similar approach of Indiana in Ind. Code 5-14-3-4(b).) As noted shortly, §22.7 currently lists a substantial number of "government records" - 57 classes of such records - that may be described as "optional public records."

The overwhelming number of "government records" should be classified as "public records," a small number of "government records" should be classified as "optional public records," and a very small number of "government records" should be classified as "confidential records." Persons wishing to have a class of "government records" designated as anything other than "public records" should have to bear a very heavy burden of persuasion. The General Assembly should list in one section of the Public Records Law **all** "optional public records," and it should at least consider the feasibility of listing in another section of Chapter 22 **all** "confidential records," so that members of the public and all government bodies subject to this law can easily ascertain in one place whether particular information fits in one category rather than another and is exempted in either form from mandatory disclosure under the Public Records Law.

The public interest would be much better served by a clear legislative categorization of all "government records"

into "public records," "confidential records," and "optional public records." This clear categorization would facilitate more rational and consistent legislative decisions with respect to the assignment of particular government records to each category, and better inform the officials who must follow this law and the citizens who wish to use it of their respective responsibilities and rights.

Of course, **the General Assembly, not the public bodies**, should decide which government records are "optional public records" and which are "confidential records." Note that **§22.7 already creates a category of "optional public records" because it does not forbid the disclosure of all records covered by that section** despite the fact that the caption of §22.7 is "Confidential records." The introductory paragraph of §22.7 only authorizes agencies to withhold the disclosure of such information; it does not prohibit the disclosure of all information in the 57 paragraphs of that section because it expressly states that "**the following public records shall be kept confidential unless otherwise ordered … by the lawful custodian of the records, or by another person duly authorized to release such information**." Other provisions of the Iowa Code already **forbid - prohibit** - the disclosure of certain information to the public, leaving public bodies with **no** discretion on the subject, so records containing that information are truly "confidential records."

C. Consider Changing the Statutory Drafting Focus from the term "Record" to the term "Information"

Consideration should also be given to joining the newly defined "government," "public," "confidential," and "optional public" terms with the term "information" rather than with the current term "record" because the former is the real focus of these statutes – their real focus is on "information" rather than just on the medium in which "information" is stored. If the drafting focus were on information rather than the medium in which it is stored exemptions from access to such "information" could easily be the same whether in a "record" under the Public Records Law or in a "covered meeting" under the Open Meetings Law.

3. A MORE ACCURATE AND CLEAR DEFINITION OF GOVERNMENT INFORMATION THAT MUST BE DISCLOSED TO THE PUBLIC IS NEEDED.

The General Assembly needs to reexamine the current definition of "public record" in §22.1 of the Public Records Law which defines a "public record" as any record "of or belonging to this state…," regardless of the medium in which the record is stored (paper, or electronic, etc.). The Public Records Law does not itself define which records are "of or belonging to this state." Presumably that was to be decided by any applicable property law.

A. The State Archives and Records Act Problem

In 2003 the General Assembly enacted a new statute – Chapter 305 – the State Archives and Records Act - which defines in §305.2(9) "record" as any information stored in any medium "made, produced, executed, or received pursuant to law in connection with the transaction of official business of state government." That act also states in §305.13 that "all records made or received by or under the authority of or coming into the custody, control, or possession of public officials of this state in the course of their public duties are the property of the state…." However, these Chapter 305 provisions do not apply to the Department of Transportation or the Board of Regents institutions, §305.15, appear not to apply to local government records, §305.2(1), and do not appear to have been considered in relation to their possible effects on the exact scope and application of the Public Records Law in Chapter 22. Instead, the Chapter 305 definitions appear to have been drafted only for the specific purposes stated in §305.4, and may be inconsistent in some respects with certain language of the Public Records Law and its originally intended scope. What is the relation of these 2003 Chapter 305 statutory definitions and Chapter 22? Note that Chapter 22 applies to all state and local government bodies while Chapter 305 has more limited application, so perhaps the two Chapters were not intended to be read *in pari materia*. The question remains, however, whether or not the Chapter 305 language must or should be read into the definition of "public record" in §22.1.

B. The Potential Breadth of the Public Records Definition

Is **every bit of information of every kind and of every degree of finality or importance to the operation of government** that is stored in any medium and that is produced "in the course of their public duties" by any state official or employee **or** that is in their "custody, control, or possession …in the course of their public duties" intended to be a "public record" within the meaning of the Public Records Law and, therefore, subject to mandatory public disclosure unless exempted? Is **every** note jotted on a yellow pad by a public official or employee, every preliminary draft no matter how tentative, preliminary, or unformed, **every** email and **every** bit of information produced by or in the possession or control of a public official or employee in the course of their duties or in relation to their duties a "public record" subject to Chapter 22 and its mandatory disclosure requirements? Are the notes prepared by a public school teacher or state university professor to aid their teaching "public records"? Are the rough notes taken by legislators or other state employees to refresh their recollection about what I said today, and their tentative thoughts about my presentation, all "public records"? Are tentative ideas or notes written on yellow pads at night and at home by state employees in the course of thinking about their job responsibilities all "public records"? Is **every** piece of paper and every electronic communication in the possession of, or produced by, or collected by, a public employee in the course of or related to their employment a "public record" subject to mandatory disclosure unless exempted? [See 4., next, for a further discussion of this issue as it applies to very tentative and preliminary ideas or opinion information.]

C. Is the Current Definition of Public Record Too Narrow?

The confusion at the outer limits over the exact scope of the definition of "public records" within the meaning of Public Records Law §22.1(3) may be illustrated by two contrasting well publicized recent events. The University of Iowa's General Counsel in consultation with the Iowa Attorney General's Office seems to have taken the view that in the hands of the author or his State University paid secretary **none** of the correspondence by an

"emeritus" (retired) University of Iowa administrator was a "public record" subject to Chapter 22. Apparently **the all-embracing incredibly broad conclusion that none of this person's correspondence in the hands of the author or his University-paid secretary was a Chapter 22 "public record"** even applied, apparently, to such correspondence that contained advice about University affairs and operations, and was stored in a University computer system, and was typed by a University-paid secretary during her work time, and was addressed to public officials, and was produced using University equipment in a University facility, and was authored by a person who had an office in the University and who uses personalized University stationary (which is required by University rules to be used only for University business) and who receives several University benefits because of the person's special and official "emeritus" status in the institution.

One would think that such correspondence giving advice **about University matters to public officials** that was produced **by a person in all of these particular circumstances enumerated above** would be considered to be a "public record" subject to Chapter 22. In addition, this conclusion seems sound because §19.1 of the University of Iowa Operations Manual expressly states that University computing resources "should be used primarily for University-related educational and administrative purposes" although some "modest personal use of University supplied technology resources" is permissible. Furthermore, that University policy expressly states that "by using University-information technology facilities…users agree to abide by all related University policies and…state law."As a result, the conclusion of the University of Iowa's General Counsel and the Iowa Attorney General's Office on this issue seems in error under the existing language of §22.1(3) **as applied to all of the particular circumstances described above**. If in all of these exact circumstances all correspondence of this type is not a "public record," that definition is seriously defective and needs a cure.

D. Is the Current Definition of Public Record Too Broad?

At the other extreme, the Iowa Supreme Court concluded two years ago that records of a non-government foundation organized under the nonprofit corporation laws of this state to

collect private contributions which would be used by the private foundation to benefit a state university are "public records," that is records "of or belonging to" the state. This conclusion resulted in the enactment by the General Assembly of an exemption to the Public Records Law to deal with some of the consequences of that interpretation of the current §22.1(3) and §22.2(2) definition of a "public record." The latter provision states that a governmental body "shall not prevent the examination…of a public record by contracting with a nongovernment body to perform any of its duties or functions." See *Gannon v. Board of Regents*, 692 N.W. 2d 31 (2005), and §22.7(52). The §22.1(3) definition of a "public record" and the §22.2(2) gloss on that definition announced in the *Gannon* case need to be reconsidered. This is so because the current statutory language of Chapter 22 seems to contemplate its applicability only to records owned by or produced by or in the possession or control of **public** bodies, and not wholly in the possession and control of completely private bodies that are not subject to the plenary jurisdiction of a government body with regard to those records. In fact, the *Gannon* case has left a large number of unanswered and unresolved questions about the records of many other wholly private bodies which need to be clarified. Furthermore, the §22.7(52) amendment to the Public Records Law, which was a purported cure for the Gannon case, may cause additional problems in the future. That amendment may negatively imply that **all** the records of wholly private nonprofit foundations that raise money for the benefit of any public institutions, and perhaps some other such wholly private foundations, may be subject to Chapter 22 when that clearly was not the intention of this statute when it was originally enacted or subsequently amended. If the General Assembly wishes to impose certain public disclosure obligations on wholly private foundations of specified kinds it should do so in a separate statute and not in the Public Records Law which was intended to apply only to government bodies.

