

# OPEN GOVERNMENT LAW TASK FORCE

## Meeting Minutes

Date of Meeting: May 24, 2016  
Time of Meeting: 10:00 a.m.  
Location: Video Conferenced between the Attorney General's Offices at 100 N. Carson Street, Moot Court Room, Carson City, Nevada 89701, and the Grand Sawyer Building, 555 W. Washington Ave., Las Vegas, Nevada 89101.

### Attending in Carson City:

Chairman Brett Kandt, Chief Deputy Attorney General  
Barry Smith, Executive Director, Nevada Press Association  
Doug Richie, Chief Deputy District Attorney, Douglas County  
Jeff Fontaine, Executive Director, Nevada Association of Counties

### Attending in Las Vegas:

No attendees reported

### Attending by phone from Reno:

Michael Large, Deputy District Attorney, Washoe County  
John Shipman, Assistant City Attorney, City of Reno

### Others Present in Carson City:

George H. Taylor, Senior Deputy Attorney General  
Sara Martel, Sr. Records Analyst, State Library, Archives and Public Records  
Gerald Lindsay, Sr. Records Analyst, State Library, Archives and Public Records

### Members of the Public:

None in the North  
None in the South

**Agenda Item No. 1:** Call to order and roll call of task force members.

**Chairman Brett Kandt, Chief Deputy Attorney General** (Chairman Kandt) asked the Task Force members present in Carson City, Reno, and Washoe County to introduce themselves. No one present in Las Vegas.

**Agenda Item No. 2:** Public comment, (Discussion Only) Action may not be taken on any matter brought up under public comment until scheduled on an agenda for action at a later meeting.

**Chairman Kandt** opened the floor for public comments:

Carson City: No public comment.  
Las Vegas: No public comment.

**Agenda Item No. 3:** Discussion and possible action on approval of May 7, 2014, meeting minutes. **(For possible action)**

**Chairman Kandt** asked for a motion to approve the minutes.

**Jeff Fontaine** (Mr. Fontaine) questioned if there was a quorum.

**Chairman Kandt** explained there are nine formal members of the Open Meeting Law Task Force group with five members currently present which confirms a quorum. Mr. Smith moved to approve the minutes, Mr. Fontaine seconded the motion; the minutes were approved unanimously.

**Agenda Item No. 4:** Discussion and possible action on approval of March 9, 2016, meeting minutes. **(For possible action)**

**Chairman Kandt** asked for a motion to approve the minutes of March 9, 2016. Mr. Smith moved to approve the minutes; John Shipman (Mr. Shipman) seconded the motion. There being no opposition, the minutes were approved unanimously.

**Agenda Item No. 5:** Review and discussion of recent federal and state court case law on open meeting laws.

**Chairman Kandt** said that due to the Open Meeting Law (OML) and the Public Records Act issues being interconnected and both being components of open government, he chose to rename this group to "Open Government Task Force," which more accurately reflect the scope of what the group is working on.

**George Taylor**, Senior Deputy Attorney General (Mr. Taylor) talked about a California Supreme Court case *City of San Jose v. Superior Court of California*, 326 P.3d 976 (Cal. 2014). He explained that the issue in the case is whether the California Public Records Act requires the City of San Jose to produce messages relating to city business if they are stored in the personally-owned cellphones or on personal accounts of city officials.

**Chairman Kandt** said the underlying issue is when a public official or public employee conducts government business using their personal device or a personal email, not held on a government server, is that record is a public record? Generally courts consider the substance of the communication, not the medium by which it is conveyed, to determine whether a document is a public record. He said there have also been a number of opinions issued by Attorneys General that have also found it to be the case; however, a minority of courts have taken the other position, from California, Colorado and Pennsylvania.

**Mr. Fontaine** asked if in any of those ruling there was a distinction between the definition of public business as in the correspondence between a public official and a constituent.

**Chairman Kandt** confirmed that the distinction made in the Pennsylvania case, where the members of the Board were communicating with each other using their private devices was a public record; but if one of those members was communicating with their constituents, it was not considered transacting government business.

