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**COMMISSION ON OPEN GOVERNMENT**

**NOVEMBER 28, 2007**

**9:04 A.M. - 3:18 P.M.**

**VOLUME II OF II**

**CLARION RESORT AND CONFERENCE CENTER**

**MEETING ROOM 3**

**KISSIMMEE, FLORIDA**

**Reported By:**

**Cynthia R. Green, Court Reporter**

**Notary Public - State of Florida**

1     **COMMISSION MEMBERS:**

2     Barbara Petersen, Chairperson

3     Honorable John Carassas, Vice-Chair

4     JoAnn Carrin

5     Bob Butterworth

6     Renee Lee

7     Will Weatherford

8     Senator Paula Dockery

9     Gerald Bailey

10    Sandy D'Alemberte (telephonic)

11  
12    **ALSO PRESENT:**

13    Jessica Dodson, Executive Assistant

14    Cynthia R. Green, Court Reporter

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P R O C E E D I N G S

November 28, 2007

9:04 a.m.

(Volume II transcript of the Commission on  
Open Government Meeting.)

CHAIRPERSON PETERSEN: We have a lot -- we  
still have a very heavy agenda for the  
afternoon. We don't have a quorum present, but  
we have no action items on the afternoon agenda.  
And I would like speakers to try to confine --  
there's no real time limit, but if you can  
confine yourselves to 10, 15 minutes, because  
we, as you know, from sitting through this  
morning, we have lots of questions from members  
of the Commission.

And secondly, for the information of the  
Commission, after the morning session, a couple  
of members of the public came up to me and asked  
me if we could hold more public hearings, and  
you know, your eyes kind of roll back in your  
head.

And the purpose of which would be to take  
more public testimony, that there are a number  
of people who would like to speak, according to  
this one gentleman, and it sort of reflects on

1 things that we heard at the Tallahassee meeting.  
2 They're intimidated by their own local  
3 governments. They're afraid to get up and speak  
4 before their own local government commissions or  
5 county commissions and they would like the  
6 Commission to take testimony.

7 We don't have it in our budget to take the  
8 whole Commission. So with your understanding  
9 and knowledge, I have volunteered to go with  
10 JoAnn when we can. We can't always do that, but  
11 to take testimony, and we will let the  
12 commissioners know if it's in Tampa and you can  
13 come, Commissioner Lee, then, you know, we will  
14 let you know. And then we will make all of that  
15 testimony and the record of it, make it  
16 available to the Commission.

17 But I think we can all see after  
18 yesterday's testimony on CSX, the Taylor County  
19 Commission on the coal plant, a number of  
20 people, we are opening up a soda bottle that's  
21 been shook for a very long time. And people are  
22 really wanting to provide us with information.

23 And so just to let you know, whenever  
24 that's possible we have agreed to go listen, and  
25 we will make that testimony available to the

1 members of the Commission and we will let you  
2 know.

3 SENATOR DOCKERY: Madam Chair, the next  
4 committee in Sarasota, do you have -- have you  
5 set the time schedule for that? Because it  
6 seems to me that a lot of people would like to  
7 come speak at night during off-work hours. So  
8 if we don't have it, perhaps we could change the  
9 public hearing to like seven to ten or seven to  
10 nine or six to nine.

11 CHAIRPERSON PETERSEN: Okay. We are  
12 working on now what the agenda is going to be.  
13 I don't think we've got it set in stone yet.

14 MS. CARRIN: We had originally planned to  
15 do the same format doing the four to six and two  
16 to four and six to eight, allowing the time in  
17 the evening. And our experience has been that  
18 fewer people come to the evening session, but if  
19 you think it would be better, we can certainly  
20 give you longer time in the evening and still do  
21 the afternoon.

22 CHAIRPERSON PETERSEN: Yes. We could  
23 retain the two to four and then we could  
24 schedule six to nine. And like last night, if  
25 we're done early, we're done early. And we can

1 schedule it longer, yes, certainly.

2 And when people are calling me and  
3 e-mailing me, I'm constantly reminding them that  
4 they can always submit written comments, that  
5 those will also -- written testimony will be  
6 considered.

7 Okay. So next we have Jane Tillman from  
8 the Florida Parole Commission and then we will  
9 have questions about the parole process left  
10 over from yesterday.

11 MS. TILLMAN: Good afternoon. I'm Jane  
12 Tillman. I'm the Director of Communications and  
13 Legislative Affairs from the Florida Parole  
14 Commission. Madam Chair and members of the  
15 Commission and Ms. Carrin and staff, it's a  
16 pleasure to be here today, and I thank you so  
17 much for allowing us to address some of the  
18 comments made yesterday in previous testimony.

19 Having been public employee for many, many  
20 years, and I won't say how many, I took their  
21 comments to heart. I appreciate the candor of  
22 those who came earlier and gave testimony and  
23 everything that they said as direct  
24 communications in legislative affairs.

25 I will go back to Tallahassee and do

1 everything I can with the resources that I have  
2 to ensure that they get the public information  
3 as quickly as possible that I'm allowed to  
4 provide on clemency issues. Right now, that's  
5 not much. But I certainly do -- I heard what  
6 they had to say.

7 One of the things that I'd like to do  
8 briefly is I want to digress from my original  
9 Powerpoint presentation and speak specifically  
10 to some of the things that I think you all  
11 probably would be asking questions on, maybe I  
12 can clarify some points early on.

13 The Parole Commission does not make policy  
14 on clemency issues, rather the Parole Commission  
15 and the Office of Executive Clemency, which  
16 Ms. Keels head up, we implement policy and we  
17 carry out the will of the Governor and cabinet  
18 sitting as the Board of Executive Clemency.

19 Two, a statement was made earlier in  
20 yesterday's meeting, and Ms. Keels also  
21 addressed this, having to do with the  
22 information that the Governor and cabinet had  
23 before them when making a decision in full a  
24 clemency hearing.

25 The parole examiner conducts an

1 investigation at the regional level, and that is  
2 only an advisory report. The commissioners  
3 themselves actually make a recommendation on  
4 that case to the Clemency Board. So I do not  
5 believe that any of our current Governor and  
6 cabinet sitting there in a full hearing that  
7 they did not have the information in that file,  
8 so it is provided, and I'm only bringing it up  
9 to let you know, yes, they have everything  
10 before them when making a decision.

11 Third, victim restitution. This is the  
12 only monetary amount required by persons seeking  
13 to have their rights restored that's required to  
14 be paid in order before that can be granted.  
15 That's the only one. Doesn't cost anything to  
16 have your rights restored.

17 We've had stories, particularly down in the  
18 Senator's district, headlines, you know,  
19 somebody charged somebody \$25,000 to help them  
20 get their rights restored. There's no cost to  
21 getting your rights restored. Heavens, you  
22 know, that's a large part of my salary, so my  
23 goodness, I'm in the wrong business if we're out  
24 there charging.

25 So please if anybody -- if you hear of

1 anyone that's charging to help somebody get  
2 their rights restored, call Ms. Keels and at  
3 least we'll be aware that this type of activity  
4 is going on.

5 Once again, victim restitution is ordered  
6 by the court and needs to be satisfied, you  
7 know, prior to someone's rights being granted.  
8 The Clemency Board has no authority by law to  
9 waive that restitution, but Janet, can you speak  
10 to that briefly. I think there might be cases.

11 MS. KEELS: There are cases where the Board  
12 and just recently in the September hearing, one  
13 of the board members did do a Rule 17, which is  
14 a rule in the Rules of Executive Clemency, which  
15 allows clemency board member to propose a case  
16 for the agenda at their own discretion.  
17 Sometimes it can be a case of extraordinary  
18 merit of an inmate that they want to have that  
19 case considered for commutation or a full  
20 pardon.

21 In this case, it was at case of a young  
22 lady who owed about \$25,000 restitution to the  
23 Federal government on a bank fraud case. And in  
24 the normal process, she would not be able to be  
25 considered for the restoration of her rights,

1 but however, one of the board members did  
2 propose her case to the Board and had her civil  
3 rights were restored.

4 And just to reiterate, the Board cannot  
5 remit restitution. That's set by the court.  
6 And I think the Clemency Board put that in  
7 place, kept that requirement because I think the  
8 victims rights groups feel that if the person is  
9 allowed to get the clemency that they seek  
10 without having first paid that restitution, then  
11 the victims won't ever see any of that money.

12 Good intentions go by the way side when you  
13 get what you want. If they get what they want  
14 and get their rights restored prior to that  
15 being paid, and I know a lot of people have  
16 said, well, if they can't get a job, they can't  
17 get their rights restored, they can't get a job  
18 and they can't pay it.

19 But the people who really want to pay it do  
20 get it paid. And this young lady who had her  
21 rights restored in September had paid about half  
22 of it. So they can do it if they chose to do  
23 so. Most people that want to find a way will  
24 find a way.

25 CHAIRPERSON PETERSEN: Thank you.

1 MS. TILLMAN: I'll give you another example  
2 following up on what Ms. Keels just said. We  
3 were in Miami on September 8th with 1,200 people  
4 who showed up on Saturday in Little Haiti who  
5 came there hoping to work with us and seeking to  
6 get their rights restored. We had one lady that  
7 we were working with who owed a \$70,000 fine.  
8 She had already worked off --

9 CHAIRPERSON PETERSEN: Restitution.

10 MS. TILLMAN: -- restitution -- she had  
11 worked off \$35,000 of it.

12 One of the issues brought up yesterday is  
13 prompt providing of data on the management of  
14 clemency or what we refer to as our MAC (ph)  
15 database. Could it be quicker? Yes, probably.  
16 I'm it. I'm it. I'm public information. I'm  
17 it on legislative affairs.

18 Right now, I'm also the restoration of  
19 civil rights outreach coordinator. And that  
20 means that Janet and I will be leaving Friday  
21 morning from Tallahassee flying to Miami. We'll  
22 spend Friday, Saturday, and Sunday of our  
23 weekend working a restoration of civil rights  
24 outreach seminar, and then we'll come back to  
25 Tallahassee Sunday night and fly out again next

1 Friday to do the same thing in Broward County.

2 We will have completed 17 trips and  
3 programs working weekends and nights since April  
4 30 of this year. So if we appear a little tired  
5 and lose our train of thought, there's a reason  
6 for that.

7 So when it comes to the records being  
8 requested, yes, I could probably get them out  
9 quicker, but I have no resources except myself.

10 I don't -- let me give you a brief overview  
11 of the Parole Commission. We're a tiny, small  
12 agency with huge media issues. I'm the first  
13 director of communications for the Florida  
14 Parole Commission. I had been a legislative  
15 liaison for the commission for nine years. But  
16 I -- when -- when the advent I guess ran in  
17 2000, 2004, the national interest with the  
18 felons voting rights issues and elections issues  
19 and the election focus on Florida, I volunteered  
20 at that time.

21 I said, look, I have a background in  
22 journalism, and I was the Florida Commission on  
23 Ethics public information officer and  
24 legislative liaison, let me do this. I'll think  
25 again in the future before volunteering so

1 quickly.

2           However, it's turned out to be quite a  
3 wonderful thing to do. So, I don't believe  
4 given the current budgetary situation in Florida  
5 that anybody is going to be giving me any extra  
6 money to do -- to hire somebody to help us so  
7 please keep in mind, yes, we do know. We want  
8 to comply with the law. And I want to get it to  
9 you as quickly as possible.

10           But a records request such as Commissioner  
11 Bailey referred to that took 72 hours, well, I  
12 would still be working on it right now, and I  
13 wouldn't be here probably.

14           So I think one of the things that I've done  
15 very well though is I have a good relationship  
16 with the media, and I have a good relationship  
17 with the people who I'm able to provide them  
18 with information.

19           There are times, however, I'm sure I'm  
20 referred to the Governor's office because I  
21 can't provide the information that they're  
22 seeking because clemency issues are confidential  
23 by law and by rule and by policy of the Board.

24           One of the things that came up yesterday,  
25 and this, I just want to address this briefly.

1 People are talking about that individuals can't  
2 get jobs. They're felons and once their rights  
3 are restored -- I want to give you an example,  
4 we had a lady who called Janet's office  
5 recently. She had gotten her rights restored  
6 and she had gotten her teaching certificate back  
7 also. And so she went to, applied for a  
8 teaching job before a board, school board. She  
9 didn't get the job. She didn't get considered  
10 for the job. That's going to happen.  
11 Unfortunately.

12 But one of the things that we tell people  
13 when this issue comes up, when they come to an  
14 outreach workshop, they want to know, number  
15 one, if I get my rights restored, am I going to  
16 get a job, a better job. There's no guarantee  
17 of that, but it's a positive thing. It's a good  
18 thing.

19 And you know, mind sets have to be changed.  
20 And I always tell people out in the communities  
21 go work on your chambers of commerce in your  
22 business community. Start there changing the  
23 mind set on employing felons.

24 So anyway, I got off of that a little bit.  
25 But the Parole Commission has 148 employees, and

1 are you ready for this one, a budget of \$10.6  
2 million. That is not postage money for many  
3 agencies. However, we do a lot with the  
4 resources that we're given.

5 As Ms. Keel stated earlier, I believe Janet  
6 made reference that in this year's legislative  
7 budget request, we're asking for 40 new -- 42  
8 new positions to help handle the clemency case  
9 load. Because clemency is so important and  
10 having our rights restored is so important and  
11 it's really, really on the forefront right now.  
12 We ask and continue to ask to have the employees  
13 to process those cases.

14 She addressed the recent changes in the  
15 policy which was brought to you by Ms. Markum  
16 (ph), and then you acted on that. Once again,  
17 public information media, everything is  
18 confidential. However, at any time the Governor  
19 has the discretion to make public what he  
20 chooses to on a clemency issue.

