

Comprehensive Reform Of The Public Records Law

2017

- **Begin to Make “Transparency By Design” Real.**
 - AG Task Force Draft Report (12/15/2016) identifies the need.
 - Appropriate GF for grants administered by the State Archivist to demonstrate local public body potential to improve public access by better/greater use of digital technology. P. Shepherd, written Testimony & Recommendations on SB 106, Submitted to the Senate General Government Committee, February 7, 2017, pages 34 - 35.
- **Explicitly Reconnect the Public Records Law With Its Original Purposes.**
 - Original purposes included facilitation of the exercise of free speech rights while also protecting personal privacy and other important public interests. P. Shepherd, pages 7 - 12.
 - Add definition of “public interest in disclosure” expressly stating that one purpose of the Public Records Law is to facilitate “the exercise of constitutionally-protected rights to speak, write, or print freely on any subject whatever.” P. Shepherd, pages 17 - 18.
 - Add definition of “public interest in non-disclosure” expressly stating that the law’s purposes include protection of personal privacy and public safety. P. Shepherd, p. 16 - 17.
- **Create An Efficient System to Review Existing Exemptions and to Ensure that Proposals For New Exemptions Are Publicly Vetted.**
 - AG Task Force Draft Report (12/15/2016) identifies the need.
 - No legislation needed: use the Assembly’s constitutional power (Article IV, Section 11) to create a system that would begin operation upon adjournment of the current Session. P. Shepherd, p. 19 - 20.
 - Require Legislative Counsel to issue an Open Government Impact Statement — modeled on Fiscal Impact Statements — on reported measures potentially diminishing the public interest in disclosure.
 - Legislative Counsel Committee, in consultation with the Advocate and Council proposed in SB 106 (2017), to create an annual work plan for review of exemptions during each interim.
- **Expressly Affirm The Authority To Publicly Release Exempt Records.**
 - AG Task Force Draft Report (12/15/2017) identifies the need; P. Shepherd, p. 23 - 24.
 - Reduce existing disincentives to exercise of the authority to release exempt records. P. Shepherd, p. 24 - 27 (Immunity/Precedent/Privilege waiver).

- **Advance the Policy Ball on Fees.**
 - AG Task Force Draft Report (12/15/2017) identifies the need. P. Shepherd, p. 32.
 - Authorize State Archivist to cap allowable charges for common tasks (e.g., per page charge). P. Shepherd, p. 32 - 33.
 - Free custodians of statutory funds to pay Public Records compliance costs from those funds. P. Shepherd, p. 33.
 - Begin to collect data on fees charged and waived by state agencies. P. Shepherd, p. 33 - 34.

- **Strengthen the Independence and Clarify the Role of the Proposed “Public Records Advocate.” SB 106, Section 1(1).**
 - Model appointment, removal on Office of Long Term Care Ombudsman. P. Shepherd, p. 3.
 - Maintain the mediation function proposed in SB 106, but require mediators to be neutrals. P. Shepherd, p. 3 - 4.

- **Improve the Timeliness Of Response to Requests By Requiring Public Bodies to Provide Weekly Status Reports to Requesters.** AG Task Force Draft Report (12/16/2017); HB 2455, Section 3(3); P. Shepherd, p. 4.

- **Clarify Unnecessarily Complex and Ambiguous Parts of the Public Records Law.**
 - Consolidate “balancing” exemptions in a single subsection of the law. P. Shepherd, p. 28 - 29.
 - Affirm that the AG and DAs have the same duty to rule on petitions. P. Shepherd, p. 31 - 32.
 - Clarify elements of the process by which local public bodies seek review beyond the District Attorney’s order. P. Shepherd, p. 30 - 31.

Respectfully submitted

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Note: I make this submission personally and not on behalf of any current or former client or employer.