E. Practical Consequences of the Scope of the Public Records Definition

The definition of "public record" subject to the mandatory disclosure requirements of Chapter 22 needs to be reconsidered for another very important reason. There is a direct relationship between the breadth of the definition of "public record" that is

subject to the mandatory disclosure requirements of this law, and the number, breadth, and flexibility of the exemptions that are needed from this law. The broader and more all inclusive and unlimited the scope of the term "public record" in Chapter 22, the larger the number, the greater the breadth, and the more flexible the exemptions from that Act will have to be to ensure the preservation of efficient, effective, and economical government and adequate protection for justified personal privacy. If literally every single bit of information, no matter how preliminary, tentative, or unformed, either produced, received, or collected by a public official or employee in the course of or related to their duties or jobs, **or** in their possession or control in the course of their duties or employment, is a "public record" subject to public disclosure on demand, unless exempted from such disclosure by a specific exemption from the Public Records Law, you will have to reconsider carefully the adequacy of the current §22.7 and §22.8 exemptions to that law. In that case you will also need to decide whether another mechanism than these current provisions for exemption from the requirements of Chapter 22 might be needed.

This is so because such a total, unlimited, comprehensive, exhaustive, all inclusive, and broad reading of the term "public record" could cause great unforeseen practical problems for state government, or at least cause a need for more exemptive provisions, broader exemptive provisions, or more flexible exemptive provisions from Chapter 22. You should, therefore, carefully review the definition of "public record" under §22.1 and §22.2(2) in light of newly enacted Chapter 305 and clarify the relationship of the Chapter 305 definitions to Chapter 22, and also determine the exact scope and breadth of the term "public record" that is subject to the mandatory disclosure requirements of the Public Records Law.

4. SHOULD ALL VERY TENTATIVE OR PRELIMINARY IDEAS OR OPINIONS BE SUBJECT TO MANDATORY DISCLOSURE UNDER THE PUBLIC RECORDS LAW?

As noted, part of the problem with the Chapter 22 definition of the term "public record" concerns very preliminary, very tentative, ideas or opinions of public officials or public employees embodied in paper or electronic records. Because

exchanges by less than a contemporaneous quorum of the members of covered bodies are currently exempt from the Open Meetings Law in §21.2(2), oral discussions containing very preliminary or very tentative ideas or opinions on public policy matters by less than a contemporaneous quorum of a multiheaded body may be conducted free of public scrutiny. On the other hand, the expression of very preliminary or very tentative ideas or opinions on public policy matters on paper or in electronic form appear to be subject to public scrutiny under the Public Records Law because the "of or belonging to" language of §22.1(3) in the current "public records" definition seems to include all such very tentative or very preliminary materials produced by or in the possession or control of public officials or employees in the course of their duties.

Even though they are inconsistent, there are sound practical reasons for continuing the exemption for very preliminary or very tentative oral discussions by less than a contemporaneous quorum of a multiheaded body under the Open Meetings Law, and the required disclosure of very preliminary or very tentative ideas or opinions on paper or in electronic form under the Public Records Law. However, it could also be argued that immediate exposure of all such very preliminary or very tentative ideas or opinions under the Public Records Law may chill valuable and necessary open and frank consideration of many issues by decisionmakers and their advisors, and chill the generation and suggestion by those people of very tentative and possibly valuable ideas for dealing with public problems.

On the assumption that all such materials are "public records" under current Chapter 22 (unless exempted by some specific paragraph of §22.7), should the jottings on a yellow pad or computer provided by state money to a state official and containing very tentative or very preliminary ideas the official is just thinking about in relation to his or her job, or a memo from an assistant to a decisionmaker containing some very preliminary or very unformed ideas the decisionmaker might think about, be immediately available to the public because they are "public records"? The Open Meetings Law functionally shields much information of this type from public discovery by the §21.2(2) quorum requirement for a meeting; the Open Meetings Law also functionally shields much information of this type from public disclosure by the current

exclusion of many wholly advisory bodies from that law. See *Mason v. Vision Iowa Bd.*, 700 N.W. 2d 349 (2005) and *Donohue v. State*, 474 N.W. 2d 537 (1991). Should the Public Records Law do the same in a very narrow and limited time fashion by an explicit exemption from that law for materials containing only very preliminary or very tentative ideas or opinions of government employees or officials before they are even formulated into a concrete proposal for future official action?

Many public records laws contain a so-called deliberative privilege exemption that shields from mandatory public disclosure very preliminary and very tentative ideas or opinions of government employees or officials before they are finally formulated and finally proposed for consideration for authoritative action. States with deliberative privilege exemptions of some kind from their public records law include: California (Cal. Gov't Code § 6254(a)); Connecticut (Conn. Gen. Stat. §1-210(b)(1)); Hawaii (Haw. Rev. Stat. §92F-13(3)); Illinois (5 ILCS §140/7(1)(f)); Kansas (K.S.A. §45-221(a)(20)); Kentucky (KRS §61.878(1)(i)); Michigan (MCLA §15.243(1)(m)); New Hampshire (RSA §91-A:5, IX); New York (N.Y. Pub. Off. Law §87(2)(g)); Oregon (ORS §192.502(1)); Rhode Island (R.I. Gen. Laws §38-2-2(4)(i)(K)); Washington (RCW §42.56.280). *See generally* OPEN GOVERNMENT GUIDE (The Reporters Committee for Freedom of the Press, 5th ed. 2006). See also Ind. Code §5-14-3-4(b)(6), Indiana Act, which exempts from mandatory disclosure "records that are intra-agency or interagency advisory or deliberative material…that are expressions of opinion or of a speculative nature, and that are communicated for the purpose of decisionmaking." While the Indiana exemption may be somewhat too broad in scope and too unlimited in time, it contains an idea at least worth your serious consideration.

Should very tentative or very preliminary bill drafts in the hands of legislators prior to introducing them as a bill be immediately available for public inspection? Should all very tentative and very preliminary ideas written by agency heads or their advisors on a state provided pad or computer about what the agency might consider in the future be immediately available for public inspection even though they have not yet been thought about and formulated into a specific proposal for future action? They appear to be subject to the current literal language of

§22.1(3) of the Public Records Law, especially if the new State Records and Archives Act provisions, §305.2 and §305.13, are combined with the current definition of "public record" in §22.1(3), and the latter provision is construed broadly as most legislators no doubt intended.

The General Assembly should, therefore, at least consider seriously the desirability of explicitly exempting from **required** public disclosure some materials in **very** preliminary and **very** tentative working papers of government officials or employees. Such an exemption might protect from mandatory disclosure **only nonfactual deliberative material** – material only embodying very tentative or very preliminary opinions or ideas -- and only prior to the time they are used as the basis for any actual recommendation of a proposal on which authoritative action of some sort will be taken in the future. The argument would be that the custodians of very tentative notes, very preliminary drafts, should be able to withhold them from public scrutiny, if they choose, for **brief periods**, while decisionmakers have a chance to think about them, and should be able to withhold them from public scrutiny **only up to the time the public officials or public employees actually formulate on the basis of such earlier tentative and preliminary deliberative materials specific recommendations or proposals for future authoritative actions**. Such a brief exemption should not apply to factual material. It should apply only to nonfactual policy, opinion, or idea materials, and such very tentative or very preliminary material could be withheld **only** for periods prior to the final formulation of an actual **recommendation or proposal,** which would be well before any actual authoritative action on any such recommendation or proposal.

It should be stressed that the purpose of such a deliberative privilege exemption is only to encourage the creation and free exchange by government employees and officials of new and innovative preliminary and tentative ideas for later more careful and deliberate consideration and that such a privilege would only apply well prior to any decision to propose, adopt, implement, or act on them. Without such a privilege some truly creative thinking by government employees and officials of a very tentative and very preliminary or speculative nature will be discouraged. This is so because employees or officials may fear that it will reflect badly on

them if all of their very tentative and very preliminary ideas or opinions must be available for public inspection when some of them may turn out, upon mature reflection, to be foolish or ill-advised.

I know this is a controversial proposal, but it does present a serious policy issue which you should at least consider because it appears that under the current language of Chapter 22, especially as construed broadly, **all** information created by or in the possession of Iowa government officials and employees in the course of their duties is immediately discoverable unless that information is within one of the §22.7 exemptions, or relief is available under the injunctive provisions of §22.8. This is so even if that information is very tentative and very preliminary, and only contains unformed ideas or opinions or speculation before they are actually embodied in any proposal for future authoritative government action.