21 I on the other hand do not -- I don't  
22 provide any information at all on a clemency  
23 case. I stick with the standard response that I  
24 perfected at the State Commission on Ethics and  
25 that was: I don't have any public information

1 on anyone by that name. I can neither confirm  
2 nor deny that a case by that name exists.  
3 However, if you're designated to act as the  
4 agent for this person seeking clemency, you can  
5 fax an affidavit to my office, and I'll be happy  
6 to provide it to you. That is the information  
7 that will be provided to the person seeking  
8 clemency.

9 Let me see, I think I've covered -- okay.  
10 I want to talk to you all, and once again, this  
11 is just me providing information to you. This  
12 is not me or anyone else advocating a position.  
13 I'm talking to you about the people that I talk  
14 to.

15 I talk to hundreds of people on a weekly  
16 basis. And one of the things that they do is  
17 they call and they say, Ms. Tillman, you know,  
18 I'm really concerned about my clemency request  
19 because I'm in a very good job. I've been, you  
20 know, arrest free for 20 plus years. My family  
21 doesn't even know, nor my employer, that I made  
22 a mistake a very long time ago. And so now, you  
23 know, if I go for a full pardon or whatever, you  
24 know, is this going to be made public?

25 And the answer to that question is, you

1 know, just at the end of the process when the  
2 Clemency Board makes an official board action,  
3 it's a public record. However, nothing in that  
4 file at the beginning or at the end becomes  
5 public. And that is unless the Governor  
6 releases it. That's the Clemency Board's  
7 decision.

8 So we can get up here as the people who --  
9 as the workers who implement policy and talk  
10 about things that happened to us, but it's you  
11 who can make recommendations to the Board if you  
12 feel that what you've heard in this these  
13 hearings merits it.

14 I will not disclose any information once  
15 again, and any questions that I get that  
16 specifically involve Governor, I send straight  
17 to the Governor's office and to his press  
18 office.

19 People talk about, once again, they don't  
20 want their neighbors to know. Many individuals  
21 who have been arrest free for years, their  
22 families, extended families, or their employers  
23 don't know that they were -- they are a  
24 convicted felon.

25 On the database information, which is my

1 most -- which is what I get asked for more than  
2 anything else, we have what we call a MAC  
3 database. It contains grants. It contains all  
4 of the clemencies ever granted in the state of  
5 Florida and the information is configured in  
6 this way.

7 And this is the only information that I'm  
8 allowed to give out on that database. And this  
9 is by Board policy. The media can get on a CD  
10 that I provide, the applicant's name, their date  
11 of birth, the type of clemency granted, and the  
12 date the clemency is granted.

13 Social Security numbers, addresses, other  
14 personal information, that's not included.  
15 That's not provided. We have one person who can  
16 burn CDs for me. Yeah. A couple of weeks ago,  
17 I think the request was 45 in one day. I sent  
18 those out to be provided by someone else.

19 That's basically my presentation. Once  
20 again, we have a toll free number for anyone  
21 wanting information on the restoration of civil  
22 rights. Memorize it. It's 1-800-435-8286. And  
23 we are so proud of that toll free phone number  
24 because we have two employees who speak Creole.  
25 They speak English, of course. They speak

1 Italian, fluent in French and Spanish.

2 So we feel like that we're doing everything  
3 we can with so few resources that we're trying  
4 to work smarter, and so I thank you today for  
5 listening to us. If you have any questions,  
6 we'll be --

7 MS. LEE: Madam Chair.

8 CHAIRPERSON PETERSEN: Yes.

9 MS. LEE: I have. There are a couple of  
10 comments or questions that came up yesterday  
11 that I'd like to have your feedback on. And I'm  
12 not sure whether this is better addressed with  
13 you Mrs. Keel or Mrs. Tillman.

14 But one of the comments was that it would  
15 be better if you could move the location of the  
16 hearings, if you could hold them through  
17 different parts of the state. And the other  
18 comment was not necessarily having your rights  
19 restored and getting a better job, but how do  
20 you prove to someone that your rights have been  
21 restored, that the documentation that's provided  
22 by the State really wasn't sufficient or it  
23 didn't have the credibility behind it for an  
24 employer to really take notice. So if you would  
25 address those issues for me please.

1 MS. KEELS: Okay. First the issue on the  
2 traveling around the state to different  
3 locations, this was actually tried back in 1981  
4 under Governor Bob Graham and the cabinet at  
5 that time. It was actually Secretary George  
6 Firestone's request. He felt like more people  
7 might attend the hearings if it were moved to  
8 different locations and they could better come.

9 We tried that for a year. We went to three  
10 different locations around the state,  
11 Jacksonville, Ft. Lauderdale, and Tampa. It  
12 proved to be that not many more people came to  
13 those locations than came to the one in  
14 Tallahassee.

15 As a matter of fact, a lot of people like  
16 to come to Tallahassee because they get to see  
17 the Governor and Cabinet in their own  
18 environment in the Capitol building. They like  
19 to see the Capitol, and they like to visit  
20 Tallahassee, which is the state capitol, while  
21 they're there.

22 A lot of people get really excited when  
23 they come into the big Florida cabinet room and  
24 see the Governor and Cabinet sitting up there,  
25 and they really enjoy that.

1           In this day and time, the logistics with  
2 security for the board members, I don't know if  
3 that, you know, if that could be done. It's  
4 certainly something that you might want to  
5 suggest to the Clemency Board that they try  
6 again on a pilot project.

7           However, with the budget cuts the way they  
8 are, I mean, I have to take four people with me  
9 to the clemency board hearings just in  
10 Tallahassee just to do what we need to do. It  
11 would be kind of a big travel issue, budget  
12 issue, if we had to take that many people plus  
13 the Florida Parole Commission staff that would  
14 need to go as well. We'd probably have to take  
15 about 10 people from Tallahassee just to do what  
16 we needed to do.

17           So that's an issue, but that's certainly  
18 something that you could recommend to the Board  
19 that they try, that they do a pilot project for  
20 a year, maybe some special money could be  
21 budgeted for that.

22           On the issue of the clemency orders, the  
23 order that Mr. Hargrett showed yesterday was  
24 actually the official executive order that is  
25 signed by the Governor and Cabinet at the board

1 hearing. Signed by the Governor and the Cabinet  
2 members with the Secretary of State signature  
3 and seal on it.

4 We actually give those out at the board  
5 meetings now. I think when General Butterworth  
6 was there, we didn't do that. They were  
7 prepared afterwards and then mailed out later.  
8 But now they're actually signed at the hearing.  
9 And the Secretary of State puts the seal and his  
10 signature on it right there.

11 And we make a copy, and then I certify that  
12 this is a true and correct copy. Anybody that  
13 needs to verify can call my office. The  
14 applicant himself or herself can also provide a  
15 copy of that to the Florida Department of Law  
16 Enforcement along with their Social Security  
17 number to have that entered on to their criminal  
18 history.

19 Now, something that -- if Commissioner  
20 Bailey was here, we might be able to have a  
21 discussion about whether he, you know, wanted,  
22 might want to get a download from our database  
23 and have that information entered. I don't know  
24 what the feasibility of that is. I'm sure it  
25 can probably be done.

1           CHAIRPERSON PETERSEN: That was the problem  
2 raised that when they were having their criminal  
3 history background checks, that it didn't  
4 reflect that clemency had been granted and  
5 rights restored and that was the problem.

6           MS. LEE: That was going to be my next  
7 question.

8           MS. KEELS: That's correct, yes.

9           CHAIRPERSON PETERSEN: This will be a  
10 question for FDLE when they're talking about  
11 their public records and issues in February  
12 where we'll ask them that.

13           MS. KEELS: But I'm certain that the IT  
14 people could certainly work out a way to  
15 transfer that data. The only issue is I'm sure  
16 you know that a lot of times the felons are not  
17 just one time felons. They're getting their  
18 rights restored two, three, four, five, six  
19 times, so --

20           CHAIRPERSON PETERSEN: And under Chapter  
21 14 --

22           MS. KEELS: That would have to go on there  
23 every time.

24           CHAIRPERSON PETERSEN: -- there's no --  
25 there's no right to share that information, that

1 would have to be a legislative change allowing  
2 the Clemency Board and the Parole Commission --

3 MS. KEELS: Well, any clemency grant once  
4 it's been done and filed with the Secretary of  
5 State's office it becomes a public document.

6 CHAIRPERSON PETERSEN: Okay.

7 MS. KEELS: So there's no legal issue with  
8 giving that information out. But we will verify  
9 at any time, anybody's executive clemency order,  
10 and there is an executive order number and that  
11 can also be verified with the Department of  
12 State, Division of Administrative Code where  
13 those orders are filed. And those can also be  
14 verified with them as well.

15 CHAIRPERSON PETERSEN: And we'll ask  
16 Commissioner Bailey to address that at the  
17 February meeting if there is a possibility.  
18 Other questions?

19 MS. LEE: Are those -- I'm sorry. One  
20 more. Are those orders on-line anywhere? Can  
21 somebody pull up that information to --

22 MS. KEELS: It is not on-line at this  
23 point. The issue with putting that in a readily  
24 available format, yes, it's public record, but  
25 to me it's an issue of privacy for a person.

1           Maybe you got clemency and you don't mind  
2           your information being shared and you even did a  
3           newspaper interview and your information is out  
4           there, but then you've got the other gentleman  
5           who doesn't want -- like Ms. Tillman said, his  
6           family doesn't know, his employer doesn't know,  
7           his next door neighbors don't know, and he  
8           doesn't want his information readily available  
9           for somebody to pull up.

10           That's the issue because people are  
11           curious. They're nosy. They might go in there  
12           and say, well, I'm going to put JoAnn Carrin's  
13           name in there and see if she's been granted  
14           clemency. Oh, yeah, she has been. Well, how  
15           about that? I didn't know that. I didn't know  
16           she was a felon. You have that issue as well.  
17           So you have to balance it with the public's  
18           right to know, but with the right of privacy for  
19           that individual as well.

20           CHAIRPERSON PETERSEN: Could I make a  
21           point? There is no right to privacy in a public  
22           record, just legally.

23           MS. KEELS: That's true.

24           MS. TILLMAN: Let me address one more  
25           comment following up. Another issue that's very

1 important, when people call and ask about  
2 writing a letter of support to, you know, for  
3 someone who is seeking clemency, they want to  
4 know if that letter is going to become part of  
5 the public record. And at this time under  
6 current policy, I tell them, no, the letter will  
7 be in the case file.

8           However, in my Powerpoint that you didn't  
9 see that I will provide to everyone, I have a  
10 statement in there about, it's just my opinion  
11 talking to these people, it could have a  
12 chilling effect on someone who wants to write a  
13 letter of support for someone yet if that file  
14 becomes public, you know, it may cause people to  
15 no longer do that or want to do that.

16           CHAIRPERSON PETERSEN: Commissioner Lee.

17           MS. LEE: I'm done, thank you.

18           CHAIRPERSON PETERSEN: Secretary  
19 Butterworth.

20           GENERAL BUTTERWORTH: Thank you. Is it a  
21 matter of public record law of someone that has  
22 been convicted of a felony?

23           MS. KEELS: I would think so under the  
24 court records, yes.

25           GENERAL BUTTERWORTH: So --

1           CHAIRPERSON PETERSEN: Court records and  
2 Department of Corrections and FDLE, yes.

3           GENERAL BUTTERWORTH: So if I've been -- if  
4 I've been granted clemency, I think I definitely  
5 would want that to be a public records, so if  
6 anybody says I'm a -- I say you're a convicted  
7 felon, you could say yes, but I received  
8 clemency.

9           One thing you said earlier today concerns  
10 me, and I think that the Governor's done a  
11 wonderful job in so far as restoring rights  
12 automatically. I think he wanted to go further,  
13 but he went absolutely as far as he was able to  
14 with the 300 members that had a vote in order to  
15 keep the vote he needed.

16           What I -- what concerns me when you say --  
17 are people being scared off from the standpoint  
18 of not going to the clemency board meeting  
19 because they say, gee, you know, with all of  
20 this information here, I have 10 traffic  
21 tickets, there's no way I'm going to get -- I'll  
22 receive clemency.

23           I'd be interested in hearing those results.  
24 I think the legislature would also. But the  
25 things that the Governor exempted out of what

1 he's giving out would be information provided by  
2 victims, prosecutors, and judges, and he said  
3 that will remain confidential as you all lean  
4 very much towards everything being open.

5 When people are out there to receive  
6 clemency usually they're in the community. And  
7 a lot of times, since I was privy to those  
8 reports for 16 years, and people are told that  
9 the -- the person would not -- would not know,  
10 even though many times in our public meetings,  
11 you would say, you know, but so and so says  
12 here, you know, you owe alimony or this, this,  
13 and this, nothing wrong with that from the  
14 standpoint of allowing the person to know this  
15 is the reason why you're not getting clemency is  
16 because you do have outstanding debts,  
17 restitution, or something else like this.

18 My only concern would be that if, in fact,  
19 that -- I'm sure the legislature, if they deal  
20 with this, will consider it, will you prevent a  
21 victim from being able to have their rights from  
22 the standpoint of really saying all they want to  
23 say about the offender if they know the offender  
24 is going to be walking the street and also  
25 having access to that.

1           So I think there is a middle ground here,  
2           but I think the person should know why they're  
3           not receiving the -- their civil rights or a  
4           leave of clemency, why they are not receiving it  
5           and many times it's very apparent by what you  
6           say, traffic tickets or something else, you  
7           don't get your own thing saying, you know, the  
8           three commissioners said no and I got all this,  
9           why should I waste my 600 bucks to go to  
10          Tallahassee. So -- but it's a -- I think  
11          Florida has come a long way, but they haven't  
12          come a long way -- they haven't come a long way  
13          enough as far as I'm concerned on those issues.