**Mr. Shipman** mentioned a U.S. Supreme Court case, *Reed vs. Town of Gilbert*, 135 S.Ct. 2218 (2015), which clarified when municipalities may impose content-based restrictions on signage.

**Agenda Item No. 6:** Review and discussion of recent Attorney General Open Meeting Law opinions and annual date on complaints and violations.

**Chairman Kandt** said that the number of OML complaints received and the number of actual OML violation have been trending down for some time possibly in part to better comprehension and compliance with the requirements of OML. He said only 30% of the complaints investigated actually result in the finding of a violation.

**Mr. Taylor** said he was surprised to discover that throughout the years it has been approximately that same 30% margin. Mr. Smith asked if the complexity of the investigations was more or less. Mr. Taylor said that although there are fewer complaints, they are taking more time to investigate.

**Chairman Kandt** referred to a couple of recent opinions issued where OML violations were found. The first one relates to NRS 241.010(2), "If any member of the public body is present by means of teleconference or video-conference, at any meeting of the public body, the public body shall insure that all the members of the public body and the public were present at the meeting can hear or observe and participate in the meeting." He said with technology we are increasingly holding meetings where one or more of the members of the board are not all physically together, some calling in or video-conferencing between more than one locations to create a quorum. He added, the language of the statute has been misconstrued as to whether this creates some right of the public to participate by video or teleconference, which it does not.

**Mr. Smith** talked about an issue from the last meeting, if one member of the public body is at a separate location, if the member call from home, or a hospital, does the public have a right to be there?

**Chairman Kandt** replied that the position of the Attorney General's Office would be no. However, there are instances where all the members of a board call in and in that instance the board must provide some physical location where members of the public can attend and must be able to listen to the entire dialogue among those remote board members.

**Mr. Smith** asked if there is a snow storm and the roads are close, and the people could not get there, would they be unable to hold that meeting? Or, if there is a small group in a huge auditorium, if they be required to provide a public address system so everyone in the auditorium could hear. Would those be analogies?

**Chairman Kandt** said the facts of a specific complaint would have to be applied to the law. The snow storm hypothetical, is difficult to ascertain because if the public can't get there, then how would the members of the body get there. The second question is referring to NRS 241.020, if the members of the public are granted access at the physical location where the meeting is, if they can't follow the meeting that would be a concern. He then talked about the second recent OML opinion where a violation was found. He said in this matter the board at issue had held a meeting without providing public notice by determining there was an emergency pursuant to NRS 241.020(2), but an emergency did not exist. The statutory emergency exception needs to be very, very narrowly construed. They held a meeting during in which then all questioned whether there really was an emergency and whether they were violating the OML, but carried on nonetheless, and took some action. Then they attempted to come back at their next regularly scheduled and properly noticed meeting and ratified everything they had done at their emergency meeting. During that process they committed a second violation because they had not noticed on their agenda that they were proposing to take a corrective action to correct their first violation.

**Mr. Taylor** added that this was not an advisory body; these were elected members of a district. He said the chairman panicked because two employees resigned with the keys to the building and password to the computer.

**Chairman Kandt** also talked about an issue with the press misinterpreting the OML when a member of a board purports to take action on behalf of the board. The issue is whether the member has the authority to act on the board's behalf. Some of the press is deeming it to be an OML violation, but it is not an OML violation, it is an agency issue whether that board member has the authority to act on behalf of that board.

**Mr. Fontaine** asked about training that had taken place in the rural areas, if it was initiated by the public bodies themselves, or if it was initiated by Attorney General's Office.

**Chairman Kandt** confirmed open government training is provided by his office, including OML and public records, with a tremendous response. There have been presentations have been transmitted by video all over the State with hundreds of people on attendance, and there are also individual trainings. This is very important to the smaller bodies that have limited staff, and may not have the expertise and familiarity with what is required with the OML and Public Records Act.

**Mr. Fontaine** said he appreciated the offer, the initiative and the outreach. He asked Mr. Taylor if there were any notable changes in the types of complaint versus the violations that are occurring.

**Mr. Taylor** responded, not so much in the type of complaint; however, OML complaints are sometimes used to challenge a board's decision. Beginning in 2010, the OAG investigated 131 complaints comparing to the average of 44 a year. Where as in the last year to date, it has been an average of 32; the total volume has decreased.