5. GOVERNMENT INFORMATION THAT MAY BE WITHHELD FROM PUBLIC DISCLOSURE SHOULD BE MADE CONSISTENT UNDER BOTH THE PUBLIC RECORDS LAW AND OPEN MEETINGS LAW.

The Open Meetings Law and the Public Records Law are intended to accomplish similar purposes – to ensure open government wherever it is possible and not inconsistent with other important public purposes. Yet, the exemptions incorporated in these two statutes and the exact scope of their wording and, therefore, applicability differ. Why should there be a discrepancy between the specific kinds of information that an agency may withhold from public inspection when the information is in a government "record" and the specific kinds of information that justifies closure by a covered public body of a meeting otherwise required to be an "open meeting"? In §21.5(1)(a) the Open Meetings Law expressly incorporates all of the §22.7 exemptions from the Public Records Law, but the Public Records Law does not expressly or impliedly incorporate in §22.7 all of the differently worded exemptions found in §21.5 of the Open Meetings Law. That seems wholly unjustifiable given the similar purposes of these two laws.

The following are two of a number of examples of exemptions from mandatory disclosure of information that are different in the two Iowa Sunshine Laws. A meeting may be closed under Open Meetings Law §21.5(f) to discuss the decision to be rendered in a Chapter 17A "Contested Case," but there is no Public Records Law §22.7 exemption for deliberative preliminary or tentative records generated by those same officials in their consideration of how to decide such a "Contested Case." Similarly, there is a discrepancy between the exact scope of the exemption from mandatory disclosure of "records" concerning an application for employment with the state, §22.7(18), and the exact scope of the exemption for meetings otherwise required to be open that concern a covered body's consideration of such an application, §21.5(i). See 6. B next.

6. A CLEAR LEGISLATIVE DECISION IS NEEDED ABOUT HOW MUCH INFORMATION MUST BE DISCLOSED IN RELATION TO APPLICATIONS FOR PUBLIC EMPLOYMENT AND THE DELIBERATIONS ACCOMPANYING THE PROCESSING OF THOSE APPLICATIONS.

A. The Problem

The General Assembly should decide whether the names and qualifications of all or some applicants for high level public positions, like state university Presidents, should be available for general public inspection and if so when. Certainly all deliberations and decisions about the **process or method** for selection of such officials and the **specific qualifications** desired are and should remain subject to public inspection and observation. But there is much controversy over whether it is in the public interest to shield from public disclosure the identity of all or some of those particular applicants for high level public positions who wish their identities to be kept secret, and if so, for how long.

Those who advocate the nondisclosure of some applications for high level government employment are concerned that if the names of all applicants for such public positions are entirely open to public scrutiny from the start of the process some very qualified people will not apply. The fear is that some very qualified persons will be discouraged from applying for a high

level government position because they believe that public knowledge of their application for the position may jeopardize their effectiveness in or continuance in the positions they currently hold. On the other hand, those who advocate the disclosure from the start of the process of all applications for high level government employment are concerned that if the names of all such applicants and their consideration are not open to public scrutiny from the beginning, all the necessary information about them and the public views about them will not be available early enough to ensure good decisionmaking by the appointing authority. They are also concerned that if information about all applications and their consideration by the appointing authority is partly closed, the public will not be able to assure itself that the best candidate was chosen and that the process was in fact conducted fairly and legally. These issues surrounding the openness of applications for public employment need reconsideration and a better resolution than that provided in current law.

B. Current Law

The current law in Iowa on some of these issues is not completely clear, and the applicable statutory provisions are inconsistent. For example, under §22.7(18) of the Public Records Law, an application for such a position from **outside** of government may be kept confidential, *City of Sioux City v. Greater Sioux City Press Club*, 421 N.W. 2d 895 (1988), while an application for such a position from anywhere **inside** government may not be kept confidential because of express language in §22.7(18). And the outside applications may be kept confidential under §22.7(18) without an actual formal request by the applicants so long as the governmental body receiving the applications "could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination." On the other hand, under §21.5(i) of the Open Meetings Law, a meeting may be closed to discuss the qualifications of any such applicant whether the applicant is from inside or outside of government so long as the covered body could reasonably believe such closure is "necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session."

C. Possible Solutions

Whether the names and qualifications of individual applicants for high level government positions and the details of the appointing bodies' consideration of such applications should be public information in this state needs to be clearly settled. The law on this subject also needs to be consistent under both the Public Records Law and the Open Meetings Law. There is no doubt that this is a difficult public policy issue.

There are a range of possible statutory solutions to this problem. The best solution should try to maximize, in so far as possible, both the important public interest in the openness of searches for government positions with the important public interest in obtaining the best candidate to fill a vacant government position. Certainly the Public Records Law and Open Meetings Law should be made fully consistent on this question. Beyond that, it seems reasonable to eliminate any distinction between inside and outside candidates for the position in question, and to at least require an applicant for such a position who wishes his or her application to be kept confidential to make that request in writing. It also seems reasonable to require any government body that decides to honor such a request to make a written finding explaining why the body's action to ensure the confidentiality of the application is "**necessary**" to induce the applicant to apply for the position, that is, why the failure to honor the confidentiality request of the applicant would result in the loss of that applicant's willingness to be considered for the position. The law should also make clear that while the appointing body may advise an applicant of his or her rights to confidentiality in these circumstances it may not directly or indirectly encourage an applicant to make such a request for confidentiality.

Additional issues you should consider include whether the identity of applicants for such positions should be kept confidential on request of the applicant only until a very small group of the candidates (defined by statute) is created for final consideration. This may be the most sound solution to the job applications controversy because it maximizes to the extent feasible each of the competing interests involved. You should also determine whether the rules for disclosure of applications for employment in government should be the same for all such positions or should

differ depending on the level or identity of the position involved? Most people seem to think that the public interest in the disclosure of individual job applications is greatest as applied to applications for high level executive positions, and that the public interest in disclosure is not as great with respect to applications for lower level executive positions and other governmental positions. There is much to say on these issues and I can furnish you later with more information about the arguments on each side and the history of the law in Iowa on this particular issue.

Other states have taken varying positions on this issue in their sunshine laws. State statutes appear to provide that **information pertaining to individual applications for government employment and their consideration by the appointing authority is**:

CLOSED [Illinois (§§140/7(1)(b)(ii) & (iii), § 120/2(c)); Kansas (§§45-221(a)(4); 75-4319(b)(1)); Maryland (§§10-616(i), 10-508(a)(1)); Mississippi (§§25-1-100(1), 25-41-7(4)(a)); Missouri (§§610.021(3) & (13)); New Jersey (§10:4-12b(8)); North Carolina (§§126.22, 143-318.11(a)(6)); Oklahoma (§§24A.7.B.1, 307.B.1)); Rhode Island (§38-2-2(4)(i)(A)(I)); Virginia (§§2.2-3705.4(2)(ii), 2.2-3712(G)); Washington (§§42.56.250(2), 42.30.110(1)(g); Wyoming (§§16-4-203(d)(iii), 16-4-405(a)(ii)];

CLOSED, if requested in writing [Wisconsin (§19.36(7)(a), (b)];

CLOSED, in the agency's discretion [Indiana (§§5-14-3-4(b)(8); 5-14-1.5-6.1(b)(5)];

CLOSED, for executive level employment, unless candidate gives consent [Connecticut (§1-213(b)(2)];

CLOSED, except for "finalists" for all public employment [Minnesota (§13.43, subd. 3); Nebraska (§84-712.05); S. Carolina (§30-4-40(a)(13)];

OPEN [Florida (Ch. 119); Tennessee §8-44-102(a)];

OPEN, with an exemption for executive-level employment if confidentiality is requested in writing, but finalists must be disclosed [Colorado §24-72-204(3)(a)(XI)(A)];

OPEN, with exemptions for specified positions, but finalists must be disclosed within a certain period of time prior to the final decision [New Mexico (university president – §14-2-1(A)(7) & (B)); Texas (university president – §552.123; school superintendent – §552.126); Michigan (university president –

§15.268(j)); Georgia (head of an agency or of a unit of the University System – §50-18-72(a)(7)].
See generally OPEN GOVERNMENT GUIDE (The Reporters Committee for Freedom of the Press, 5th ed. 2006).

The largest number of states, therefore, appear to shield individual applications for public employment and the deliberations concerning individual candidates from disclosure, obviously concluding that the potential harm from their universal disclosure outweighs the potential harm from their universal closure. In any case, this is a matter you must independently consider to decide what approach to this problem is the best public policy for Iowa.