14                 CHAIRPERSON PETERSEN: Senator Dockery, I  
15                 know you had some questions.

16                 SENATOR DOCKERY: Yes, I was trying  
17                 interject a little bit earlier when you were  
18                 talking about Commissioner of FDLE because this  
19                 is precisely the conversation he and I were  
20                 having yesterday when we asked you whether we  
21                 were going to have a presentation from that.

22                 We felt very strongly that -- I think the  
23                 comment was made yesterday and I think you made  
24                 the comment today that notification of  
25                 restoration of civil rights goes to the

1 supervisor of elections.

2 MS. KEELS: Division of Elections.

3 SENATOR DOCKERY: Division of Elections.

4 We're thinking that's good they can vote, but it  
5 seems to me it's more important that it  
6 automatically be given to FDLE than to  
7 supervise -- Division of Elections.

8 And the Commissioner and I were talking  
9 about how that could easily be coordinated  
10 between the offices, so it definitely was his  
11 intention to -- to continue conversations with  
12 you on --

13 MS. KEELS: Our IT people and his IT people  
14 could certainly get together and work that out  
15 just like they do for the Division of Elections.

16 SENATOR DOCKERY: And if as you say it's a  
17 hundred people a quarter, it's not even like  
18 that needs to be done on a daily basis. Well,  
19 actually for the automatic --

20 MS. KEELS: Well, for the civil rights  
21 restoration, it would have to be done on  
22 probably a weekly or biweekly. We do it for  
23 Division of Elections on a biweekly basis now,  
24 because there's so many.

25 SENATOR DOCKERY: Okay. Can you -- could

1           you talk for a minute about the difference  
2           between who automatically has their civil rights  
3           restored versus the ones that still need to go  
4           through the process.

5           MS. KEELS: The persons who are eligible  
6           for the automatic level one are the nonviolent  
7           offenders. The -- no sexual batteries, no  
8           sexual offenders, no murders or manslaughters.  
9           There are certain other -- in the Rules of  
10          Executive Clemency under Rule 9, it has a list,  
11          a laundry list of offenses that are not eligible  
12          on that.

13          Then there are on level twos, some  
14          mid-level investigations. It doesn't require a  
15          hearing, but it requires more information for  
16          the Clemency Board and they have a 30-day review  
17          time. It goes on a list of names with their  
18          offenses and it has back-up material with the  
19          circumstances of the offense and victim's  
20          comments and whether they've paid their child  
21          support and what their criminal history has or  
22          is and whether they have a domestic violence  
23          injunction.

24          Those are -- that's information that some  
25          of the Clemency Board members requested be

1 provided to them to make a decision on these  
2 non -- they're not really nonviolent because it  
3 can be like an aggravated battery or an  
4 aggravated assault or a battery -- aggravated  
5 battery on a law enforcement officer, something  
6 to that effect, but it's not the more serious  
7 crimes of murder or sexual battery or sexual --  
8 lewd and lascivious on a child or something of  
9 that nature.

10 So that's your mid level, level twos.  
11 Those are without hearing unless two of the  
12 board members don't approve that, and then it  
13 has to go to the next level to a hearing.

14 Then your level threes would be the ones  
15 that do require a full investigation and hearing  
16 before the Board, and those are your more  
17 serious crimes, your murders and your sexual  
18 batteries.

19 SENATOR DOCKERY: Okay. Is there any  
20 differentiation on the information that they  
21 and/or their representatives are entitled to  
22 among those three categories?

23 MS. KEELS: The only information that the  
24 Governor has authorized to be provided to that  
25 applicant at this point in time is a copy of the

1 confidential case analysis investigation report  
2 that is provided to the applicant prior to the  
3 next board hearing.

4 Only those cases that are going forward for  
5 a full hearing and have that -- that -- it's  
6 probably five, six, seven, eight page report  
7 with a recommendation from the Commission. The  
8 first two categories, the level ones and level  
9 twos, don't require a full investigation. They  
10 don't require a recommendation from the  
11 Commission. So only that third category, the  
12 full hearings, that's the only information that  
13 goes to the individual.

14 SENATOR DOCKERY: How do the individuals  
15 that don't need a hearing know that their rights  
16 have been restored?

17 MS. KEELS: They get a certificate mailed  
18 to them or we try to mail it to them at their  
19 last known address that we have.

20 SENATOR DOCKERY: So did they know they  
21 were being considered or did they just hear  
22 about it after --

23 MS. KEELS: Some people knew they were  
24 being considered because they've actually made  
25 contact with our office, and then some people

1 don't know that they were considered.

2 SENATOR DOCKERY: Okay. In the  
3 recommendations that you're giving out to those  
4 who are having a hearing, if there is a  
5 statement in that case file from a victim, let's  
6 say it's a rape, will that be redacted or will  
7 that -- the individual who's up for the hearing  
8 have access to --

9 MS. KEELS: That is redacted, according to  
10 the Governor's wishes and the other members of  
11 the board, that information is redacted.

12 SENATOR DOCKERY: Okay. And the Governor  
13 did this by executive order, correct?

14 MS. KEELS: He did it basically by a letter  
15 to me saying this is what we want you to do.

16 CHAIRPERSON PETERSEN: The letter is in our  
17 packet.

18 SENATOR DOCKERY: So even without  
19 legislative action, that will last for longer  
20 than a year?

21 MS. KEELS: Yes, it was last as long as  
22 Governor Crist wants it to last.

23 SENATOR DOCKERY: But it would have the  
24 restrictions on it that are within his letter?

25 MS. KEELS: That's correct.

1           SENATOR DOCKERY: So if we wanted to  
2 broaden it, it would take legislative action.

3           MS. KEELS: Well, actually, the legislature  
4 can't do anything with the public records on  
5 clemency because it's completely an executive  
6 power of the Governor. Clemency can't be --

7           SENATOR DOCKERY: I'm not really talking  
8 about the public records aspect of it. I was  
9 talking about the automatic restoration aspect  
10 of it.

11          MS. KEELS: Automatic restoration, even --  
12 anything regarding clemency can only be done by  
13 the Governor and the Cabinet members.

14          SENATOR DOCKERY: Really?

15          MS. KEELS: Unless you get a constitutional  
16 amendment to amend the Constitution.

17          SENATOR DOCKERY: Then how come there have  
18 been bills over the past five --

19          MS. KEELS: Because it included the joint  
20 resolution for the constitutional amendment with  
21 it with those bills.

22          SENATOR DOCKERY: And let's see if I have  
23 anything else?

24          CHAIRPERSON PETERSEN: Do you know what the  
25 constitutional provision is?

1 MS. KEELS: It's Article 4, Section 8a.  
2 Article 4, Section 8a.

3 SENATOR DOCKERY: And lastly, when you are  
4 entitled to release -- not entitled, but when  
5 you are permitted to release information, can it  
6 be to anyone or can it only be to the -- the  
7 ex-felon and --

8 MS. KEELS: It's only to the applicant or  
9 the applicant's designated representative. And  
10 that could be an attorney or it could be an  
11 advocacy group that he has working with him or  
12 it could be his mother, his wife.

13 SENATOR DOCKERY: Okay.

14 MS. KEELS: Anyone that he has designated  
15 to receive the information on his behalf.

16 SENATOR DOCKERY: How about the media?

17 MS. KEELS: The media, no.

18 SENATOR DOCKERY: Okay. Thank you.

19 CHAIRPERSON PETERSEN: This man carries the  
20 Constitution with him. It's not the pocket  
21 size.

22 UNIDENTIFIED PERSON: I have the Federal  
23 pocket size. (Laughter.)

24 CHAIRPERSON PETERSEN: There is a question  
25 I think in my mind about under Section 14,

1 what's it, .25 --

2 MS. KEELS: .28.

3 CHAIRPERSON PETERSEN: .28, the exemption,  
4 which is under Tab 12, the Governor does have  
5 the authority to release clemency records. And  
6 I think what Governor Crist has done is a  
7 fabulous thing. But when he leaves office, we  
8 have to start all over again. And I don't know  
9 if there's ever been any governor in history  
10 that has done what Governor Crist did by  
11 allowing access --

12 MS. KEELS: Not to my knowledge.

13 CHAIRPERSON PETERSEN: And I have received  
14 in the last 15 years thousands of complaints  
15 about the lack of access to these records, both  
16 from the people up for clemency, the victims,  
17 the media. And so I think what we might want to  
18 do, if not for February, then maybe May, is look  
19 at the Constitution, and look at Section 14.2a.  
20 It may take an act of the legislature, it may  
21 take a joint resolution to amend the  
22 Constitution, but to look at it and see whether  
23 we need to make a permanent change rather than a  
24 change specific to Governor Crist.

25 And I will be willing to look at the

1 Constitution and the history of it, I've tried  
2 and I've already done some research, as I said,  
3 because I've gotten lots and lots and lots of  
4 questions about this issue. But I will be -- I  
5 might not be able to get it done by February.  
6 But I will look at it certainly and give more  
7 information of the constitutional requirements,  
8 the statutory requirements. The policy has to  
9 conform with the statutes and the Constitution,  
10 so the policy will be steered by obviously  
11 whatever legislative or constitutional changes  
12 are made.

13 But I think we've had such compelling  
14 testimony from the people seeking clemency, and  
15 I think that I heard yesterday a couple of the  
16 advocates saying they wanted broader access, and  
17 I'm going to check on that as well, check with  
18 them and make sure that's what -- I think  
19 Mr. Edwards yesterday from ACLU was saying  
20 recommending that we consider granting  
21 third-party access to those records as well.

22 Obviously the -- so we will confirm that  
23 with the transcript from yesterday, and then I  
24 will get back to the Commission with more  
25 information about the constitutional

1 restrictions and what changes we might or might  
2 not be able to make.

3 MS. LEE: Just one more question, if I may.  
4 If -- if there are level one crimes or whatever  
5 where your rights are automatically restored,  
6 and there are people who don't know that their  
7 rights are being restored, are you all working  
8 on a better system to match those two together  
9 to make sure that even when a person leaves  
10 jail, that they know that there is a potential  
11 for their rights to be restored or can you do it  
12 right then?

13 MS. KEELS: Yes. In conjunction with the  
14 Department of Corrections, when the person is  
15 leaving the custody of the Department of  
16 Corrections or terminating supervision,  
17 Department of Corrections is providing  
18 information to that individual about how their  
19 rights are going to be restored, or if they're  
20 not eligible for this process how they go to the  
21 next process. They started to do a better job  
22 of informing those people of this process.

23 And also that's what we're doing now is  
24 traveling around the state having these  
25 workshops so that more people know about it.

1 And then the county jails, there's also -- there  
2 was also a bill that was passed a couple years  
3 ago to provide the information to the county  
4 jail so that those inmates coming out of county  
5 jails get that form and get that information so  
6 that they can make contact with our office and  
7 they know where it start on that.

8 MS. LEE: So do they have to apply for the  
9 restoration or is there an automatic  
10 restoration?

11 MS. KEELS: They do not have to apply. The  
12 persons who are coming out of custody of the  
13 Department of Corrections are off of  
14 supervision, their names are automatically  
15 submitted to the Florida Parole Commission for  
16 review.

17 And if the person is found to be eligible  
18 for the restoration and their certificate is  
19 provided, we mail that to the last known address  
20 that the Department of Corrections provides to  
21 us.

22 If they are found to be ineligible or they  
23 have to go through a different process, then  
24 they are then notified of that by letter from  
25 the Florida Parole Commission advising them of

1 that information as well.

2 MS. LEE: Thank you.

3 SENATOR DOCKERY: Madam Chair, may I ask  
4 another question if I could. The individuals  
5 who are up for automatic restoration, is that  
6 after they -- not only been released from  
7 prison, but is that also after they've served  
8 any --

9 MS. KEELS: Supervision.

10 SENATOR DOCKERY: -- supervision.

11 MS. KEELS: That's correct. When they  
12 completely finish everything and paid the victim  
13 restitution and they have no pending charges.

14 SENATOR DOCKERY: And if they were to  
15 reoffend with a new felony, would that preclude  
16 them in the future from being granted an  
17 automatic restoration or once their time is  
18 served and their supervision is over, they would  
19 be once again granted?

20 MS. KEELS: It depends on the level of the  
21 crime. If it's a different level than a level  
22 one automatic, then there is a 10-year waiting  
23 period, and I have to look at the rule because I  
24 have to figure out exactly what it says.

25 CHAIRPERSON PETERSEN: Any other questions?

1 I will, as I said, look at the constitutional  
2 issues, and I think what I could do is explain  
3 the constitutional interaction between Article 4  
4 and Article 1 and Chapter 14 and I can put that  
5 in a letter and get it to you before the next  
6 meeting, and then we can have further discussion  
7 about any necessary changes. Thank you very  
8 much. It's been very helpful. I think we've  
9 gotten a lot of information that will help us  
10 move forward on the clemency issue.

11 Next, we have Representative Frishe is here  
12 to talk to us, and I think JoAnn has a hand out.  
13 He is not on the agenda, but we do have a hand  
14 out from him.

15 CHAIRPERSON PETERSEN: Thank you.

16 REPRESENTATIVE FRISHE: Thank you, Madam  
17 Chairman. The handout is actually from the  
18 person I'm going to introduce, my resident  
19 expert on these matters. As you know, no  
20 legislator is a resident expert on anything. We  
21 all have our resident experts.