**Chairman Kandt** clarified that if it is determined that a complaint fails to state a claim or the OML does not even apply, Mr. Taylor still replies to the complainant with an explanation. More often, the complaint will state a claim and that is when Mr. Taylor conducts an investigation and requests that the public body that is the subject to the complaint respond to the complaint. He reiterated that even though the number of complaints goes down, approximately 30% of the time there is a violation.

**Agenda Item No. 7:** Discussion and possible action on statutory clarification of "clear and complete" standard set forth in NRS 241.020(2)(d)(1). **(For possible Action)**

**Chairman Kandt** indicated there were approximately 8 proposals from the last meeting. The first one is whether there is a need for statutory clarification of the "clear and complete" standard. An agenda must contain a "clear and complete statement of the topics scheduled to be considered during the meeting." The clear and complete standard was addressed by the Nevada Supreme Court in *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003). The Court required that an agenda must provide full notice and disclosure of discussion topics and any possible action and rejected the "germane" standard. The Court indicated that a higher degree of specificity is needed when the matter is of substantial public interest. Mr. Kandt indicated that this can be determined from the level of public comment and debate on the matter. Also, if it is a matter that media has taken a great deal of interest in and there has been a lot of media coverage. Finally, if it is a matter that the public body has been debating extensively, vigorously, and devoting substantial amount of time to considering.

**Mr. Richie** said you don't want to get to a point where an agenda item is so lengthy where the public has to read through a paragraph that is not clear due to so much detail.

**Mr. Shipman** said he would prefer an objective standard.

**Michael Large** (Mr. Large) concurred.

**Chairman Kandt** said that in the absence of the general proposal, it will be on hold, however, if anyone found anything they would agree from another jurisdiction, to please share with the group.

**Mr. Fontaine** recalled prior discussion about some guidance in the OML book/manual of how the agenda items need to be described. Chairman Kandt agreed there is some guidance in the manual.

**Agenda Item No. 8: Discussion and possible action on revision of public notice posting requirements set forth in NRS 241.020(3)(a). (For possible action)**

**Chairman Kandt** said this is how to move beyond the idea of thumb tacking agendas on bulletin boards at three separate prominent locations in the respective jurisdiction. He suggested revising it by not completely eliminating the physical posting requirement. He pointed out there are still public bodies who chose or assume they have to post it in several locations creating a lot of hard work for themselves in the process.

**Mr. Smith** said there is value if the notice and the public body figuring out where it can be posted for people to see it.

**Mr. Fontaine** said there are some significant differences in terms of how you notify people in a small community versus notifying people in the entire state.

**Chairman Kandt** asked Mr. Fontaine if he was suggesting to create one for state agencies and a separate one for local government.

**Mr. Fontaine** said perhaps. He asked if there was a statewide website for public meetings. Mr. Taylor confirmed there is one, and that he was not aware of any complaints.

**Chairman Kandt** reiterated the options, to either reduce the required number of physical posting locations, eliminate them altogether, or create two different sets of posting requirements, one for state and the other for local governments. He asked Mr. Taylor if he would check to see what other states have done, if they have dropped or changed that requirement.

**Mr. Richie** asked where would be the best point, the library or where they regularly meet?

**Mr. Smith** said that may be why it is not specified other than their principal place of business. He said he had reservations on scaling it back.

**Chairman Kandt** said he would leave this item on the agenda in the interim.

**Agenda Item No. 9: Discussion and possible action on statutory clarification of applicability of Nevada Open Meeting Law (NRS Chapter 241) to subcommittees and advisory bodies. (For possible action)**

**Chairman Kandt** said the OAG has always advised the advisory body or subcommittee that when making recommendations to the parent body, or if taking action on behalf of

the parent body, the OML applies, which is reflected in our opinions and in our manual; and when in doubt, default to following the OML.

**Mr. Taylor** said it seems to work well with subcommittees. He asked, do some advisory bodies have to go back to the county commission or another county when they make any decision?