7. MANY CURRENT EXEMPTIONS FROM MANDATORY DISCLOSURE OF GOVERNMENT INFORMATION NEED TO BE RECONSIDERED.

Each of the 57 specific exemptions from the Public Records Law in §22.7 and each of the eleven specific exemptions from the Open Meetings Law in §21.5(1) should be carefully and individually reexamined with an eye towards creating a much more rational set of joint exemptions from both Acts for very narrowly drawn, specific identified types of information, whose disclosure would clearly be inconsistent with the public interest. In addition, in any redrafting of §22.7 any such exemptions should be organized by subject categories on a more rational basis than their current organization.

A. The Problem

There should be many fewer and better drafted narrow generic exemptions from required disclosure than are currently contained in Chapters 21 and 22. A large number of the existing exemptions should be rewritten and consolidated. Too many of the current exemptions from these laws, especially the 57 specific exemptions from the Public Records Law in §22.7, are for a particular agency or a particular program rather than for a very narrowly drawn and identified specific type of government information that should not be disclosed regardless of the agency or program generating, creating, collecting, or possessing the

information. Most of these specific exemptions were added as piecemeal, ad hoc amendments during the last twenty-five years. A large number of the existing exemptions in §22.7 are also too vague, too broad, or too narrow. See, for example, some better drafted more general exemptions from required disclosure found in the Indiana Public Records Law, Ind. Code 5-14-3-4(a)-(b), some of which might at least be considered when reviewing the many current specific exemptions in Iowa's §22.7. Finally, exemptions for government information from mandatory public access should apply to both Chapters 21 and 22 since their purposes are identical and the harm to the public from disclosure of specific information properly exempted under either law would be the same.

B. Example: Personnel Records

An example of an exemption from disclosure in §22.7 that should be reconsidered in its current form is the §22.7(10)-(11) exemption from required disclosure for public records dealing with "personal information in confidential personnel records." That provision should be clarified and refined because it is much too vague and there is much confusion over what is "personal" and what is a "confidential personnel record." That provision might be amended to delete the words "personal information in confidential personnel records," and to substitute language exempting from required disclosure only specified kinds of information in personnel and payroll records, as further defined in much more specific narrowly drawn statutory language. Even the public disclosure of some information about identified government employees in personnel and payroll records might invade the privacy of the identified government employees without serving any important public purpose. This is true, for example, with respect to certain deductions authorized by government employees from their own salaries. So, United Way deductions, deferred compensation amounts like IRA and SRA deductions, and the amount of insurance purchased through a government sponsored optional program by identified employees, should not be subject to required disclosure to the general public.

However, a reformulated §22.7(10)-(11) should make clear that some personnel information in records concerning identified government employees must be available for public inspection and, therefore, should not be exempt from public disclosure. For

instance, the public should be entitled to ascertain who is employed at public expense, how much they earn, when they were employed by the government body, the positions they hold or held, and their basic general qualifications for the job such as their educational degrees and their relevant work experience. Additionally, the public has a legitimate interest in being able to ascertain serious disciplinary actions against some, most, or all government employees which result in discharge, suspension, or loss of pay, once appropriate agency procedures have been exhausted and the disciplinary action has already been taken. Consideration should also be given as to whether information about a government employee's record of absences from work should be available to the public. Other provisions of the Code of Iowa may need to be amended to ensure their consistency with any legislative action with respect to §22.7(10)-(11). Personal information about public employees such as their home phone number, or their home address, or their health or family status, should not normally be available for public inspection.

C. Example: Social Security Numbers

Another example of an exemption from required disclosure of specified information that seems defective because of its excessively narrow and specific form is §22.7(32). That provision exempts from required disclosure the social security numbers of specific persons in the records of specified agencies or officials that collect them for specified programs or purposes. Why is that provision limited to specified agencies or officials or programs? Social Security numbers of all individuals [and, for example, charge card numbers like VisaCard or Mastercard numbers of individual card holders] should generally be treated as confidential under the Public Records Law without regard to the specific government body holding that information or the specific government program collecting or using that information. See also proposal 8. A. next dealing with similar information about identified individuals.

D. Example: Peace Officer Investigative Reports

Another exemption from Chapter 22 that should be reexamined because it is too narrow in scope deals with "peace officer investigative reports." Section 22.7(5) exempting from

inspection "peace officer investigative reports" should be broadened to include **all law enforcement investigative reports** prepared by any government official charged with law enforcement duties, whether civil, administrative, or criminal, subject to a similar limit as now found in that provision. That is, §22.7(5) should be amended to make optional public records all investigative reports by law enforcement officials generally, including law enforcement officials charged with administrative or civil regulatory functions. The current definition of the term "peace officer" used in §22.7(5) is defined in §801(11) and does not appear to include administrative agency officials charged with wholly administrative or civil law enforcement functions. Any such broadened §22.7(5) should continue to include the existing proviso that "the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential …except…."

The policy justification for current §22.7(5) would support its extension to investigative reports by all law enforcement officials including reports by all of those officials engaged in wholly administrative or civil law enforcement activities. This is so because investigations by all of those officials may focus on persons who are found in the end to have acted entirely lawfully, and, therefore, the public disclosure of such reports may unnecessarily injure the reputation or privacy of identified individuals without any substantial public benefit. The public disclosure of such reports may also seriously interfere with the success or effectiveness of subsequent government action properly taken against individuals who are the subject of those investigatory law enforcement reports.

E. Conclusion

I could give many other examples of existing §22.7 exemptions from required disclosure that are either too broad, too narrow, too vague or unclear, or too agency or program specific, or unjustified as a matter of policy. So you should take a careful and systematic look at each of the current 57 paragraphs of §22.7 and each of the current eleven paragraphs of § 21.5(1) and redraft them in appropriate ways to eliminate such problems.

8. SEVERAL ADDITIONAL EXEMPTIONS FROM MANDATORY DISCLOSURE NEED TO BE CONSIDERED.

A. Example: Personal Information about Identified Persons

To some extent exemptions from mandatory disclosure of personal information in government files about identified persons who are students or state employees or that involve the medical records of people are covered by existing § 22.7 exemptions. Unfortunately, there do not seem to be any general exemptions from mandatory disclosure of personal information in government files about identified individuals who are neither students nor government employees or that does not involve their medical records, and that protects them against such disclosures that would amount to an "undue invasion of their personal privacy." An "undue invasion of personal privacy" would be the release of personal information in government records about an identified individual in situations where the public interest in its release does not clearly outweigh the loss to the individual involved from the disclosure of that information. Consideration should be given to adding such an exemption to §22.7.

B. Example: State Licensee Personal Information

The Public Records Law needs a provision to delineate the specific types of personal information about individuals who hold state licenses of various kinds that are in the files of the licensing agency that should be public information, and the specific types of information about them that should be exempted from required public disclosure, and under what circumstances. Note that information in agency files about licensees is not within the meaning of §22.7 "personnel records" or "student records." So, an exemption should be added to §22.7 to shield from **required** public disclosure certain kinds of personal information about identified licensees. Currently, almost all information about a licensee in the files of a licensing body is presumably a "public record" that must be disclosed under Chapter 22 unless a specific exemption can be found in §22.7 where there is no such generic exemption of this kind. Of course, for a particular licensing body, another statute may provide such an exemption, and the enactment

of a general provision on this subject suggested in 8. A, above, might moot the need for such a specific provision respecting licensees.

In addition, the exact scope and desirability of any such exemptions from public disclosure of information about identified licensees currently found in individual licensing statutes should also be reconsidered. The question has arisen, for example, as to when, if ever, before they have been finally adjudicated by the licensing agency, formal complaints filed against licensees should be available for public inspection and as to whether there should be different rules on this matter for different classes of licensees.

Nothing in §22.11, the Fair Information Practices provision, authorizes the withholding from public scrutiny of personal information about an identified individual licensee if §22.7 or another statute does not already authorize such withholding. And, as noted in 9. next, an injunction against disclosure of such information would often be hard to obtain because **both** standards (a) and (b) in §22.8(1) must be satisfied before an injunction may issue. Furthermore, commencing an action for such an injunction to prevent the disclosure of personal information about a licensee is too expensive and otherwise impractical for most subjects of such personal information in government licensing records who do not want their personal privacy violated by a government body. Finally, under current law licensees whose personal information is about to be disclosed to the public by a licensing agency do not even have a right to prior notice that such information is about to be released.