22 CHAIRPERSON PETERSEN: I kind of object to  
23 that.

24 REPRESENTATIVE FRISHE: I resemble that  
25 remark, I will have to tell you.

1           As you all know, our government in this  
2 country started out as a small democratic  
3 republic, and it functioned very well. In fact,  
4 it functioned so well that the culture that grew  
5 up around that democratic republic has produced  
6 the strongest, most successful financially, and  
7 the most inventive country the world has ever  
8 seen.

9           Part of what made that economic miracle  
10 possible is that the United States economy has  
11 evolved with time to where there is such a  
12 degree of transparency in financial transactions  
13 that we put more trust in our Mastercard than we  
14 do our city governments. We trust visa more  
15 than we do any other branch of government. We  
16 know for a fact that all is going to be well  
17 when we use those cards, for instance.

18           Today, in relation to government, we're  
19 struggling under the weight of a Federal  
20 government that is three times larger than the  
21 sum of all 50 states budgets put together.  
22 We've become huge. We've tried to find  
23 regularly one size fits all solutions to every  
24 problem from an incredibly diverse country.

25           What we've ignored is our history. When

1 our country was founded, the Congressmen were to  
2 have 30,000 constituents. Our founding fathers  
3 thought that having more would be such a huge  
4 number that nobody could represent them well  
5 enough.

6 Today I represent about 92,000 voters, the  
7 average congressman represents 700,000.  
8 Hopefully, and you would hope we've kept up with  
9 the times and progressed. Cars get us around  
10 faster. Airplanes get us around faster.  
11 Computers have helped dramatically, but still  
12 most people can't name their congressman, much  
13 less have ever met him. I can go into any  
14 restaurant in my district, unless I'm a regular  
15 there, the waitress has no clue who I am. Some  
16 days that's good.

17 On that tact, Justice Lewis Brandice (ph)  
18 said that the states should be the laboratories  
19 of democracy that feed the Federal government,  
20 that the best programs will come from the  
21 governments that are closest to the people.

22 Today, we've concentrated power in our  
23 Federal governments. Our cities and counties  
24 will tell you we've concentrated power in  
25 Tallahassee. I can't argue with them on that.

1           We've used global technology to change the  
2           way we live in every way except that government  
3           has failed to adopt those technologies in such a  
4           way that maintains the citizen activism that is  
5           the hallmark of our country -- or was the  
6           hallmark of our country.

7           Instead, that technology has been used  
8           repeatedly to concentrate power, whether it be  
9           in the county, the city, Tallahassee, or  
10          Washington. If we are to restore the faith of  
11          the people in our government, and as you can  
12          tell by the polls, congressmen, used car  
13          salesmen, and other scoundrels don't rate real  
14          well in public confidence. And if we don't  
15          restore that public confidence, eventually,  
16          we'll lose our government.

17          So I think what you're here for today is  
18          vital important. To this end your committee was  
19          created. And in that cause, we have some  
20          suggestions that we would like to present to you  
21          that I believe will help return the power of  
22          government to the people, which ultimately is  
23          what has led to the success of our system of  
24          government.

25          I would now like to introduce to you Andrew

1           Graham. He is a successful and respected  
2 securities lawyer in Tampa and has firsthand  
3 knowledge of the items that we'd like to  
4 recommend to you.

5           MR. GRAHAM: Madam Chair and Commissioners,  
6 my name is Andy Graham. I will deny pretty much  
7 everything he just said. I'm neither  
8 successful, nor an expert in anything, but thank  
9 you for allowing me to speak today. I will be  
10 brief.

11           I'm here to propose that state agencies  
12 commissions, authorities, boards, councils,  
13 subdivisions be required to provide specific  
14 financial and other information on their  
15 websites and provided on a timely basis.

16           I'm a recent appointee to the Hillsborough  
17 County -- Hillsborough Community College Board  
18 of Trustees, and before my appointment, I went  
19 to the college website to see what sort of  
20 information it had on the size and the scope of  
21 the college just to get an idea how big the  
22 budget was. Nothing was there.

23           There was information for students --  
24 perspective students, vendors, and teachers, but  
25 nothing a taxpayer would want to see, no idea of

1           how much money they spend.

2           In general, I think that's pretty common  
3           with government websites. I haven't done a lot  
4           of research on that, but give you another  
5           example, the Florida Commission on Human  
6           Relations publishes on its website a glowing  
7           annual report of all of its accomplishments,  
8           nothing on what it costs. No idea what they  
9           spend.

10          The Florida House and Senate websites are  
11          pretty good. They provide a lot of pretty good  
12          information, a lot of source information, but no  
13          year to year budget comparisons. I was trying  
14          to find out how big the Florida budget was and  
15          how big it was last year and the year before.  
16          Maybe it's there, but I couldn't find it.

17          The Governor's taken the lead, I think, by  
18          creating this Commission and the Office of Open  
19          Government, and I'm very interested in this  
20          FloridaPerforms.com that he recently announced.  
21          I'd like to see how that works.

22          I want to commend, also, the Attorney  
23          General for his government accountability  
24          project. He's got a good website, a lot of  
25          useful information, and a suggestion box for

1 improvements there.

2 As Representative Frishe said, I'm a  
3 securities lawyer. I deal with a lot of public  
4 companies. These are companies that have to  
5 have shares of stock traded on the stock  
6 exchange. And all of these companies, they are  
7 required to provide a lot of information to the  
8 Securities Exchange Commission.

9 They provide it through an electronic  
10 process called Edgar, which I never knew what  
11 that means, but it's Electronic Data Gathering  
12 Analysis and Retrieval system. It's immediately  
13 available to public when they file it. And  
14 nowadays, most companies provide this on their  
15 websites. So when they file something with the  
16 SEC, it's immediately available on their  
17 websites.

18 If you go to Microsoft.com, they've got  
19 information going back to 1994. Pretty much  
20 anything you need to know about that company is  
21 there. Its financial statements, information  
22 about its directors, executive officers, how  
23 much they're compensated and how they're  
24 compensated.

25 When it files the report, it's immediately

1 available on its website. When engages in a  
2 major transaction, it files a report with the  
3 SEC, and again, that's immediately available on  
4 its website. It has to file a report on that  
5 transaction within four days, so it's very  
6 timely information.

7 I don't see any reason why the state  
8 agencies shouldn't have to provide the same  
9 thing. I've included in my written comments the  
10 kind of information that public companies have  
11 to provide. I'm not going to repeat that here.

12 Give you some of the advantages of putting  
13 this information on the website. It's good  
14 marketing. You don't want somebody to go  
15 somewhere else to get the information about your  
16 agency or your corporation. It's cheap.  
17 Somebody is providing this information already.  
18 They're giving it to somebody. They're  
19 reporting to either the SEC or the government  
20 base, they're reporting it upstairs someplace.  
21 And just putting on the website shouldn't be a  
22 major obligation.

23 It saves time and money. You don't have to  
24 fulfill as many information requests because the  
25 people can go right to the website and get it.

1 And it's just good corporate governments. The  
2 more eyeballs you have looking at this  
3 information, the less likely you're going to  
4 have some sort of wrongdoing or poor decision.  
5 And if it is -- does happen, they will be more  
6 likely to be exposed.

7 I think having this information readily  
8 available will make better citizens and maybe a  
9 better informed news media. That may be a  
10 stretch, but if you can believe that.

11 But anyway, here are my proposals. These  
12 are very similar to the type of information that  
13 public companies have to provide. On the  
14 websites, I think there ought to be an annual  
15 financial statement and budgets going back at  
16 least 10 years. Perhaps the Inspector General  
17 can be assigned the task of posting this  
18 information and they can just link to that  
19 information from their websites.

20 The number of employees at the agency. The  
21 name, age, and salaries of the executive  
22 director, a description of what the executive  
23 director has done in the last five years, has  
24 the executive director filed bankruptcy, has a  
25 criminal record. And if there's -- if the

1 executive director is required to file things, a  
2 disclosure statement, a link to that disclosure.

3 Same information for the next highest paid  
4 executives. Same information for any board  
5 members or commission members that serve that  
6 agency. And again, if they're required to file  
7 a financial disclosure statement, a link to that  
8 disclosure.

9 There should be some sort of management  
10 discussion analysis of the financial statements.  
11 A line by line by the management analysis and  
12 explanation of every item almost on the balance  
13 sheet on the financial sheet saying what  
14 happened, expenses went up, they went down, why,  
15 you know, there's not much of that and really  
16 it's a need of comparison, which are hard to  
17 find.

18 Some metric by which the performance of the  
19 agency can be measured. That can be difficult  
20 to do if you don't on a case by case basis.  
21 Perhaps the vision that supervises that agency  
22 can set those regulations, perhaps a link to  
23 this FloridaPerforms.com might suffice. We'll  
24 see what they have on that website coming up.

25 I'd like to see copies of all the material

1 contracts. Again, public companies have to do  
2 this. They have to report it within four days.  
3 Immediately winds up on their websites. The  
4 amount expended on lobbyists, outside attorneys,  
5 and consultants. The amount spent on travel.

6 I'd like to see a code of ethics. Now,  
7 there's a statutory code of ethics, but it's not  
8 easy to read and it's really not just user  
9 friendly. Then maybe a whistle blower hotline  
10 number to the Inspector General's office. I  
11 believe that's required to be disseminated to  
12 employees. I'd like to see it on the website  
13 where anybody can see it.

14 Again, if you know you're maybe being  
15 looked at, I think that helps keep the employees  
16 honest. I'd like to see a five-year spending  
17 chart with comparisons to population, growth,  
18 income, growth and inflation.

19 If the agency has a commission aboard, then  
20 some means by which the public can contact and  
21 give recommendations, complaints, suggestions to  
22 the board members. And finally, just a  
23 suggestion box, electronic e-mail suggestion  
24 box.

25 Again, those are basically the kind of

1 things in the private sector a publicly held  
2 corporation has to do and I'd like to see the  
3 government do the same thing.

4 CHAIRPERSON PETERSEN: And I will say as  
5 president of a nonprofit organization, most of  
6 that information is found on my Form 990, which  
7 is a public record.

8 MR. GRAHAM: Is it on our your website?

9 CHAIRPERSON PETERSEN: Believe me, my  
10 website is so bad. But I have a note, website,  
11 we're upgrading our website. We are seriously,  
12 but yes. And Representative Frishe, are you  
13 going to file this legislation?

14 REPRESENTATIVE FRISHE: Unfortunately, I'm  
15 out of both slots for this coming session. But  
16 however, this is something that I'm hoping your  
17 commission will come to us and there will be  
18 more than ample opportunity for committee bills  
19 to be crafted. I think this is something that  
20 should be part of an open government proposal.

21 I think it's very clear that we have a  
22 crisis in confidence in our government with the  
23 general populous, and I think that has led to a  
24 lot of the disassociation and the disaffection  
25 of the general populous. They don't participate

1 in a lot of elections, particularly local  
2 elections have incredibly low turnouts.

3 There's this loss -- this loss of  
4 connection to what governs their everyday lives.  
5 I think that is a very, very bad thing for the  
6 future of our society and our culture and our  
7 government. I think it's worth trying to get,  
8 as Andy said, more eyeballs on what's going on.

9 I think in a small town in New England  
10 where you have monthly meetings, and every  
11 member of the community, all 120 or however many  
12 showed up, it's easy to follow the County or  
13 City budget. I know it's a lot more complicated  
14 at the state level, but it's worth opening it up  
15 so that at least some people who are interested  
16 can help us keep an eye on it.

17 Because if I'm trying to track travel  
18 between agencies, they don't even use the same  
19 accounting title for travel between agencies.  
20 So if I want to track -- and I would never track  
21 your travel, Senator, but if I wanted to  
22 track --

23 SENATOR DOCKERY: Feel free.

24 REPRESENTATIVE FRISHE: I'll track Judge  
25 Carassas's travel, I can't go to a specific line

1 item, an accounting line item, in the judicial  
2 management budget and take that same line item  
3 number and go to Secretary Butterworth's  
4 financials, line item for travel is going to be  
5 a different accounting number.

6 We need to establish standards like the  
7 accounting industry has for the private sector.  
8 We need to have some standards that allow us to  
9 track what's going on. Because if I can't do  
10 it, I know for sure the average citizen can't do  
11 it unless he's a retired accountant.

12 And I think it's worth making the effort,  
13 and I'm looking forward to seeing what else your  
14 committee comes up with. I think it's very,  
15 very important. Thank you very much for giving  
16 us the time to intrude on your agenda. We  
17 appreciate it.

18 CHAIRPERSON PETERSEN: I think this is very  
19 much in line with some of the actions recently  
20 taken by the Governor, the Attorney General's  
21 cap. Senator was talking about yesterday  
22 government in the Sunshine and we will work on  
23 it for future meetings and see if we can't come  
24 up with some -- a proposal for approval and  
25 maybe even some draft language and we will

1 invite you back to the commission meetings to  
2 talk about it.

3 REPRESENTATIVE FRISHE: You've got an able  
4 senator and an able house member who I'm about  
5 to chase back to St. Pete. But I appreciate  
6 your indulgence.

7 CHAIRPERSON PETERSEN: Anybody have any  
8 comments or questions? Secretary Butterworth?

9 GENERAL BUTTERWORTH: Representative, did  
10 Mr. Graham, by any chance live in your district?

11 REPRESENTATIVE FRISHE: No, sir, he  
12 doesn't.

13 GENERAL BUTTERWORTH: You're lucky. With  
14 that platform, I think really what both of you  
15 have presented is something which probably  
16 ultimately a little bit more they can do.

17 REPRESENTATIVE FRISHE: I have no fear of  
18 Graham because he's my younger brother.

19 CHAIRPERSON PETERSEN: Senator Dockery.

20 SENATOR DOCKERY: Madam Chair, just to  
21 leave him with some feedback. I think it's an  
22 excellent proposal and it's frustrating to our  
23 constituents, I know, as well as to us to not  
24 have that transparency in some of these very  
25 large departments and agencies in state

1 government.