**Mr. Richie** confirmed they do not.

**Chairman Kandt** said there could be extensive discussion and deliberation from an advisory body, then the advisory body makes recommendation to the parent body, who just accepts it.

**Mr. Smith** talked about a recent case where the advisory body makes recommendations to the city manager and not the elected body. He recalled the law was intentionally changed so it would not have to be every single committee following the OML.

**Mr. Taylor** detailed the case from 2007 where the city manager of Las Vegas created a task force committee to report to him.

**Mr. Richie** said the distinction could be that the county manager or staff generally gathers information for the public body and then present recommendation or options.

**Agenda Item No. 10:** Discussion and possible action on statutory clarification of applicability of Nevada Open Meeting Law (NRS Chapter 241) to proceedings of the Public Utilities Commission of Nevada. (**For possible action**)

**Chairman Kandt** reminded the group Mr. Smith had brought this issue up because they have proceedings that are not for the commission but for a hearing officer.

**Mr. Smith** agreed. He said that his understanding of the statute and the Public Utilities Commission's (PUC) interpretation were the opposite.

**Chairman Kandt** said the commission's general counsel had indicated she wanted to attend meeting, but she is not here to comment.

**Mr. Smith** explained their position. The statute says hearings and workshops are subject to the statute, so they turned to the statute which says, if it is one person conducting the meeting that is not a public body.

**Chairman Kandt** asked which statute he was referring, because the Administrative Procedure Act specifies in the administrative rulemaking that the workshops and hearings that are held are subject to the OML, even if it is not a public body. For instance, the OAG has rulemaking authority in many instances, and when we conduct a

hearing or workshop in connection with regulations we are considering adopting, we have to comply with the OML under that specific statutory provision, NRS 233B.061.

**Mr. Smith** confirmed that is the statute he was talking about.

**Chairman Kandt** asked if the PUC is going by the administrative rulemaking pursuant to NRS Chapter 233B, and even if that rulemaking is being promulgated by a single individual, they still have to, under the expressed language citation that says each workshop or hearing held in conjunction with this rulemaking process must be conducted in accordance with NRS Chapter 241. Interestingly enough, we have not received an OML complaint on this issue, which would give us an opportunity to issue an opinion to that effect.

**Chairman Kandt** asked when the PUC engages in decision-making by a hearing officer, as opposed to the entire commission, is that done pursuant to NRS Chapter 233B or is that done pursuant to other statutory authority?

**Mr. Smith** said, my understanding the PUC regulations essentially say if you don't have a regulation that applies, you turn to the NRS, and if the NRS does not apply, you follow the rules of civil procedure.

**Chairman Kandt** asked if the PUC's general counsel issued some sort of written analysis of the application of these provisions.

**Mr. Smith** said yes, formal and informal, she has written to me and to she wrote to Las Vegas Review Journal.

**Chairman Kandt** and Mr. Taylor asked Mr. Smith if he could provide a copy. Chairman Kandt suggested leaving it on the agenda for further discussion.

**Agenda Item No. 11:** Discussion and possible action on expansion of statutory requirements for public access to meetings conducted by teleconference or videoconference that are subject to the Nevada Open Meeting Law (NRS Chapter 241).  
**(For possible action)**

**Chairman Kandt** talked about subsection 2 of NRS 241.010 enacted in 2013, which was for a specific application, when members of the body are appearing via video or teleconference, that the public be able to follow the discussion at the meeting. He said it has been misinterpreted to imply that there should be some right for the public to access meetings via video or teleconference. Or as pointed out earlier, if a member of the board is appearing via technology, should the public have the right to be where ever that member is, such as home, hospital?

**Mr. Fontaine** agreed the possibilities are far-fetched. He said he had also given some thought to the issue regarding the right for public to participate in meetings telephonically, and felt there were already enough challenges based on observation



with board members participating remotely having lots of trouble with background noise completely disrupting the meeting. He said understand everyone is interested in allowing maximum participation for the public, but there are a lot of problems associated with this issue.

**Chairman Kandt** offered, if board members physically all meet in one location, but the board chooses to provide in its public notice that members of the public will also be provided access at a satellite location via technology, if they choose to make that option available to the public, the public exercises their right to utilize that option, but then the technology breaks down, should there be some limits upon the ability of that board to conduct their meeting?