Note, however, that members of the public should have a right to ascertain certain information about government licensees. Their name and business address, the terms and conditions of their licenses, their basic general qualifications for the license, any disciplinary action taken against them as a licensee after that action occurs, should be disclosed and should, therefore, be public records. In the interest of protecting personal privacy, however, §22.7 should expressly exempt from required public disclosure most other records concerning identified licensees. Subject to advance notice to the licensee, however, such a §22.7 exemption should allow the agency to release exempted information about a

licensee in situations where it reasonably believes important public interests would be served by that disclosure.

C. Example: Preventing Excessive Disclosure of Personal Information to the Subject of the Information

On the other hand, protection of the interests of the subjects of personal information in government files may also go too far under current law. Note that Section 22.11(d) appears to give a right to every person to review every "government record" about that identified person, and to have additions made to it "unless the review is prohibited by statute." That could turn out to be a dangerous provision. Very few statutes actually "prohibit" such a review by the identified object of a government record. Indeed, §22.7 only **authorizes** the custodian to keep records referred to in that section confidential. It does **not** "prohibit" the custodian from making those records available to the subject of those records because it says the "following records shall be kept confidential **unless otherwise ordered…by the lawful custodian**." Therefore, the legislature may have unintentionally given everyone a right to see **every** government record identifying them unless some other statute specifically prohibits the disclosure of that particular type of information to the subject of the information.

The subject of a government record should have access to such a record "**except to the extent that it is determined otherwise by statute, or it can be shown by the government body that the release of some or all of that information or the entire class of which it is a part, would frustrate the accomplishment of an important public purpose**." By not adding a qualification of this kind to §22.11(d), the statute may have opened up a hole that could cause unintended harm in some situations because, as noted, there are few Iowa statutes that actually "prohibit" the custodian from showing personally identifiable information to the subject of information. Potentially, for example, this provision might allow the subjects of all civil and administrative enforcement investigations to see all such material as it is gathered. Such a generic right could seriously interfere with the ability of such law enforcement officials to properly perform their jobs. So, §22.11(d) should be amended to allow the inspection by the subject of all government records, except as qualified by a limitation of the kind noted above.

9. THE SCOPE OF EXISTING JUDICIAL AUTHORITY TO RESTRAIN THE EXAMINATION OF GOVERNMENT INFORMATION OTHERWISE SUBJECT TO PUBLIC INSPECTION NEEDS TO BE REEXAMINED.

Section 22.8(1) should be amended to allow a court to issue an injunction to restrain the examination of a particular public record normally available for public inspection, or a particular record within the scope of one of the §22.7 exemptions from required disclosure that the custodian decides to make available for public inspection, on the **sole** ground that "**such examination would clearly not be in the public interest**." Current §22.8 requires that, for an injunction to issue, such an examination must, in addition to satisfying that standard, also be demonstrated to be likely to "substantially and irreparably injure any person or persons." This is undesirable because there will be situations in which inspection by one or more members of the public of a particular public record, or a record exempted from required disclosure by §22.7, would be very harmful to the public interest at large without, in addition, substantially and irreparably causing special injury to a particular identifiable person or persons.

Any such change permitting an injunction to issue solely on the ground that "such examination would clearly not be in the public interest" should preserve the current qualification contained in §22.8(3). That provision states that in any actions brought for such an injunction the court "shall take into account the policy of this Chapter that free and open examination of public records is generally in the public interest even though such examination may cause inconvenience or embarrassment to public officials or to others." Such a change should also preserve the current requirements in that provision that an injunction may issue "only if the person seeking the injunction proves by clear and convincing evidence that this section authorizes its issue."

Section 22.8(1) should also be amended to allow a court to issue an injunction to restrain inspection of a particular public record, or a particular record exempted from required disclosure by §22.7, on the sole ground that the inspection would **"substantially and irreparably invade the privacy of the subject of that**

record, and that the harm to that person from such disclosure is not outweighed by the public interest in its disclosure." Finally §22.8 should be amended to explicitly authorize a court to issue an injunction against disclosure by a public body of **a record solely on the ground that the record is not a "government record" at all,** even though it may be in the temporary possession of a government body

It is hard to understand, for example, why an injunction against inspection of a record should not automatically issue if a petitioner demonstrates "by clear and convincing evidence" that such inspection is **clearly not** "**in the public interest**." Yet, under the current language of §22.8(1), such a showing would **not** be enough to issue an injunction. If a petitioner cannot **also** prove that the examination would "substantially and irreparably injure any person or persons" – meaning special injury to a particular identified individual – the injunction must be denied. (Current paragraphs (a) and (b) of §22.8(1) must be read to cover two different kinds of harm, otherwise they would be redundant. Since paragraph (a) covers harm to the public interest at large, that is, to the community interest, paragraph (b), which purports to be a wholly independent and additional ground, appears to cover only special, particularized, individual injury to a specific identifiable person.) The danger of requiring clear and convincing proof of **both** currently required grounds (a) and (b) of §22.8(1) as a prerequisite to obtaining an injunction against public inspection is particularly great because of the inadequate exemptions in §22.7 to the Chapter's disclosure requirements if the existing term "public record" is very broadly interpreted in light of new Chapter 305 and preexisting property law assumptions.

As noted earlier, the term "public record" in §22.1(3) is likely to be interpreted under current law to include any and all information of every type, no matter how preliminary or tentative, in any medium produced by, collected by, or in the possession or control of any government official or employee in the course of or related to his public duties. If that is so, the §22.7 exemptions and the §22.8 injunctive provision must be formulated in a way that anticipates successfully every single serious problem that might occur from the public disclosure requirements of the Public Records Law. Do we really want every single public record not expressly exempted from disclosure by §22.7 to be available for

public inspection even if we did not anticipate beforehand all the negative consequences to the public interest of the release of a certain type of government information?

For example, do we really want the written combination to a government safe (which is not currently excluded from inspection by an exemption in §22.7) to be subject to public discovery via the Public Records Law? And since a custodian must make available for public inspection **all** nonexempt records "of or belonging to the state," and may make available for public inspection, in its discretion, some records excluded from required disclosure by §22.7, or some records that in fact turn out not to be "government records" in the first place, should not §22.8 provide a means by which such disclosure can be prevented by a court, an independent neutral body, if the disclosure 1) is **not** in the "public interest," **or** 2) would constitute an **undue** invasion of personal privacy, balancing the public interest against the private harm, **or** 3) if the record is **not** a "government record" in the first place?

10. THE PRECISE SCOPE OF A CUSTODIAN'S DISCRETION TO RELEASE INFORMATION OTHERWISE EXEMPT FROM MANDATORY PUBLIC DISCLOSURE NEEDS TO BE CLARIFIED AND PROVISION MADE FOR ADVANCE NOTICE TO AFFECTED PARTIES.

A. Scope of Discretion

The Public Records Law should be amended to clarify the precise scope of the existing §22.7 discretion of a custodian of a public record acting under that provision to release information otherwise exempt from required public disclosure, and also should be amended to properly structure and regulate exercises of that discretion to be sure it is not exercised in an arbitrary, capricious, or unreasonable manner or in a manner otherwise in violation of law. Note, again, that while §22.7 is titled "Confidential records," that title is misleading because the introductory paragraph of the section explicitly provides that "the following public records shall be kept confidential, **unless otherwise ordered by…the lawful custodian of the records…."** Consequently, §22.7 currently authorizes, and should continue to authorize, the lawful custodian to make available for inspection by some or all members of the

public, in its discretion, most of the records currently exempted from required disclosure by that provision. In exercising that discretion, however, it should be made explicit that the custodian is bound to act in a manner consistent with the state and federal constitutions, and in a manner consistent with all other applicable legal requirements. Currently, the Iowa Administrative Procedure Act provides some protection against improper exercises of a custodian's discretion under §22.7; but that statute is no help in dealing with improper exercises of a custodian's discretion when the custodian is a local government or special purpose unit like a school board because Chapter 17A applies only to state level government. As a result, a provision needs to be added to Chapter 22 itself to elaborate the precise scope and limits of a custodian's discretion to release §22.7 information.

If the legislature decides that some types of records currently governed by §22.7, such as the medical records of identified persons, should be truly "confidential records" rather than "optional public records," the legislature should remove those records from §22.7 and include them in a separate section of Chapter 22 compiling all truly "confidential records" which may not be disclosed unless another statute so provides, a court orders their disclosure, or unless lawful discovery or a lawful subpoena so requires.