2 And it would be I think responsive of us,  
3 especially in light of all of the property tax  
4 conversation we had about -- and budget cutting  
5 to show where the money is. Because there are  
6 some extremely bright people out there who like  
7 to get involved in government that aren't in an  
8 official elected position that might take the  
9 time and look through some and make some  
10 recommendations to us that we had never seen  
11 because there wasn't that transparency that we  
12 can, you know, as you know, as is flattery,  
13 steal other people's good ideas.

14 So just as you did from your brother, I'd  
15 like to do from our constituents, so very good  
16 proposal. Thank you.

17 REPRESENTATIVE FRISHE: Thank you, Madam  
18 Chair.

19 CHAIRPERSON PETERSEN: Thank you.

20 VICE-CHAIR CARASSAS: Can I thank  
21 Representative Frishe from coming all the way  
22 from District 54, one of the finest districts in  
23 the state of Florida that has a long history of  
24 representing excellent representatives, right,  
25 Representative?

1 CHAIRPERSON PETERSEN: Long history --

2 VICE-CHAIR CARASSAS: My former district.

3 REPRESENTATIVE FRISHE: I'm honored to  
4 serve in your footsteps.

5 CHAIRPERSON PETERSEN: Thank you very much.  
6 County attorney, Leon County.

7 MR. TELON: Madam Chair, members of the  
8 Commission, I appreciate the opportunity to be  
9 able to speak to you this afternoon. My name is  
10 Herb Telon. I'm currently the County attorney  
11 in Leon County. I've been a local government  
12 lawyer for almost 30 years now as both an  
13 in-house city attorney and a county attorney.

14 And my main purpose in being before you  
15 today is to represent the Florida Association of  
16 County Attorneys of which I'm the president at  
17 the present time.

18 Despite some of the commentary that I've  
19 read on the table outside, the Florida  
20 Association of County Attorneys is not against  
21 open government and the Public Records law and  
22 the Sunshine law. What we are in favor of is  
23 fairness and sensible open government.

24 And the four issues that we have outlined  
25 in the correspondence dated October 10 that you

1 have in your agenda package are some items that  
2 we would like the Commission to consider.

3 The main concern that local government  
4 lawyers especially those that represent local  
5 governments as in-house lawyers but all of those  
6 whether they are outside counsel or in-house  
7 deals with matters of claims or litigation.

8 It is -- there are all kinds of other  
9 administrative issues that have to be done, but  
10 our biggest concerns have always come up in the  
11 form of claimants and litigators. And the  
12 problem is that your taxpayer dollars are at  
13 risk because we can't take on a claim or a  
14 lawsuit on a -- on an even or fair playing  
15 field.

16 And I don't believe that what we are  
17 seeking here is intended to close government.  
18 What we're seeking here is to try to protect our  
19 now ever dwindling ad valorem tax funding from  
20 having either a loss or a larger loss because  
21 we're unable to communicate properly with our  
22 clients, which is the County or the City as  
23 represented by their elected legislative  
24 representatives.

25 Let me just cover our -- briefly the four

1 issues for you. As you know, Chapter 119 has a  
2 small exemption for attorney work product. It  
3 is, as I described it, very small. It is the  
4 litigation impressions of the lawyer handling  
5 the case. There is no similar exemption for the  
6 ability to communicate those thoughts with your  
7 client in written form especially.

8 And so one of the things we would like to  
9 be able to have the Commission consider is  
10 allowing the attorney/client written  
11 communication on matters of filed claims or  
12 filed litigation to be exempt until the  
13 conclusion of the claim or the litigation.

14 The other issue is related to that and that  
15 is what we described as fact work product.  
16 Almost every lawsuit that I'm involved with has  
17 an expert witness, almost every one of those  
18 tends to be someone we have retained whether  
19 they be a financial expert or a planning expert.

20 And again, there is no current exemption in  
21 the Public Records law for the communications  
22 that I have with my expert transportation  
23 planner. Under all of the Rules of Civil  
24 Procedure and under the Federal rules and in  
25 many states, those communications are absolutely

1 exempt until the litigation is over.

2 It provides a significant problem for me as  
3 a local government lawyer to have an open  
4 conversation with my experts or my fact  
5 witnesses about the circumstances or the  
6 strategies of the case that are not  
7 automatically eligible for production under a  
8 119 request.

9 That leads to the fourth item in the paper  
10 that we presented to you, which is plaintiff's  
11 lawyers -- if I represent a local government,  
12 I'm once out of 10 times a plaintiff. I'm  
13 usually a defendant.

14 The trick of the trade is you sue the local  
15 government, then you file a public records  
16 request for all of the documents that I can't  
17 get from you. If I need documentation or  
18 materials from the plaintiff about their claims  
19 and their case, I have to follow the Rules of  
20 Civil Procedure.

21 That involves filing a request for  
22 production or filing interrogatories. Those are  
23 allowed to sit for 30 days. Most of the  
24 plaintiff lawyers that I deal with request a  
25 30-day extension at that point in time. And at

1 that juncture, they usually object on the basis  
2 of one of the various materiality or relevancy  
3 objections that are permissible.

4 None of those apply to me. I have a  
5 significant turnaround time requirement to  
6 produce the documents that I don't get from the  
7 other side. It is inherently unfair and puts in  
8 jeopardy my ability to successfully defend the  
9 local government entity when that is my primary  
10 function. We're not talking about making the  
11 doors closed. We're talking about making the  
12 playing field even.

13 The last item on the Sunshine law shade  
14 issue is a request that you consider an  
15 expansion of the attendants at what is the  
16 attorney/client privilege meeting commonly  
17 called the shade meeting. Right now as we know  
18 under the law it is limited to the  
19 commissioners, the elected legislature  
20 representatives, their lawyer, and their chief  
21 administrative officer. That's it.

22 I have found in the number of occasions  
23 that we've had these meetings, that it is  
24 essential that they hear from the primary  
25 witness on their behalf personally and have an

1 opportunity to ask them questions.

2 We're not saying that that should be not a  
3 part of the transcription that is required. All  
4 we're saying is that there should a broader  
5 ability for me as the lawyer to bring with me  
6 the County engineer or the County's planning  
7 director and have them discuss the case  
8 personally with the commissioners and so that  
9 they can hear the pros and cons of the  
10 litigation matter. It would all be on the  
11 transcript and it would all be a disclosable  
12 public record when the litigation was over.

13 So those are the four items that the  
14 association had requested that I bring to the  
15 Commission's attention.

16 Now, let me tell you in Leon County, while  
17 I have a quick shot at the lecturn. I don't  
18 know whether or not it is a legislative fix that  
19 needs to be done or a judicial fix through the  
20 Supreme Court, but we had an incident occur last  
21 week in Leon County where an individual who  
22 unfortunately lives at the homeless shelter, but  
23 is somewhat familiar with the judicial system  
24 typed up five domestic violence complaints  
25 against my -- five of my seven county

1 commissioners for treatment she alleged occurred  
2 at the homeless shelter.

3 We don't own, nor run the homeless shelter,  
4 have absolutely no connection with that facility  
5 and nothing in the complaints which were filed  
6 by this individual who has some mental health  
7 issues has anything whatsoever to do with a  
8 county issue, a county commissioner issue, or  
9 the individuals whom she named as defendants in  
10 these cases.

11 But the clerk of the court, without a  
12 filing fee, takes these domestic violence claims  
13 and processes them. They assign them a case  
14 number and that case number is there for the  
15 rest of eternity. I cannot make a motion to  
16 expunge because it's not a criminal allegation.

17 Even though the circuit judge in the Family  
18 Division looked at the matter and clearly  
19 indicated that this had no basis of being filed,  
20 that case number is there forever.

21 Even if I try to have the records sealed,  
22 the case number will be there assigned to that  
23 person and the subject matter of the case will  
24 be there forever.

25 So if I Google your last name and you were

1 one of my commissioners, John Daly is one of  
2 them, it will show that he was the subject of a  
3 domestic violence claim for the rest of his  
4 life. There's nothing I can do under the  
5 current state of the law to change that when  
6 clearly there is absolutely no basis for it  
7 being there.

8 When he goes to his friendly Wachovia bank  
9 for a bank loan next week, they will run a name  
10 search. It will turn up that he was the subject  
11 of a domestic violence claim. He can say that  
12 the claimant was wrong and had a mental health  
13 issue, but how does the bank know that?

14 So what's the solution? I believe there  
15 ought to be an ability to have a defendant in a  
16 case with a zero merit that doesn't belong in  
17 the system at all be able to petition a court, I  
18 don't think we should be able to do that on our  
19 own or with the clerk's office, I think you  
20 should be able to petition the circuit court to  
21 have that record completely expunged from the  
22 judicial system if the judge agrees with my  
23 argument that it should have never been filed to  
24 begin with.

25 Now, again, whether this Commission has the

1 authority to look into that or whether that  
2 requires a change to the rules of Judicial  
3 Administration, I'm not exactly sure. But I  
4 thought I would bring that to your attention  
5 just because it is one that just happened to us  
6 last week, and my commissioners want me to fix  
7 it. So I'm ready to answer questions about that  
8 or any of the other items from the Association  
9 of the County Attorneys.

10 CHAIRPERSON PETERSEN: Questions?

11 MS. LEE: Statement, not a question.

12 VICE-CHAIR CARASSAS: I have a question,  
13 too.

14 MS. LEE: Okay. Go ahead, Judge.

15 VICE-CHAIR CARASSAS: No, go ahead.

16 MS. LEE: I think -- let me just say that I  
17 am a member of the Florida Association of County  
18 Attorneys. I wanted to put that on the record,  
19 being Hillsborough County attorney. We do  
20 participate in the organization.

21 I think Herb has really brought forward  
22 some issues that we experience every day that  
23 are cumbersome in our jobs, but we've managed to  
24 work through them. Certainly, there is room for  
25 improvements.

1           I want to speak specifically about the  
2           Sunshine issue that you brought forward and  
3           allowing experts into those Sunshine meetings  
4           because that is the one that I think is most  
5           critical to the Board in terms of information  
6           and decision making with respect to how they  
7           approach litigation.

8           And this -- what he is proposing is  
9           currently an exemption to the Sunshine law.  
10          This is the shade meeting where the public is  
11          not allowed to attend now and the records are  
12          opened at the end of litigation.

13          What is being proposed is that the expert  
14          witness, who generally has all of the  
15          information as you probably know, the attorney  
16          is the messenger. They're not always the  
17          knowledge carrier, but we are the messenger.

18          So that environmentalist who can tell you  
19          what the minimum flows and levels are or someone  
20          else who can tell you when a building will blow  
21          down, that person needs to be in the meeting  
22          with the Board and the attorney to explain those  
23          technical details to them.

24          It does not preclude any access to the  
25          public because the public doesn't have any

1 access under the law as it stands. It does not  
2 keep any information from them because that  
3 information is already disclosed at the end of  
4 the litigation period.

5 So this would be -- I don't even want to  
6 call it an expansion of this. This would allow  
7 an additional person in to give the Board  
8 information, and I strongly support that one.

9 CHAIRPERSON PETERSEN: If I understand,  
10 under current law, any member of the Commission  
11 could go talk to the expert to get information  
12 now, correct?

13 MS. LEE: Yes, they could on an individual  
14 basis. But you are probably aware that when  
15 we're talking about experts of that caliber,  
16 we're talking anywhere from 350 to maybe \$800 an  
17 hour for those -- the types that I'm talking  
18 about. It's not just your staff person, and it  
19 would be very helpful to have the building  
20 director or the planning director in some of  
21 those meetings as well.

22 VICE-CHAIR CARASSAS: That was my question,  
23 too, if you're involved in litigation, which is  
24 what triggers, right --

25 MR. TELON: Yes.

1           VICE-CHAIR CARASSAS:  -- the shade meeting,  
2           is there any provision -- there's nothing that  
3           stops an expert or a planning director's  
4           employee of talking to the individual  
5           commissioners one on one and briefing them and  
6           bringing them up to date and saying this is what  
7           I -- this is my opinion on this matter, right?  
8           Does the litigation change that relationship at  
9           all or can they talk to them individually about  
10          that?

11          CHAIRPERSON PETERSEN:  I believe --

12          VICE-CHAIR CARASSAS:  Without having a  
13          meeting of the Sunshine --

14          MS. LEE:  They can talk to them.

15          CHAIRPERSON PETERSEN:  They can even hold a  
16          fact finding, which is not subject to the  
17          Sunshine.  If you wanted an expert to come talk  
18          about the FEMA requirements and the structural  
19          elements of the building and whether they are  
20          compliant, fact finding meetings are not subject  
21          to the Sunshine.  You can have all seven members  
22          of your commission at -- sit with the expert and  
23          have the expert provide the information as long  
24          as there is no discussion among the members of  
25          the commission, that is a fact finding meeting

1 that is not currently subject to the Sunshine.

2 And then the other issue would be under  
3 article -- I mean, unless you do expand the  
4 subject matter that is allowed at the closed  
5 meeting, subject matter of the meeting is  
6 confined to discussions of settlement  
7 negotiations or strategy sessions related to  
8 litigation expenditures. So you've got a  
9 limitation there on what you can discuss.

10 But to my understanding of the Sunshine  
11 law, you could currently have your expert come  
12 in and provide the information to all of the  
13 members of the commission simultaneously as long  
14 as the commissioners don't discuss among  
15 themselves the merits of one proposal over  
16 another. That is fact finding, and fact finding  
17 is not subject to Sunshine.