**Mr. Fontaine** replied, well, that is the question I brought up earlier. I think it has the potential of perhaps, it certainly doesn't incentivize a board from wanting to do that, because the possibility of could occur.

**Chairman Kandt** agreed as he looks at it from the state level; however, rural counties such as Lyon County where there are three distinct population centers maybe they try to video-link county or local government meetings. He emphasized that some of the state boards that do try to increase public access by providing satellite locations, and whether it would create a disincentive if in that instance you statutorily were precluded from conducting your meeting if there was a breakdown.

**Mr. Smith** said it is important to make a reasonable effort to restore and maintain access for the public.

**Mr. Richie** said if you analyze this, you be looking at a board versus the public, and so the potential for problems are multiplied. If a board member tries to connect remotely and they can't, the board goes on, whereas if you put this in the OML, if one citizen can't connect all the business of the public body has to stop because one person or a group of people cannot connect remotely.

**Mr. Smith** explained there was a request a few years ago, of the possibility of conducting meetings where there was not a single physical location accessible to everyone via skype or a chat Room; which we agreed could not work.

**Chairman Kandt** said NRS 241.016(4) provides that electronic communication "must not be used to circumvent the spirit or letter of this chapter to deliberate or act, outside of an open and public meeting."

**Agenda Item No. 12:** Discussion and possible action on repeal of criminal penalties for action taken in violation with knowledge or violation set forth in (NRS Chapter 241.040(1)). **(For possible action)**

**Chairman Kandt** said: I know there is some concern for some of the local government public bodies. General Laxalt indicated in last meeting that this is a tool that we feel

should be available. If we ever prosecuted someone criminally, that would be subject to the highest standard of proof; we would have to prove beyond a reasonable doubt that the members of the public body knowingly took action in violation of the OML. He added, it is never been utilized, but I always envisioned that if we ever had a circumstance where we had proof and we felt we could meet that burden, that we have members of the body actively conspiring to circumvent the OML, that it may warrant a criminal prosecution to vindicate the public's right to access to meetings and to transparency in government, and therefore it would be appropriate to maintain this tool.

**Mr. Shipman** said: I have never heard of anyone being prosecuted over this issue. I think there is a danger here, especially with the OAG's investigatory powers and selective enforcement. I have always been uncomfortable with investigation, not knowing if there is going to be a criminal element . . . if the OML is a subject to 1<sup>st</sup> amendment limitations and constrains. The answer is removal from office. If you got official conspiring and doing deals outside of the public view, to me the remedy then would be to remove them from office. I just don't see the value of criminally prosecuting them, other than dissuading people from serving on boards and commissions knowing that they could potentially be criminally prosecuted.

**Mr. Taylor** said: In one instance I had one attorney who was not sure if he was going to ask his client to respond to my request for a statement.

**Mr. Fontaine** said he agreed with Mr. Shipman, and to keep in mind there is wide range of public bodies that this affects, from state agencies to county commissions and small local districts. In the small district it is already difficult to get people to sign up or run for election, and when they review what the requirements are and what the potential ramifications are to serve on a board, and then to find out that they could be prosecuted criminally.

**Chairman Kandt** pointed out that public officials can be prosecuted criminally for their actions under other statutes, and not just for knowingly acting to violate the OML. We are not talking about eliminating all of that other potential criminal liability they can face for wrongful acts. Mr. Shipman used "selective enforcement," but the fact is, we decline to prosecute when we believe it is in the public interest. We recognize that the vast majority of individuals that serve in an elective or appointed position on a board or on another public body want to do the right thing. And when they do violate the OML or some other provision, it is typically out of ignorance or frankly bad advice from their attorney. To the extent that knowingly acting to violate the OML can result in a criminal prosecution, that for the small number of individuals that may not be trying to do the right thing, but in fact maybe out to do something wrong, that could be a deterrent effect upon them; the fact that that could be a consequence. I still feel that it is something we want, but hope we never have to use it. I think we demonstrated that we don't use it without careful consideration because we have not been confronted with that circumstance yet, where we felt that the public would be served by our prosecuting members of the public board criminally.