B. Advance Notice of Discretionary Release of §22.7 Information

Chapter 22 should also be amended to ensure that when a custodian exercises its discretion to release for public inspection specified records that identify particular persons and that are exempted from mandatory public disclosure by §22.7, the persons so identified will, if feasible under the circumstances, receive advance notice that the information in question is to be released. In that way, such persons will be able, if they choose, to seek an injunction under §22.8 to prevent the public release of that information. This is the only way to protect such persons against what might be unjustified invasions of their personal privacy by an otherwise potentially lawful release of information in §22.7 records. Consequently, the Public Records Law should be amended to require, except in instances where there is good cause not to do so, that government bodies make a reasonable effort to

notify the identified subject of a §22.7 record of its intended release. Disclosure of §22.7 information about identified individuals to persons **inside** state and federal government who are lawfully authorized to access such information should not require such advance notice of the disclosure to the subject of the record. Note also that the body using its discretion to release §22.7 information about an identified person should only have to make "reasonable efforts under the circumstances" to provide such notice to the subject of the record before it is released.

11. A PROVISION NEEDS TO BE ADDED TO CHAPTER 22 TO ENSURE THAT GOVERNMENT RECORDS DO NOT LOSE THEIR DISCLOSURE STATUS WHEN THEY ARE TRANSFERRED TO THE CUSTODY OF ANOTHER OFFICIAL, AGENCY, INSTITUTION, OR PERSON.

Chapter 22 should be amended to make clear that records that are "confidential records" or "optional public records" in the hands of one government body do not lose that status when the original or a copy is transferred to the custody of another government body, official, or person inside or outside of government. Any government body transferring such a government record to another government body, official, or person should also be required to advise the new custodian of the "confidential" or "optional public record" status of that record.

In the case of a transfer of either the original or a copy of an "optional public record," or a "confidential record" by one government body to another such body, official, or person, the originating government body should be authorized to impose limits on the recipient's right to disclose the contents of the original or copy to members of the public. Exceptions to this authority of the government body transferring such a record to another government body should be made only for "good cause." The government body first creating or obtaining possession of an "optional public record" or a "confidential record" is usually most knowledgeable about that particular class of records. Therefore, it is usually in the best position to determine the propriety and fairness of the disclosure of records within that class to the public. So, the discretion of the government body first creating or obtaining possession of an "optional public record" or "confidential record"

should ordinarily control on the question of whether those records should be disclosed to members of the public

12. THE AVAILABILITY FOR PUBLIC INSPECTION OF FINAL SETTLEMENT AGREEMENTS BETWEEN AN AGENCY AND ANOTHER ENTITY OR PERSON SHOULD BE CLARIFIED.

Written final settlement agreements between an agency and individual are "public records" under the Public Records Law because those records are "of or belonging to the state" and, therefore, must be disclosed to members of the public unless exempted from mandatory disclosure by some provision of §22.7. No part of §22.7 generally exempts from public disclosure agency settlement agreements. The only plausibly relevant exemption, the exemption found in §22.7(4) for records "which represent and constitute the work product of an attorney," is not applicable **after** such a settlement has become final because that exemption only applies to records "which are related to litigation or claim made by or against a public body." In other words, only work product prepared in contemplation of or in the course of such litigation or claim and not work product that just memorializes the outcome of such litigation or claim is exempt from disclosure under §22.7(4). After a settlement of a matter and a settlement agreement becomes final there is no longer any pending "litigation or claim."

Section 17A.3(1)(e) of the Iowa Administrative Procedure Act also provides that every state agency shall:

> **make available for public inspection and index by name and subject all final orders, decisions, and opinions: Provided that to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets, an agency shall delete identifying details when it makes available for public inspection any final order, decision, or opinion; however, in each case the justification for the deletion shall be explained fully in writing.**

The purpose of this provision is to avoid secret agency case law; to provide the public an opportunity to familiarize itself with the actual operative content of agency law by ascertaining an agency's case precedent, its prior decisions in similar cases; and to permit the public to evaluate the quality, effectiveness, and fairness of an

agency's performance in the mass of final authoritative decisions it makes when it defines in writing the legal rights of particular persons. The provision authorizing the deletion of personally identifying details is meant to assure adequate protection for personal privacy when those written final orders or decisions, which must include the facts on which they are based, are publicly disclosed. See Bonfield, "The Iowa Administrative Procedure Act," 60 Iowa Law Review 731 at 791-795 (1975) discussing the requirements of §17A.3(1)(e).

Nevertheless, many agencies have routinely refused to make these settlement decisions of particular applicability in individual cases available for public inspection even when all details that would indicate the identity of the party involved are removed as might be permitted under the "Provided" clause of §17A.3(1)(e). Since details of the facts on which the order is based that reveal the specific identity of the outside party involved may often be removed when such a settlement order is made available for public inspection, it is hard to believe, as some agencies argue, that public access to such settlement orders will always discourage the nongovernmental party from agreeing to such a settlement.

It is true that in many cases a settlement of a dispute between an agency and a private party is the wisest and most economical course of action for the state and, therefore, barriers to such a desirable settlement should not be erected. However, the argument that public access to agency settlement orders might discourage outside parties from agreeing to such a settlement would only justify an amendment to §22.7 and §17A.3(1)(e) authorizing the agency to delete from a settlement order when that order is publicly disclosed those specific facts on which the order is based that identify the outside party involved. This is so because such a deletion would remove any impediment to settlement yet preserve the public's right to know important information about the actual content of agency law and the effectiveness and fairness of its law enforcement activities.

Agencies also argue that they need not disclose such settlement orders despite Chapter 22 and the mandatory language that it must do so in §17A.3(1)(e) because they entered into confidentiality agreements with the other party as part of the

settlement of the case. But such a confidentiality agreement cannot override a state statute requiring disclosure of such written final orders or decisions.

Some agencies also argue, wholly incorrectly in my view, that they are not currently required to make settlement orders available under §17A.3(1)(e) because settlement orders are not a "final order, decision, or opinion." However, any written authoritative final disposition of a disputed individual matter or final disposition of the rights or duties of a particular person by an agency has long been viewed and treated in administrative law as an agency "order" or "decision," and any authoritative written final settlement agreement between an agency and another party regarding the disposition of such a matter must first be approved by the agency head to be binding. The legislative history of Chapter 17A is also very clear that §17A.3(1)(e) was intended to apply to all written "final orders" and "decisions" resulting from both formal adjudication ("contested cases") **and** to any informal adjudication of an authoritative nature that potentially could be used in the future as precedent.

This issue needs clarification by the General Assembly to ensure that there is no secret agency case law in the form of individual final settlements and so that members of the public can ascertain the actual content of the agency law which they must follow. It also needs clarification so the public can effectively evaluate the fairness and effectiveness of agency performance in its law enforcement activities. Current law seems to require agencies to make settlements in individual cases available for public inspection, allowing them in some cases to remove any details identifying a particular person. But since some agencies disagree, the law should be clarified on this subject to ensure that all such agency "orders" or "decisions" - potential agency precedent – are open to public inspection with the details identifying individual nongovernmental parties deleted where that is appropriate. Of course, an agency should still be able to rely on any §22.7 exemption that might be applicable and authorize the withholding from public inspection of any particular settlement order.

13. THE TIMELINE WITHIN WHICH GOVERNMENT INFORMATION MUST BE MADE AVAILABLE NEEDS TO BE RECONSIDERED.

The General Assembly needs to decide how soon a request to inspect specified public records must be satisfied. There have been many complaints about agency tardiness or unreasonable stalling in responding to requests for public records. As a result, additional mandatory time limits might be imposed on agencies to ensure more prompt compliance with the existing requirements of the Public Records Law, and means could be provided for easy and costless enforcement of those time limits. Currently Chapter 22 only imposes a specific time limit on agency determinations "whether a confidential [§22.7] record should be available for inspection…to the person requesting the right to do so." It gives agencies a maximum of "twenty calendar days" to make such a determination. §22.8(4)(d). However, consideration might be given to prescribing by statute a much more complete schedule of maximum time limits for the various stages of agency responses to requests for the examination of public records. This might eliminate what is currently perceived as excessive agency stalling in some cases to requests by citizens to inspect specified public records.

The General Assembly also needs to decide the time within which, and the extent to which, ongoing open-ended requests for public records as they become available in the future remain in force and must be satisfied by the custodian. For example, should members of the public have a right to demand in advance that a public body **instantly copy them by email** on every email sent between identified specified officials or employees, or on every email dealing with identified specified subjects by any official or employee of the public body? Apparently such a request was recently made and denied. It is true that in a meeting required to be open by the Open Meetings Law the public is vested with a right to receive instantaneous information from a government body. Instinct and practicality, however, suggest a different conclusion for email exchanges and other writings subject to the Public Records Law; but the exact timelines within which specific requests must be satisfied for public records that are not exempt from disclosure is a matter that needs further statutory clarification.