18 You'd have to be careful to warn your  
19 commissioners not to discuss it, but certainly  
20 if you wanted your attorney or your  
21 environmental protection person from your agent  
22 from the County to ask questions of to provide  
23 the information, that would be allowed and would  
24 not be a violation of Sunshine today.

25 MS. LEE: So your suggestion would be to

1 have the commissioners sit in silence and just  
2 have --

3 CHAIRPERSON PETERSEN: It's not -- and we  
4 would want to get Pat Gleason's (ph) opinion on  
5 this. The way I understand it, they are allowed  
6 to ask questions of the expert. They are not  
7 allowed to have discussions of the merits of  
8 what the expert is saying. They're not -- they  
9 don't have to sit there with duct tape over  
10 their mouth, in other words. They can ask  
11 questions. They can't discuss among themselves.  
12 So they can have this kind of conversation, but  
13 they can't have this kind of conversation. Is  
14 that --

15 MR. TELON: Let me just say that I don't  
16 know any local government lawyer who has that  
17 same interpretation of 286.

18 CHAIRPERSON PETERSEN: Fact finding? It's  
19 in the Sunshine manual. We'll ask -- maybe we  
20 could get Pat to give us a written opinion or  
21 written explanation of the fact finding  
22 requirement.

23 MS. LEE: I like the interpretation.

24 CHAIRPERSON PETERSEN: There's a long  
25 discussion of fact finding in the Sunshine

1 manual of what that entails, and there's case  
2 law. And we'll get Pat, and she does have a  
3 response or a position, I guess, an article that  
4 she can respond specifically, but under -- what  
5 is it? Tab 18, Carol Asisero (ph), who couldn't  
6 be here today, has a -- does respond generally  
7 under Tab 17. And then Dena Shulman (ph), who  
8 is from the same law firm as Carol Asisero will  
9 speak next.

10 But we will -- we'll ask Pat if she would  
11 explain, and I will tell her what I think it  
12 means and she can respond to maybe my  
13 interpretation of it. But fact finding is not  
14 considered subject to the Sunshine and this  
15 question comes up regularly from local  
16 governments.

17 MS. LEE: Well, I -- in response, I would  
18 agree with Herb that we have never used it in  
19 that manner, but I like the idea. Generally,  
20 the fact finding has been to tour a garbage  
21 plant or a land fill or to explore something  
22 outside of the realm of litigation, to  
23 understand a new process or something. But it  
24 has not been to have the -- the expert witness  
25 present to the Board in a closed session or

1 without the public being present.

2 CHAIRPERSON PETERSEN: I would, again, I  
3 mean, you would have to be so careful in your  
4 closed session that the expert witness -- in  
5 having the expert witness testify that you don't  
6 go outside those two very limited provisions  
7 that you're allowed to discuss at the closed  
8 door session, the strategy sessions and related  
9 to expenditures, and basically, can we settle,  
10 can we hire outside counsel, those are the,  
11 kinds of discussions.

12 So if you have not read the other two  
13 provisions or your presentation, I think we  
14 have, it's under Tab 16 -- no -- yes. 16 is  
15 your proposal. And then we'll try to get more  
16 information on fact finding from Pat and see  
17 what she has to say, too, and we'll see what  
18 happens from there.

19 Any other questions? Senator? We're going  
20 to step out of order just a little bit.

21 MR. TELON: I appreciate it very much.

22 CHAIRPERSON PETERSEN: And ask Dena simply  
23 so we can follow up with -- everything is fresh  
24 in everyone's mind.

25 MS. SHULMAN: Thank you, Madam Chair. My

1 name is Seinna Shulman. I'm a lawyer at  
2 Thompson and Asisero. We're a law firm in  
3 Florida that represents primarily media  
4 interests. We deal day in and day out with  
5 access issues.

6 One of the things that we deal a lot with  
7 is the litigation exception, both from the  
8 records side as well as the open meetings side.  
9 We would, of course, by nature of who we are and  
10 who we represent oppose efforts to what frankly  
11 is an expansion of the current exemption for  
12 discussions between an attorney and its -- the  
13 board that it serves.

14 The -- this is not a new argument for  
15 expansion. We hear it all of the time. Every  
16 session it seems there's somebody trying to get  
17 a little bit more. Several attempts at this  
18 failed until we got what we ended up with in  
19 '93, and that is a very narrow exception for  
20 circumstances in which attorneys may speak  
21 outside the public view with the Board.

22 And specifically, I know we've already said  
23 this, I don't want to repeat too much because I  
24 know we have a very educated panel from both  
25 sides, the exemption is very limited to the

1 discussion of settlement negotiations or  
2 litigation expenditures and strategy related to  
3 litigation expenditures.

4 It's difficult to imagine why the addition  
5 of extraneous people beyond the County attorney  
6 or the City attorney, the Board, and the chief  
7 executive officer presently allowed would help  
8 to help in those very limited circumstances.

9 It is frankly we learn every day because as  
10 you know the procedure requires these  
11 transcripts to be made available many months  
12 later, sometimes years later at the conclusion  
13 of a litigation, it's difficult as it is to  
14 confine ourselves to those types of discussions.

15 To give you a recent example, a -- very  
16 near here a local agency had been sued -- had  
17 been trying to enforce their public sex offender  
18 ordinance dealing with how close to a school sex  
19 offenders could live, registered sex offenders.  
20 Of course, the state has, I think, a thousand  
21 feet. This particular municipality had a  
22 smaller area.

23 And in a situation where bad facts make bad  
24 law, they had somebody who had been convicted  
25 many, many years ago, situation where the guy

1 was 19, she was 16. It wasn't what the public  
2 fears as a sex offender. He was living within  
3 the prohibited zone for the local ordinance.

4 They need to discuss settlement strategy in  
5 the closed session. At the time, of course, the  
6 public and the press has no idea what is truly  
7 discussed and the transcript, of course, reveals  
8 a discussion of should we drop this case.

9 I would argue it goes beyond just seeking  
10 guidance from the agency and asks, you know,  
11 sort of gets real close to that final decision  
12 which should under the exemption be done in  
13 public, and then they furthered the discussion  
14 by talking about how they should revise the  
15 ordinance to prevent a constitutional challenge  
16 to it.

17 So these -- to me, that's a very clear  
18 example of exceeding the scope of the present  
19 exemption. So these are very real issues for  
20 the public and the press to be excluded from  
21 these types of things.

22 What I think is often left out of the  
23 discussion, and any time there is an advocacy  
24 for a broader right of restriction, sort of a  
25 double negative there, is the fact that when a

1 government agency is sued, and as we just heard,  
2 typically the government agency is the defendant  
3 in these matters, there's two very public issues  
4 at play here.

5 First, the public agency has been accused  
6 of misconduct of some sort. And the public  
7 undoubtedly -- the very purpose of the Public  
8 Records Act is to help the public monitor  
9 instances of government misconduct. So from  
10 that perspective, the public should be allowed  
11 as unfettered access as possible.

12 The other thing is the underlying  
13 assumption that the client is just the county  
14 board or the city board or the government  
15 agency. The ultimate client is, in fact, the  
16 public. That's whose money is going to go to  
17 pay for whatever settlement agreement is  
18 reached. That's whose resources are drained in  
19 the litigation. So I think it's perhaps a bit  
20 unfair to just assume that the public would  
21 agree with restricting its right to monitor what  
22 is essentially its business. It is ultimately  
23 the client in these types of situations.

24 So just to just reiterate, any expansion of  
25 the very narrow exception that presently exists,

1 and frankly, we feel is a little broad and  
2 abused anyway, would be something that as  
3 advocates for the press and public, we would  
4 definitely vehemently oppose.

5 Again, I don't see any reason why the  
6 addition of extraneous personnel such as an  
7 expert is going to further the very limited  
8 discussions that are allowed to be held outside  
9 of public view under the present exemption. If  
10 anybody has any questions, I'd be happy to --

11 CHAIRPERSON PETERSEN: Questions?

12 Comments? Judge? And as I said, we will get  
13 some more information from Pat and get it out to  
14 the members of the Commission as soon as we can  
15 get to her.

16 SENATOR DOCKERY: Madam Chair.

17 CHAIRPERSON PETERSEN: Yes.

18 SENATOR DOCKERY: One question. The  
19 situation that you -- or the example that you  
20 gave, which is basically a Romeo and Juliet type  
21 of sexual offender, which hopefully we addressed  
22 in the legislature in the last session, did  
23 the -- would the Commission have had the  
24 authority to treat that case differently than  
25 the local ordinance allowed? Did they have --

1 did they have the ability to by a super majority  
2 vote or whatever treat that differently?

3 MS. SHULMAN: Well, the County attorneys  
4 have been prosecuting people who are violating  
5 the local ordinance, but the settlement  
6 discussion that was held outside of public  
7 review related to whether they should drop the  
8 charges against this individual because bad  
9 facts make bad law.

10 They had several other cases going on, so  
11 the purpose of the discussion behind closed  
12 doors was to determine from a settlement  
13 perspective whether the charges against this  
14 particular individual should be dropped.

15 Of course, that discussion could not occur  
16 without considering the constitutional  
17 implications of the ordinance and whether it  
18 should be revised.

19 CHAIRPERSON PETERSEN: If I can add it  
20 because I talked to a number of people about  
21 this particular situation. I believe the  
22 local -- the state law says you can't live  
23 within 1,000 feet and the local ordinance said  
24 2,500 feet.

25 SENATOR DOCKERY: Was it in Brevard County?

1 MS. SHULMAN: I don't think it was Brevard.

2 CHAIRPERSON PETERSEN: No, I think it was  
3 on the -- it was southwest Florida, I believe.

4 MS. SHULMAN: Forgetting exactly. We deal  
5 with these every day unfortunately.

6 CHAIRPERSON PETERSEN: I think it was  
7 around Ft. Myers or Cape Coral. I think it was  
8 somewhere in southwest Florida. But the local  
9 ordinance said 2,500 feet and the County was  
10 prosecuting people. So in this case, the County  
11 was the plaintiff in the case.

12 MS. SHULMAN: Right.

13 CHAIRPERSON PETERSEN: And this particular  
14 young man, as Sienna said, he was 19, she was  
15 16, he had done his time.

16 MS. SHULMAN: It was many, many years ago.

17 CHAIRPERSON PETERSEN: He was convicted in  
18 another state. He's since married, has a child,  
19 and bought a house. And they were trying to  
20 basically evict him and get him to move out.

21 And the judge, in bringing the case, it was  
22 criminal -- it was a -- anyway, the judge  
23 questioned the constitutionality of the  
24 ordinance, and I think declared the ordinance  
25 unconstitutional. And the County was trying to

1           decide -- or the City was trying to decide  
2           whether to appeal and called the session, the  
3           closed door session.

4           And during that session, not only discussed  
5           whether they should drop that man's case, but  
6           they had three other cases where they were clear  
7           sexual offenders and because the  
8           constitutionality had been called into question,  
9           they then started discussing whether they should  
10          change the ordinance, and they walked out of  
11          that meeting, and without a public vote dropped  
12          the appeal.

13          So there was then the question of whether  
14          they took action at the closed door meeting,  
15          which is prohibited by the exemption, they can't  
16          take action.

17          So there were a lot of issues with that  
18          particular -- but this is, as Sienna says, it's  
19          fairly common. We get a lot of questions like  
20          this, did they go too far, did they --

21           MS. LEE: I think, Madam Chair --

22           CHAIRPERSON PETERSEN: It sometimes takes  
23           quite a while to get the transcripts.

24           MS. LEE: -- it is very important that  
25           County attorneys are vigilant in executive

1 sessions that they don't go beyond the  
2 boundaries. There is a constant reminder to the  
3 board members all of the time to remember that  
4 this is -- there is a record being created.  
5 Someone will read this. Be careful what you  
6 say. Be careful what you discuss in there.

7 I'm always listening and carefully watching  
8 the words fall from their lips to make sure that  
9 that boundary is not breeched. But I think  
10 that's part of the training and policing that  
11 has to go with the County attorney, who is  
12 responsible for those sessions.

13 CHAIRPERSON PETERSEN: And that would be --  
14 it is, I agree. I mean, there are great local  
15 government attorneys who are very vigilant and  
16 others who encourage their commissioners to  
17 discuss things that they're not supposed to  
18 discuss and to --

19 MS. SHULMAN: And use their private e-mails  
20 addresses and whatever else.

21 CHAIRPERSON PETERSEN: Yes. And -- but I  
22 agree. And I think that's, you know, what we  
23 all strive for in terms of education. And I  
24 think, like I said, we will get more information  
25 on this. I encourage you to read today's

1 presentation and Carol's letter and Pat's  
2 article on this exemption. Because this is, it  
3 is a big issue.

4 Any more questions or comments? Okay.  
5 Thank you very much.

6 Next we have Dr. Zengalli (ph), Interim  
7 Director of the Agency for Enterprise  
8 Information Technology.

9 After him, I have some very brief  
10 information to give you. No presentations, just  
11 very brief information on sort of status report  
12 on some of the things I'm working on. And then  
13 JoAnn has a couple of things, but it will be  
14 very, very brief, and very quick.

15 DR. ZENGALLI: If you could give me just a  
16 little direction, you have people catching  
17 airplanes, you have audience left. I'm not  
18 exactly certain how long you would like this  
19 presentation to be. And I don't think you want  
20 an hour at this point. Can you give me some  
21 rough parameters, 30 minutes, 25.

22 MS. CARRIN: I would say about 20, 25  
23 minutes.

24 DR. ZENGALLI: Okay.

25 MS. CARRIN: Because I know there is a lot

1 of information to cover.

2 DR. ZENGALLI: First, if I could, just  
3 to -- for those of you who know me, I've been  
4 the recent Chief Information Officer of the  
5 state of Florida for five weeks. And in two  
6 months, I'll be retired. So I have a job for a  
7 very short period of time.