**Mr. Fontaine** asked: do we still have the monetary fine? And how much is that?

**Chairman Kandt** responded: \$500

**Mr. Fontaine** asked: and how often has that been imposed?

**Chairman Kandt** stated we negotiated a settlement with Washoe County School Board where they agreed to pay the fine, and then we suspended payment provided they did not committed any further violations of the OML for a period of one year. We have offered the same term in a proposed settlement agreement to the Fernley Pool District Board of Trustees for a violation and it is on the agenda for their meeting tomorrow. We are trying to use it as a tool to ensure compliance rather than to use it as a sword.

**Mr. Fontaine** said: so having the possible criminal prosecution is a deterrent?

**Mr. Shipman** said: like the statistics George presented at the beginning, the way I am reading it is, two thirds of the complaints that are made are unfounded . . . kind of the notion that there are a lot of people out there using the OML as a sword, that if they are not getting what they want politically, they try to shift the process to another forum. That is offensive to me, because in defending public officials, they are there because they are trying to make a difference; they have to make a tough decision, and you got people out there that if they are not getting exactly what they want, they start threatening to file meritless complaints. At the end of the day, the fact that there is a criminal component to that, to me it is not going to deter my officials from doing the right thing, but it will deter people who want to be part of the system. I think the extension of the civil component would be great, because now you got all the tools . . . .

**Mr. Richie** said: I am sympathetic to your views. One issue though we don't want to become Illinois or Michigan. I think the OAG has shown a lot of discretion on these issues, and to be honest we are talking about a misdemeanor; the type of conduct that would warrant prosecution. I favor more tools to deter wrong doing. You need to make sure that you understand the rules and comply with them. It may sound harsh, but at the end of the day, when you step up to serve in these capacities, you need to understand the great trust that is being placed upon you, talk to you attorney.

**Mr. Fontaine** stated: for those who have attorneys.

**Chairman Kandt** said: there are some boards that meet without an attorney present.

**Mr. Fontaine** asked: what I am trying to understand is how this stacks up to what a public official can do that would find themselves criminally prosecuted.

**Chairman Kandt** said: are you asking if it is proportionate to the crime? We will have to do some comparisons.

**Mr. Smith** said: I think this is one of the safeguard against having that happen.

**Mr. Large** said: the criminal aspect of the OML violations, if you are operating under . . . criminal prosecution, why should I as an attorney recommend that my client to cooperate in any kind of investigation with the OAG on a potential violation, if you are going to subject them to potential criminal prosecution? I this tool has never been used, why is it there? I think the removal of office is a good idea. I tend to disagree with those who want to keep the criminal in there.

**Chairman Kandt** said: we see what other states provide in the way of any criminal penalties.

**Agenda Item No. 13:** Discussion and possible action on creation of an intermediate statutory appeal process for denial of a request made pursuant to Nevada Public Records Act (NRS Chapter 239). **(For possible action)**

Chairman Kandt said: I think we all know that if somebody is denied a record or is not provided a response to a public records request, their remedy is to apply in district court in the jurisdiction where the records are located for an order compelling their disclosure.

**Mr. Smith** said: this is a broad issue for the state when we get into records because of the lack of anyone having any enforcement outside authority, that is why I like to see some stuff in there, before you have to go to court, or has it been brought up and administrative law judges, something like that could be a possibility. The question is where would this authority best lie? This is a Task Force and the OAG enforces the OML, it seem logical that they can be a combined function with the public records law, but that is certainly a consideration for the OAG.

**Chairman Kandt** said: so you are proposing we would serve in an administrative law capacity, if somebody applies to us if they feel they were wrongfully denied a record under a legitimate request?

**Mr. Smith** said: we have a records commission with a lot of expertise. When we talk about of the progress that has been made of the OML training, including records training, and we have a records manual that applies to state agencies, but it does not apply to local governments, which is another step in the process. At some point either it is a function that falls under the OAG that somehow it gets combined with the OML . . . and someone with more expertise in records and might be independent from the OAG as the OAG tends to represent agencies in court.