14. CONSIDERATION SHOULD BE GIVEN TO CLARIFYING THE PRECISION WITH WHICH A PERSON REQUESTING GOVERNMENT INFORMATION MUST IDENTIFY THE INFORMATION SOUGHT AND TO IMPOSING SOME LIMITS ON THE BREADTH OF DEMANDS FOR SUCH INFORMATION.

Section 22.2 of the Public Records Law is inadequate because it does not clearly require a person requesting access to public records to do so in a manner that identifies the records requested with sufficient precision and clarity that the government body can easily ascertain the exact records it must make available.

Current §22.2 may also be inadequate because even with sufficient precision and clarity it does not recognize that some requests for access to or copies of public records might be so burdensome to satisfy because of their size and scope that they become unreasonable if they are intended to require, at one time, the delivery to the requestor or access to all the records covered by the request. What if a private business wanted a copy of tens of thousands of clearly described paper records and the requestor was willing to pay the large costs associated with the delivery of those records because obtaining them had profit-making potential for the business? There should probably be some provision in the law, such as extended time or increased charges, for dealing with excessively large and broad-scoped requests that would be **unusually** difficult for an agency to handle or that would seriously impede an agency's ability to conduct its daily business. But care must be taken to ensure that any such provision does not create an unjustifiable excuse for public bodies to delay the delivery of or prevent public access to public records that should otherwise be available for public inspection.

15. CHAPTER 22 SHOULD BE CLARIFIED TO ENSURE THAT ANY GOVERNMENT INFORMATION REQUIREMENTS IN OTHER PORTIONS OF THE CODE OF IOWA ARE IN ADDITION TO THE PUBLIC RECORDS LAW.

When the General Assembly amended Chapter 22 in 1984 it inadvertently omitted from the Chapter language originally appearing in that law stating that all rights under the Public Records Law to inspect were in effect "**unless some other provision of the Code expressly limits such right or requires such records to be kept secret or confidential**." I am sure the General Assembly did not intend, by that omission, to have the disclosure requirements of Chapter 22 prevail over other statutes expressly stating to the contrary. To avoid any confusion or possible arguments over that question, language similar to that language quoted above should be reinserted into Chapter 22.

Some consideration should also be given to placing within the provisions of Chapter 22 all provisions of the Code of Iowa relating to the availability for public inspection of specified government information. However, this may prove to be practically infeasible or unworkable.

16. FOR HISTORICAL PURPOSES, GOVERNMENT INFORMATION THAT IS TREATED AS AN OPTIONAL PUBLIC RECORD OR CONFIDENTIAL RECORD SHOULD BE MADE AVAILABLE FOR PUBLIC INSPECTION AFTER A SPECIFIED NUMBER OF YEARS.

Historians in the future may wish access to information currently treated as an "optional public record" or a "confidential record." At that future time the reasons for limiting public inspection of that information may no longer be persuasive. So, some time limits on nondisclosure should be considered so that information that is now justifiably restricted, but which might not be justifiably restricted 10, 20, 50, or 100 years from now, may be available for public inspection.

17. THE DEFINITION OF "GOVERNMENTAL BODY" SUBJECT TO OPEN MEETINGS REQUIREMENTS NEEDS TO BE REEXAMINED.

A. Advisory Bodies

The current definition of "governmental body" subject to the Open Meetings Law needs to be reexamined. In the original Open Meetings Law the General Assembly did not intend to cover purely advisory bodies, that is, bodies without any "**policy-making duties.**" See §21.2(2) and *Mason v. Vision Iowa Bd.*, 700 N.W.2d 349 (2005), *Donohue v. State*, 474 N.W. 2d 537 (1991). The General Assembly later changed its mind with respect to some governmental advisory bodies, see §21.2(1)(e) and §21.2(1)(h), but not as to other advisory bodies that were not included within those later amendments because the later amendments applied only to such bodies created directly by the "governor or general assembly," or directly by "statute or executive order," but not by other means.

It is also not completely clear when a body is an advisory body that is exempt from the Open Meetings Law under the §21.2(2) term "policy-making duties." Is a committee formally and directly appointed, see §21.2(1)(c), by a covered body under the Open Meetings Law that does **not** qualify as a covered body under §21.2(1)(e) or (h), and that only has authority to recommend to the covered body for its final decision a specified number of final candidates for a high level public position, an exempt advisory body under the current law? Or is the formally and directly appointed body a covered body because it does make some subsidiary types of process decisions in the course of making its recommendations to the covered body, and those types of decisions might be deemed to be final decisions even though they could later be overruled by the appointing body with the authority to make the final binding decision? This seems an unlikely result under existing law. See *Mason v. Vision Iowa Bd.*, 700 N.W. 2d 349 (2005), which appears to support the view that the mere fact that a body authorized only to make recommendations also makes some subsidiary final process decisions in the course of making those recommendations does not convert it from an advisory body which

is not subject to Chapter 21 into a "policy-making" body which must follow that law. Nevertheless, there appears to be some disagreement as to whether such a body is covered by Chapter 21.

These issues concerning the applicability of the Open Meetings Law to advisory bodies need to be clearly resolved.

B. Joint Bodies

Your recent amendment to Chapter 28E to ensure bodies created under its authority are subject to the Open Meetings Law clarifies that issue for those bodies, §28E.6(2), but it does not settle the status under Chapter 21 of some other non-Chapter 28E joint bodies. That is also a matter you need to look into in light of the practical realities involved to decide whether the current definition of "governmental body" goes far enough.

18. THE DEFINITION OF "MEETING" IN THE OPEN MEETINGS LAW NEEDS TO BE REEXAMINED.

A. Some Inevitable Inconsistencies between the Open Meetings and Public Records Laws

The current definition of "meeting" in §21.2 needs to be reexamined. A meeting requires the simultaneous presence or participation of a quorum of a covered body's members, but a series of discussions by less than a quorum of its members is not covered. Yet a **series** of oral discussions or a series of email exchanges, **each of them between less than a quorum of the members of a covered multimember body,** can effectively settle a matter for such a body with the later gathering of a quorum for final action by the body becoming no more than an affirmance of that which may have already been decided on a one-by-one basis. Note, however, that while an oral discussion by less than a quorum of a covered body is not observable by the public because it is not subject to the Open Meetings Law, emails or other written "records" of discussions between them relating to the business of the body are subject to disclosure under the Public Records Law unless exempt under §22.7. Practical considerations make these inconsistent results between Chapters 21 and 22 inevitable because it is unlikely that you could make oral conversations between less than a quorum of a body covered by the Open Meetings Law

subject to the open meetings requirements without very seriously interfering with the effective, efficient, and economical administration of government.

For example, it would be wholly impractical to prohibit in person, telephonic, or email conversations between any two members of a seven-member covered body outside of a duly noticed public meeting even though those two members constituted less than a quorum because any such a prohibition would in practice prevent the successful operation of such a body. Note that Chapter 21 provides that a "meeting" must be noticed at least twenty-four hours in advance, the time, location, and agenda must be specified in advance, minutes must be kept, and it must occur in a facility where the public can attend and observe. Is it really in the public interest to wholly prohibit two members of a seven-member body to talk to each other about the business of the body if they happen to be in an automobile together, or if they meet on the street, or if they are at home thinking about a business matter and suddenly decide to exchange ideas by phone or by email? The adverse effect of such a prohibition on all such discussions by less than a quorum would be significant and would seriously interfere with the ongoing ability of the body to operate in a successful, efficient, effective and economical manner. The result of such a prohibition would be the unfortunate end of all unscheduled preliminary discussions about the body's business by any of its members. And it does not make any sense to treat email conversations between less than a quorum differently than such in person or telephone conversations that are clearly permitted by Chapter 21.

You should also note the anomaly that the Open Meetings Law does not apply to single headed bodies at all. So oral conversations with a group of government advisors by the head of a single headed body are wholly exempt from disclosure, while written or electronic "records" of all such exchanges are subject to disclosure under the Public Records Law unless they contain information specifically exempt from that law in §22.7. These inconsistent results between oral and written communications by the head of a single-headed body are also inevitable for practical reasons. The contents of such oral communications by the head of a single-headed body cannot be made available to the public by

subjecting them to the requirements of the Open Meetings Law without seriously interfering with the effective, efficient, and economical operation of government.