8 I was the past executive director of the  
9 Department of Revenue for the last eight years  
10 and been in state government 35. You see things  
11 on this chart though that do reflect, I spent 18  
12 years as legislative budget director on the  
13 House and Senate and a number of those  
14 capacities.

15 What I really wanted to do today, I  
16 certainly enjoyed listening to some of the  
17 earlier presentations, is to try to provide a  
18 framework for how you might look at IT not only  
19 in terms of open government, transforming  
20 government, but this is my framework.

21 And if I could, I have been appointed by  
22 the Governor and Cabinet, which means I would  
23 like to serve out my last two months. And my  
24 primary job is to select my replacement, so most  
25 of what you hear today is my kibitzing and

1 suggestions, not recommendations because I  
2 haven't taken things through the Governor and  
3 Cabinet.

4 But I'm one of those that have I believe  
5 been a champion of IT and state government over  
6 the last number of years, the last 10. At  
7 Revenue, we have been successful at putting up  
8 an integrated tax administration system. And  
9 we're half way through an integration of our  
10 child support enforcement program.

11 With that, you can see that I truly believe  
12 in IT in terms of its ability to transform how  
13 we do business. On the tax side, just to give  
14 you a little bit of the parameters in terms of  
15 how successful I think technology can be and why  
16 I think this is a critical time as you look  
17 forward to the next 10 years, the legislature,  
18 thank you, gave us a hundred million dollars  
19 over the last nine years to build Sntax.

20 That system as such today produced 30  
21 percent fewer FTEs in that organization than 14  
22 years ago. Okay. It produced the same budget.  
23 The operating budget of the Department of  
24 Revenue today is the same budget for 11 years  
25 ago. There's been no essential increase in the

1 budget. In the last four years, we've brought  
2 in close to a little less than a billion dollars  
3 of increased revenue.

4 So the potential, you know, I think that's  
5 one of the reasons why the Governor and Cabinet  
6 chose me to go out and try to screen 220  
7 applicants with a team and make a recommendation  
8 for who the state CIO would be.

9 With that, you see a business model in  
10 front of you that probably doesn't look a whole  
11 lot like government, but certainly with the  
12 representative talking about what a private  
13 sector approach to government might look like,  
14 if you went into any major private corporation  
15 and you looked over here on this lower left-hand  
16 side down here in the yellow, it says integrated  
17 administrative services, back end office  
18 services. If you Google that, you'll get these  
19 same things, administrative support services,  
20 but these are the same services that every  
21 single entity in the world has.

22 They have accounting systems. They have  
23 auditing systems. They have personnel systems.  
24 You know, public relations, management systems,  
25 retirement systems, facility management systems.

1 Purchasing systems, procurement systems. And  
2 there isn't a single Fortune 500 company that  
3 develops those information systems in isolation  
4 of each other.

5 We are one of the only multi \$60 billion  
6 enterprise that says let one entity do your  
7 accounting system, let another entity do your  
8 personnel system, let another entity to do your  
9 purchasing system. We have no statewide  
10 contract management system in place. We have  
11 hybrids in every single organization.

12 All of the systems that are in place today  
13 are old. They are obsolete. They're archaic.  
14 They can't stand up for the long run.  
15 Legislature has tried to fund some successful  
16 transformation of them, and we've had a couple  
17 of disasters in the last few years.

18 If you would look in a modern corporation  
19 today, if you ask the question what's  
20 everybody's travel look like? As importantly,  
21 if you ask the question what is your IT  
22 resource, you couldn't get an answer today. If  
23 you went out there and asked TRW, the  
24 appropriation staff, or any agency tell me what  
25 your total expenditure in a year is in IT. They

1 can't give it to you.

2 If you ask the question how many IT, FTE do  
3 we have in state government, you also can't get  
4 that answer. Okay. So clearly over there on  
5 the bottom left-hand side, okay, you need a  
6 major transformation of what these enterprise  
7 systems look like. At least my suggestion to  
8 the Governor and Cabinet to the budget staff and  
9 some of the people up there, it would be nice if  
10 we took the next two years, since there's not  
11 going to be any major IT funding in the next two  
12 years, there's a couple of outstanding projects  
13 that are going down the road, but the ability  
14 with budget cuts that are going on or revenue  
15 estimate to deliver large transformations of how  
16 we're doing these back end functions isn't going  
17 to happen.

18 So why don't we take the next two years and  
19 figure out how to do it right. Try to figure  
20 out not only how to do it right, but get  
21 legislative input into that right, try to figure  
22 out what the right time framework is to build  
23 these systems. It's not going to happen in two  
24 years.

25 These are going to take six to eight years

1 in terms of how to build these kinds of systems  
2 and put them in place. And let's do it right  
3 this next time around.

4 If you look at the little line that goes up  
5 to the blue boxes at the top, prior to Y2K, many  
6 private sector corporations had to revamp their  
7 accounting systems. They chose to go to modern  
8 ERPs. They had to revamp those accounting  
9 systems.

10 And while they were doing that, they  
11 changed their planning and budgeting and  
12 accounting -- and performance management  
13 systems. More ERPs were sold prior to Y2K than  
14 any time in the history. And as they did it,  
15 corporate America was able to change radically  
16 the way they budget performance based budgeting  
17 are some of the buzz words out there. But how  
18 they budget in terms of information to drive  
19 with really, you can blame me, I'm one of the  
20 architects of your current budget system.

21 Unfortunately, it was done the latter part  
22 of the 1970s and early '80s. That's how old  
23 your budget system is. So when the audience out  
24 there asks for a public records request of the  
25 LASPBS system, guess what, it's going to take a

1 long time before you can give an answer. It's  
2 going to be expensive to get that answer because  
3 it isn't a modern system in terms of how to deal  
4 with today's technology.

5 So if you're going to go about changing the  
6 yellow side with about a two or three year lag  
7 maybe it's time that somebody a lot younger than  
8 me and a lot smarter than me and some of the old  
9 timers that are hanging around, you look at the  
10 new generation of people out there and say what  
11 does a really, really, really modern budget  
12 system look like today. Something that would  
13 help you manage.

14 We just went through a budget cutting  
15 session, it was all manual. They sent out a  
16 list of the agencies saying identify cuts, the  
17 list came back, the list went out, the list came  
18 back. And you figuratively went through a world  
19 that said how are we going to balance the  
20 budget.

21 So those are two worlds that we are having  
22 to address right now. We spent \$86 million on  
23 accounting system and pulled the plug on it.  
24 We've got an HR system that can't tell you how  
25 many people you got on your call center, how

1 many auditors you got in state government.  
2 Broadbanding has collapsed everything together  
3 that our secretaries that are sitting in the  
4 room have a hard time telling what you kind of  
5 employees we have in state government, what your  
6 turn over is, or what information you need to  
7 manage a corporation as large as we have today.

8 If you look at that other big box world  
9 down in there, please forgive me. It says draft  
10 stamped on there. I don't want to imply in any  
11 way, shape, or form, but one of the things I've  
12 heard the audience say in addition to that you  
13 need modern back end support, you need modern  
14 planning and budgeting.

15 Sat down there and said we have to look at  
16 integrated delivery of service. If you look  
17 down here on the far right-hand side down at the  
18 bottom, the two blue ones, you see registering  
19 businesses. And as you go around that little  
20 wheel, you see all of the agency entities that  
21 are in the business of regulating business.

22 Each of them are going in and registering a  
23 business themselves. Each of them are going in  
24 and collecting information and data from them  
25 and putting their own law to how they're going

1 to audit those functions.

2 Many states have gone out with a different  
3 vision and says, well, why can't we have one  
4 stop registration. Okay. Why do we need, you  
5 know, more than one website when someone wants  
6 to open a new business? How are we going to use  
7 today's technology and link the business world  
8 together to make it easy to operate in this  
9 environment today?

10 Our systems don't dictate that today and  
11 that every computer system is coming from  
12 another agency and they don't talk to any other  
13 agency when they decide how they want to build  
14 their computer systems.

15 If you look over at other agencies, you  
16 look at ours on the revenue side, tax  
17 administration. We were successful in taking 36  
18 of your taxes, they are all paid by business and  
19 deal with one stop integrated tax  
20 administration, one business identifier, one  
21 business registration system, one call center,  
22 okay.

23 We're bringing in unemployment compensation  
24 from UT, and that's a very integrated world down  
25 there. We got beverage outside, you got

1 cigarette outside. I doubt that you'd ever want  
2 to have an integrated lottery system in that  
3 same world, but we will be by the end of January  
4 of this year coming up the first state in the  
5 country that has a fully integrated tax  
6 administration system with one stop service  
7 across the line in a modern technology, SAPs  
8 ERP.

9 If you then look at the clustering of these  
10 activities, you know, I've seen General  
11 Butterworth out there looking at his new agency  
12 and some of his -- and what I've gotten from the  
13 team out there, is he's starting to partner with  
14 other agencies that are starting to contact the  
15 same clientele that he's dealing with. Okay.  
16 Excellent idea if you wanted to build a brand  
17 new computer system.

18 If you look at that first little one, and I  
19 apologize for me branding that indigent family  
20 services, because I doubt what that is, and that  
21 would be exactly what you call it. But if you  
22 look across state government, what has happened  
23 is supporting that indigent family that used to  
24 be only in a few agencies has been now dispersed  
25 across a wide variety of agencies. In a number

1 of those agencies that service delivery has been  
2 driven down to the district level, and in some  
3 cases, outsourced.

4 Now, you want to start asking questions  
5 about where is the information to tell you where  
6 the systems are going, if you had to pull every  
7 outsource system, every district, every other  
8 agency to see how well we're serving that  
9 indigent population, it would be massive  
10 undertaking. But we all want to build brand new  
11 computer systems to support them. And right  
12 now, from my perspective, we're not doing a lot  
13 of talking to each other to learn how they  
14 should be built.

15 Today, if you would look at food stamps,  
16 (inaudible) and Medicaid, they are all going  
17 through an integrated benefits determination,  
18 integrated eligibility determination delivery  
19 service. If you look at the Department of  
20 Revenue, we're doing the same thing for child  
21 support and getting the same money to the same  
22 family.

23 If you look at unemployment compensation,  
24 over at AV, they're doing the same thing with  
25 unemployment compensation benefits. If it's

1 going to the same family, we're trying to  
2 intercept it to get it over to the child support  
3 enforcement family.

4 If you look at the WIC program, it's over  
5 in the Department of Health. It goes through a  
6 similar eligibility determination to get those  
7 kinds of services to that targeted population.

8 In today's modern day and age, I doubt that  
9 you would build isolated computer systems that  
10 don't talk to each other for each of those  
11 systems. That's what we're doing today. Okay.

12 So you get kind of a broad framework here  
13 that says if you want to look at running  
14 government in a more business oriented fashion,  
15 by business process by the way the work flows,  
16 you got to understand where the work is and you  
17 would build an information system to support  
18 that integrated work. Okay.

19 Now, this is a (inaudible). You know, with  
20 respect to the other things I heard in the  
21 audience today, one of the things that we are  
22 looking for in a new CIO, someone that can do a  
23 lot better job than I can in the time I've had  
24 in office, some of you can sit there and not  
25 only know technology, but sit there and try to

1 do an assessment of where is technology in state  
2 government. So you can step back and get  
3 something other than a big sheet like this,  
4 which would be what would the business  
5 requirements be.

6 If you -- you know, I came from the  
7 Department of Revenue, fifth largest state  
8 agency, lots of IT everywhere. We are in the  
9 business in the Department of Revenue of  
10 processing information. That's what we do.

11 Tax administration is nothing more than  
12 information process. I've got 2,500 people on  
13 the tax side, 2,400 log on to the Suntax system  
14 every day and they work all day long on the  
15 information process.

16 That's true in the child support  
17 enforcement program, too. It's not so true in  
18 the property tax program. But as you go around  
19 state government, some programs are in the  
20 business of information processing. They are  
21 very large. They have very large IT offices.

22 If you go to other offices, and I had the  
23 pleasure of moving from the Department of  
24 Revenue in the last few weeks over to the  
25 Governor's office, bless the Governor's office,

1 they have the CIO and three IT staff. That's  
2 their entire IT staff. I needed to take 220  
3 resumes in port it out to the screening  
4 committee, get them all scanned in and port them  
5 all back. Isn't going to happen real quickly.  
6 They have a lot of things to do, and that was  
7 way down on the priority list, and it's going to  
8 take a little while to get that done.

9 I said, gee, could I get the Department of  
10 Revenue to help out, I really need to get this  
11 done, and it was done in a couple of hours. It  
12 was not that big of a task. When you only got  
13 four people and they got a job and you try to  
14 add something on to it like a public records  
15 request, it's going to be difficult. The lady  
16 that stood up here and said I'm the CIO of one.  
17 You do anything, I've got my regular job and now  
18 I got to meet your public records demands.

19 These are some small little suggestions  
20 that I do believe at a time when we're going to  
21 be cutting budgets again this session  
22 dramatically. And the long return forecast for  
23 the next two years doesn't mean it's going to be  
24 really good one the session coming up after this  
25 one. Okay.

1           We're not going to see a lot of money being  
2 spent in IT. That's a good time to scrutinize  
3 what is being done and maximize the use of those  
4 resources. One small suggestion I have is this  
5 new office that's created, if you could throw  
6 some money at it, nonrecurring, not much, you  
7 know, so that when somebody comes in from the  
8 outside with a public records request and we  
9 give them this huge bill that says here's what  
10 it's going to cost to produce those documents,  
11 you could draw on and subsidize from this new  
12 agency and say can we lower the cost of that.