**Chairman Kandt** said: you bring up a point, for some reason the legislature made a policy decision that there would be a different set of rules for local government for public records versus the state. Putting aside the OAG's role, I guess at the state level we do have administrative law judges that operate in a variety of capacities; there might be an ability to create a process there, but that does not address local governments.

**Mr. Smith** said: starting the process of how do you make and respond to a request, getting the training going, getting a records manual published are all steps that the state could undertake . . . going back to Clark County School District, the large entities do have policies and procedures in place that differ jurisdiction from jurisdiction; smaller ones do not have that in place.

**Chairman Kandt** said: some counties in the south have indicated they would like to come under the regulation and rulemaking authority of the state's public records laws and be subject to the Nevada Public Records Manual, which is incorporated by reference into the Nevada Administrative Code. They think it would be beneficial to them, to have more structure.

**Sara Martel** said her agency would like to see an intermediary step, they get calls from citizens who are not getting compliance with the agencies the parties they are contacting, and going to court is not possible, but there is no other option for us to give them. They have no other recourse or anyone to complain to when agencies don't respond to a request.

**Chairman Kandt** said I understand what you are saying, if at the state level there was an intermediate step and you take it to the administrative law judge, the requestor still has to go through a process in our state.

**Mr. Smith** said the administrative law judge is not necessarily the solution; I just used that as an example.

**Chairman Kandt** said, in some ways, the Attorney General's Office performs two roles in OML enforcement. George makes his findings of fact and conclusion of law in response to an OML complaint, similar to an administrative law judge, then he becomes a prosecutor in the event of a violation. I don't quite see how that would work under the Public Records Act.

**Mr. Smith** said the models that exist out there also include someone like a citizen's advocate, a place to turn to, or a commission. One of the advantages is that over the years the OAG has compiled through numerous AGOs on the OML a lot of guidance in very particular circumstances that you can rely upon. Guidance on public records is entirely based upon case law and as soon as there is a court case and there is a decision by the Supreme Court, there are very different interpretations of what that means the next time you make a request. What we have in OML opinions are more consistent than what we have in case law in relation to public records.

**Chairman Kandt** said, our office has issued official opinions on the public records law, we have issued guidance pursuant to NRS 228.150, but the majority of guidance comes from the body of case law of the Nevada Supreme Court. I will check to see if we can provide a compilation of all official Attorney General opinions on the Nevada Public Records Act. One of the challenges with anything we propose is whether it has a fiscal

note, because it would be very difficult to advance any proposal with a significant fiscal impact.

**Mr. Fontaine** agreed.

**Agenda Item No. 14:** Discussion and possible action on restructured statutory exemptions to the Nevada Public Records Act (NRS Chapter 239) modeled on the exemption categories set forth in the Federal Freedom of Information Act. **(For possible action)**

**Chairman Kandt** said Scott Doyle provided a memo of his research regarding a proposed restructuring of the statutory exemptions to the Nevada Public Records Act modeled on the exemption categories that are set forth in the Federal Freedom of Information Act.

**Mr. Smith** said it makes a lot of sense to see what other states have done rather than the federal government.

**Mr. Fontaine** said he had a proposal which has to do with information about local agencies when they have deal with when they become cooperating agencies with the federal government on environmental impact statements. We recently became a cooperating agency with the Bureau of Land Management and the changes they are proposing for three of our counties, and the provisions in the agreement was we had to keep information confidential, we could not share the information outside that MOU. We are talking about participating in a public process with the federal government that has tremendous impacts to the counties and constituents from that county.

**Chairman Kandt** said these confidentiality provisions are not statutory or based in case law, they are essentially contractual in nature and would otherwise be subject to disclosure under the Nevada public records law and create a conflict?

**Mr. Fontaine** said he would like to explore to see what we can do to make it work.

**Chairman Kandt** emphasized the frame time for developing any consensus proposals, it would be in about three months, because our office would have to submit a bill draft request to the Legislature by September 1.

**Chairman Kandt** opened the floor for public comment.

Carson City: No public comment.

Las Vegas: No public comment.

There being none, he adjourned the meeting at 12:07 p.m.