B. Quorums and Email Meetings

The Open Meetings Law requires and should continue to require that simultaneous oral or electronic discussions about business by a participating quorum of the members of a covered body be conducted in an open meeting. It is not always clear under current law, however, when email communications between a quorum of the members of a body subject to the Open Meetings Law become a meeting of that body. Must a **quorum** of a covered body be **simultaneously online with each other** before emails between its members are or should be deemed a meeting? The answer would seem to be "yes" under current law. This is so because the current language of §21.2 suggests that gatherings of the members of a covered body must involve the **simultaneous participation of a quorum** either in person or by electronic means to constitute a covered meeting and, therefore, less than a quorum of the members of a covered body seem to be entirely free under present law to talk to each other about its business by email (or by phone or in person) outside of a duly conducted public meeting. (Of course, any emails by such people about the body's business would be discoverable by the public under the Public Records Law unless within one of the exemptions from that law.)

Nevertheless, the question has been asked as to whether a series of email communications between a quorum of the members of such a covered public body over a period of time when they are **not** simultaneously online with each other should also constitute a covered meeting. The provision governing electronic meetings, §21.8, was obviously drafted with only telephone meetings in mind where a quorum is simultaneously assembled for the communications involved. It did not have in mind email communications over a period of time where a quorum of members are not simultaneously participating in the communication. As noted earlier, there does not seem to be any good reason to treat email communications that do not involve simultaneous participation by a quorum any differently than telephonic or in person communications between less than a quorum of the

members of a covered body. As a result, such email communications do not and should not constitute a meeting under Chapter 21.

However, what about an email by one member of a covered body to all other members of that body which is communicated to all of them at one time but to which each of them responds at different later times. Is that a covered "meeting" within the meaning of Chapter 21? Should it be? That is an issue you should deal with. It is a borderline case under existing law. It is also not clear how and whether an email meeting, if there be such a thing, may be accessed by the public if it is covered under some circumstances as an open meeting under Chapter 21. These problems require your serious consideration.

C. Reasons Requirements as a Means of Dealing with the Contemporaneous Quorum Requirement under the Open Meetings Law

It seems wholly impractical to prohibit all discussions of the business of a public body by less than a quorum of its members outside of a formal meeting whether that discussion is *in personam* or by electronic means (phone or email). However, it might be wise to require all public bodies subject to the Open Meetings Law, when a quorum finally takes definitive action on a matter in an open meeting, to clearly state the rationale for that action. This should include a requirement that each person voting publicly state for the record his or her reasons for that vote. Such a requirement will help capture for public perusal any of the reasons for the action taken that might result from permissible earlier oral discussions by less than a quorum of the body that occurred outside of the open meeting.

D. When Does a Recess of a Meeting amount to its Termination and Require a New Notice before its Resumption?

The current language of §21.4 of the Open Meetings Law would seem to preclude giving public notice of a meeting for a specified day, time, and location, and continuing that meeting to a different day, time, and location, without giving another public notice of the different day, time, location, [and agenda] by simply

recessing the first day's meeting rather than adjourning it. Even though the current Open Meetings Law seems to preclude such action there is some disagreement about this, as recent events have demonstrated. Therefore, the language in Open Meetings Law §21.4 should be clarified to assure that covered bodies cannot avoid giving separate notice for each severable gathering of a quorum to conduct business, whether that meeting is justifiedly open or closed, by simply recessing that meeting to another day and time rather than adjourning it. Of course, for practical reasons, a recess announced during a properly noticed meeting should not require an entirely new notice if it fits within the "good cause" exemption of §21.4(2), or if the recess announced during a properly noticed meeting is announced in an open session, and the recess is only until a very short time later – for example up to a couple of hours – on that same day, and at the same place.

19. CONSIDERATION SHOULD BE GIVEN TO STRENGTHENING THE MECHANISMS AVAILABLE FOR ENFORCEMENT OF PUBLIC INFORMATION REQUIREMENTS.

A. Administrative Enforcement Possibilities

Consideration should be given to adding an administrative scheme by which to enforce these sunshine laws more effectively and at a lower cost for members of the public wishing to enforce their rights. If any administrative scheme for the better enforcement of these laws is created, it should be added to not substituted for the existing scheme for the civil enforcement of these laws through direct action in the courts.

For example, a single purpose state official could be created and specially authorized by law to investigate complaints by citizens about alleged noncompliance with these particular laws and given authority, in certain circumstances, as part of such an investigation, to examine the minutes and tapes of a closed meeting of a covered body, see §21.5(4), and to examine records withheld from public inspection by a public body on the ground that they are exempt from disclosure. After such an investigation, this official could be authorized to issue a public report on the merits of the complaint. Such an official might also be authorized by statute to issue formal advisory opinions on the interpretation

and application of Chapters 21 and 22 - like a declaratory order under §17A.9 of the Iowa Administrative Procedure Act - and courts would be obligated to give some deference to such advisory opinions by this official. See §17A.19(10)(l) and §17A.19(11)(c). Advisory opinions with respect to the interpretation and application of these laws by such an independent official would have the advantage of emanating from a truly neutral official whose primary commitment would be to the enforcement of these laws, rather than from the attorney for the public body whose judgment may be clouded or unduly influenced by the conflict between their duty to the legal system generally and their duty to the interests of their client. In addition, such a new single function official could be authorized to mediate disputes between the public body involved and complainants in relation to these sunshine laws. This official could also be charged with making a comprehensive annual report to the General Assembly on compliance with these laws, their effectiveness, and whether particular provisions appear in practice to have arrived at a proper balance between the competing interests involved. Finally, this official could be made responsible statewide to ensure the training of all relevant public officials about their duties under these laws. Indiana has created an official with at least a few of these responsibilities. Ind. Code 5-14-4. Such a single purpose state official could be located either inside or outside of the current office of the Ombudsman who already performs some (but not all) of these functions.

In the alternative, an independent regulatory administrative body might be created and delegated all necessary authority to enforce through its own prescribed administrative processes compliance by all public bodies or officials in the state with the Open Meetings Law and the Public Records Law. Such a body could be authorized to receive complaints from members of the public, to investigate all such complaints, to prosecute alleged violators before that agency, to hold Chapter 17A administrative hearings on alleged violations where warranted, and to issue legally binding orders against violators that it could enforce in the courts. All of this could be done at no cost to the complainant and without any need for the complainant to hire a lawyer.

B. Increasing Civil Penalties

Whether or not you choose to add an administrative scheme of enforcement to Chapters 21 and 22, you should consider increasing the existing civil penalties for violation of these laws and facilitating speedier relief in such civil actions filed in the courts.

C. Elimination of Criminal Sanctions

Addition of the civil enforcement provisions in 1984 to the Public Records Law was sound. See §22.10(1)-(5). However, preservation in the Public Records Law of a criminal sanction, as an **additional** sanction, was unsound. See §22.10(5) and §22.6. Criminal sanctions in such a law do not work as well as civil enforcement sanctions, which were placed in the Open Meetings Law in 1978 as a **substitute** for criminal sanctions.

Retention of criminal sanctions for violation of Chapter 22 is a bad idea for several reasons. Public prosecutors will almost never prosecute violators of this law criminally and criminal sanctions in the Public Records Law will only serve to **weaken** its enforceability. The reason for this is that for constitutional and other reasons laws enforced by criminal sanctions must be construed narrowly, while civil remedial statutes are generally construed broadly. We want the Public Records Law to be construed broadly in favor of disclosure. The privilege against self incrimination may also be available whenever an enforcement action is brought under Chapter 22 because violations of that chapter are also currently punishable by criminal sanctions as well as by civil enforcement. If violation of Chapter 22 was not also criminal that privilege would not be available. In addition, given the availability of the self incrimination privilege because violation of Chapter 22 is currently a criminal offense, the shifted burden of persuasion in civil proceedings to enforce Chapter 22 provided for in §22.10(2) might be subject to constitutional challenge. The criminal penalties in Chapter 22 should, therefore, be deleted, relying entirely on the existing civil remedies and, perhaps, some additional administrative remedies which are likely in the long run to be much more effective.

D. Education of Custodians of Public Records

Finally, I think you might consider **requiring** all custodians of public records under Chapter 22 and the members of all covered bodies under Chapter 21, **and their lawyers**, to attend educational programs explaining the sunshine legislation applicable to their respective responsibilities. Better education of such public officials and their lawyers is likely to help improve adherence to the requirements of these laws.

20. OTHER PROBLEMS AND CONCLUSION

The items I have noted above are only a partial listing of current defects in the language of the Open Meetings Law and the Public Records Law. **Many** other defects in these statutes will be disclosed in the course of a serious and comprehensive study of the laws regulating government in the sunshine in Iowa.

Even if you do not agree that **all** of the issues I have raised earlier in this document are problems, you should realize that others see them as either technical, practical, or policy deficiencies of these laws and, therefore, it is worth your time to consider these issues carefully before you attempt to take any final action on strengthening and repairing them.