13           I have a lot of excess capacity in some of  
14 my IT functions in the Department of Revenue. I  
15 can do imaging for people. I can do some  
16 militant scanning in some of these small  
17 agencies. But you're going to have to find some  
18 way to help these small, small agencies.

19           Children's with Disability has a CIO and  
20 five. That's it. Okay. Pretty hard to sit in  
21 there when they get an additional burden on  
22 what's getting done, but they can't go to some  
23 other agency that might have excess capacity and  
24 say can you scan my records in. No. A bigger  
25 agency. Somewhere in the budget act to allow

1 resource sharing among agencies where the big  
2 ones might with very little effort be able to  
3 help out the technology even the smaller agency.

4 Revenue help the agency out now with very  
5 little impact on their world, you know, that  
6 seems to be important. Some ability to  
7 subsidize a public records request because an  
8 agency that is small has to reproduce records,  
9 has to go in and manually produce things, okay.  
10 Might be able to not have to pass that full  
11 operating cost on to a citizen that's asking for  
12 it because it seems prohibitive in terms of  
13 making those kinds of requests.

14 I don't think you'd see that would be a lot  
15 of money. I don't think either of those would  
16 cost very much, but it would certainly have in  
17 these agencies that do get a big demand for  
18 public records request to ease their burden in  
19 terms of what they're doing.

20 I'm going to be pushing for a multi agency  
21 IT planning. Okay. Don't know if anyone will  
22 buy that, but I think it's critical. I'm going  
23 to be pushing for integrated approaches across  
24 the board. If you look it at, you know, law  
25 enforcement, it's always nice to see CSI Miami,

1 or CSI Vegas and all of that little electronic  
2 stuff they have. That's not what ours look  
3 like. Okay.

4 Look at the agencies that are all isolated  
5 law enforcement when we were helping CFO Sinc's  
6 office out, I think she was a little surprised  
7 the first time through to realize that, you  
8 know, I was in there quite early that she had  
9 law enforcement undertaking over there with the  
10 state fire marshal's office. You know, that's  
11 the law enforcement agency. How do we  
12 coordinate those functions across government  
13 from an IT perspective?

14 I know right now in a number of situations  
15 if you go in to get fingerprinted, you got to  
16 get fingerprinted three times, okay, for a lot  
17 of activity. None of that makes sense today.

18 So it's a very short overview. I knew I  
19 wasn't going to have a lot of time, but I didn't  
20 want the big picture not to be laid out. This  
21 is not a radical change in what we're doing, but  
22 it does call for integration of services. It  
23 does call for broader planning in terms of what  
24 we're doing.

25 I do believe -- I worked for the

1 legislature for 18 years, I do believe we need  
2 in a lot of setting of the business requirements  
3 legislative involvement, legislative input, both  
4 on the accounting side, the planning budgeting  
5 side, the personnel side, and some of the  
6 business requirements in some of these systems  
7 when they come forward on the IT side.

8 So with that, I hope I did good. I'd like  
9 to be employed.

10 CHAIRPERSON PETERSEN: Senator?

11 SENATOR DOCKERY: I'm trying to understand  
12 your graph here. Is this your suggestion of how  
13 the IT systems in the state ought to be  
14 organized, or is this your suggestion of how the  
15 public records request ought to be organized, or  
16 is this your suggestion of how the budget, or is  
17 this your suggestion about how there should be  
18 restructuring of the government, or all of the  
19 above?

20 DR. ZENGALLI: Probably all of the above,  
21 but I primarily did it because of IT. Okay.  
22 When you look at why things were clustered  
23 together in the areas that they were clustered  
24 together, it was that they served a similar  
25 client base, okay. They were dealing with the

1 same kind of activity, okay. At the work flow  
2 level, the nature of the work was very similar.

3 If this was 65 percent correct, I'd do a  
4 back flip. Okay. I sat down with a couple of  
5 budget analysts. We went over the budget. We  
6 kind of figured out where things would go. It  
7 tracks fairly closely, but at a lower level to  
8 your sunset bill. Okay. When you sit out there  
9 and look at your sunset bill and said let's look  
10 at services.

11 On the other hand, I do believe in each of  
12 these areas, if you were to go out and build a  
13 brand new computer system, we have wasted tons  
14 of money in the state government by having each  
15 isolated silo build their own computer system,  
16 okay, and not talk to somebody sitting right  
17 down the hall from them that already has one  
18 built, serving the same client and the same  
19 population base.

20 I mean, how many call centers do you need  
21 in state government? How many websites do you  
22 need in state government? When business calls  
23 in, why should they have to go to nine different  
24 websites to get the information that they need.

25 There are plenty of other states that have

1 started down the path of saying why can't we  
2 just have a business website and link, not a  
3 reorganization of the government, not changing  
4 the boxes, but the ability to change the data in  
5 a way that you get one stop service. Okay. And  
6 that's true in a lot of these different areas.

7 SENATOR DOCKERY: Is this supposed to be  
8 all inclusion because failing to see DJJ  
9 anywhere?

10 DR. ZENGALLI: DJJ is there. I hope it's  
11 over there on the criminal justice side. That  
12 may not be where you thought it should be.

13 SENATOR DOCKERY: It's not there. It's  
14 not --

15 DR. ZENGALLI: Department of Juvenile  
16 Detention, didn't call it the right name.

17 SENATOR DOCKERY: Oh, DOC, okay.

18 DR. ZENGALLI: I apologize. Again, this  
19 was about a two day undertaking. Like I said,  
20 if it was 65 percent correct, if you do look at  
21 the budget entities here, it's about 90 percent  
22 of the money in just these little line items  
23 that are underneath these circles as you go  
24 around them. There isn't any of them that I  
25 think you're going to see that don't involve

1 more than two or three, or four, or five, or  
2 six, or seven agencies to sit down there and say  
3 where you're going.

4 SENATOR DOCKERY: I would say this. As a  
5 legislator, I find this fascinating. I'm not  
6 quite sure what it has to do with the public  
7 records, but from -- I think in light of the  
8 fact that we do have a tough budget year in the  
9 past and we're going to have another one, that  
10 particularly striking to me under land, because  
11 I've always been very involved in environmental  
12 protection and water and those kinds of things.

13 It is amazing how many different agencies  
14 deal with land, Department of Transportation.  
15 We don't think about it because we don't think  
16 of roads as land, but they own an awful lot of  
17 land for right-of-ways and whatnot.

18 FWC, DCA, the water management districts,  
19 which don't show up in there, but they also were  
20 in there. And even DMS owns a lot of the state  
21 property. It may not be land, but it's  
22 property. It's real estate. And all of them  
23 have their own offices to do appraisals, their  
24 own offices to do --

25 DR. ZENGALLI: Fly the state, GIS.

1           SENATOR DOCKERY: And there is a lot of  
2 waste, but it's not a lot of waste if you look  
3 at it department by department. It's a lot of  
4 waste if you look at the total state system.

5           So I think this is very instructional, and  
6 I appreciate it. And it brings up the question  
7 that we deal with here is how do we apply the  
8 citizen's right to have information quickly with  
9 the current structure of government? And I was  
10 just reading a little earlier a letter from a  
11 reporter, Bill Cotterel (ph), I thought -- think  
12 who was saying that it shouldn't all go through  
13 one public information official because that's  
14 still the agency controlling the information  
15 rather than giving access to the information,  
16 which I thought was kind of intriguing because I  
17 hadn't thought of it in those terms.

18           DR. ZENGALLI: A number of states have gone  
19 on the business side to a business website with  
20 portals into the regulatory agencies to make the  
21 links in there, but when you registered in one  
22 agency, you registered for all agencies. You  
23 know, when you went in and needed this kind of  
24 critical information to go, you went to one  
25 site, you were reading it from all of the other

1 websites, but you only had to go to one place to  
2 get it.

3 And what you see here, I had an hour, but  
4 maybe I can squeeze it into a half an hour.  
5 There are other pieces. I can just lay out a  
6 few of them. Some of the technology that  
7 existed each one of these sites is just as old  
8 as LASPBS is. Okay. They're based in the old  
9 Cobalt based systems. Okay. They are in not  
10 relational databases that let you port the  
11 information everywhere. They are in --  
12 databases. You got to read the entire record to  
13 find the thing you want to pull out and you got  
14 to read another one or many other ones are in  
15 disks and files that are immediately archived  
16 because they don't have storage space. And when  
17 you want to do a public record, they got to go  
18 retrieve them and bring them all up.

19 These systems were not as modern as you may  
20 think they are when you watch some of the  
21 services being delivered on television. Okay.  
22 Some of these systems were built in the early  
23 '80s, and that's 25 years ago. Okay. They're  
24 not using modern technology today. They're not  
25 using it in a way that's constructive of what's

1 going on.

2 I just hope that everybody understands that  
3 when you're dealing in the communications world,  
4 you know, e-mail, web, correspondence, phone,  
5 all of the stuff you can get on your palm pilot,  
6 that technology is moving weekly. Okay.

7 When you're dealing with these big  
8 structures that you do get public records  
9 requests, that isn't moving, you can't build  
10 these systems, okay, in weeks. Okay. Like you  
11 can, I need a new correspondence tracking  
12 system, build me one, and put it in place.  
13 Okay. I need to do these kinds of things.

14 These kinds of systems are going to take  
15 you awhile. We have no state 10 year plan for  
16 IT. No one can produce a 10 year state plan for  
17 IT. No one can tell you where the state of  
18 government of Florida is going in the IT world  
19 today. And many state agencies are in the  
20 information process in the world. This is what  
21 we do for a living.

22 CHAIRPERSON PETERSEN: I would suggest in  
23 the supplemental materials again, Tab 4, again,  
24 a report from the Senate Governmental Operations  
25 Committee that gives you a very good

1 understanding of the history of what  
2 Dr. Zengalli is talking about. It's like deja  
3 voodoo for me. I worked for the legislative  
4 technology resource committee, the joint  
5 committee, and it was the IRC when I was there.  
6 The IRC is gone. The joint committee is gone.

7 But what I think, and JoAnn is going to  
8 talk a little bit more, we're going to, again,  
9 change the schedule just a little bit, but the  
10 idea is that when we get the state more  
11 coordinated, it's easier to provide access and  
12 then that also that transparency is a little  
13 easier because -- I mean, that's a good point  
14 you brought up about Bill Cotterel's piece. We  
15 are not creating the funnel, we're allowing  
16 people to have access to the information  
17 directly, and that is very helpful in terms of  
18 public access.

19 Do we have any other questions or comments  
20 from other members? Thank you very much.

21 MR. SHAW: Can I ask a question?

22 CHAIRPERSON PETERSEN: Very quickly because  
23 we're really running out of time.

24 MR. SHAW: -- what the potential for -- Bob  
25 Shaw -- talked this morning about people being

1           able to go get records from the state  
2           government, what's the potential for them all  
3           these integrated systems, somebody calling up  
4           for public records request, you say I'm not  
5           going to do it, so find it yourself.

6           DR. ZENGALLI: At this level, if the  
7           records are dated in paper, not just typed or  
8           electronic. The records -- these systems though  
9           that brought up to speed, that was where we were  
10          today -- if you think you're going to get there  
11          in six weeks, you're not, six to eight years  
12          worth of figuring out --

13          MR. SHAW: So you better include it in  
14          there --

15          DR. ZENGALLI: Yes.

16          CHAIRPERSON PETERSEN: That's a requirement  
17          under current law, that people have access to --  
18          I mean, not that we, you know, get on-line  
19          access, but that we have access to the records  
20          in any form or format in which they're  
21          maintained by an agency, and that when an agency  
22          is designing a new electronic record keeping  
23          system, they consider public access to the  
24          records stored on that system. So we would  
25          hope, yes.

1           Okay, JoAnn.

2           MS. CARRIN: Thank you, Madam Chairman. If  
3 you look under Tab 19 in your notebooks at the  
4 last meeting, Mr. Moore brought up the issue of  
5 putting on-line on a daily basis all of the  
6 e-mails and correspondence that come in and out  
7 of state government agencies.

8           As just an experiment to see what kind of  
9 an impact that might have, I volunteered to talk  
10 with our citizen services office that gets the  
11 bulk of the e-mail and postal correspondence  
12 that comes to the governor's office just to see  
13 what kind of numbers our small agency has.

14           And you'll see in this report, they did a  
15 breakdown of the numbers of e-mails and postal  
16 correspondence, and I believe in the first --  
17 from April through September, we had 112,000,  
18 almost 113,000 e-mails that came into the  
19 Governor's office, and 24,000 postal  
20 correspondence.

21           So the process now is that somebody reviews  
22 those, they're sent out to the appropriate  
23 agency, the postal correspondence is scanned  
24 into our system.

25           You will also find some examples of the

1 postal correspondence that the Governor's office  
2 receives and e-mail correspondence. These are  
3 examples. They're real examples of things that  
4 have been sent in that contain confidential and  
5 exempt information.

6 So in order, as I understand it, as it's  
7 been explained to me, in order for us to be able  
8 to put these on-line on a daily basis probably  
9 is not possible because each one would have to  
10 be read, screened, redacted, before it could  
11 even be sent to the agency that could deal with  
12 the citizens problem or issue.

13 And so I just offer these as examples, and  
14 I believe in the report they talk about the  
15 current process and then what the process would  
16 involve if we added on the daily posting of  
17 correspondence and e-mails.

18 And you know, the talking, increase staff,  
19 increased technology, not that it wouldn't be  
20 something that we would like to do, but it's  
21 something that right now we're not in a position  
22 of doing.

23 And I think that other agencies,  
24 particularly those in health and human services  
25 face some of the same kinds of challenges as far

1 as receiving exempt and confidential information  
2 and correspondence.

3 CHAIRPERSON PETERSEN: And others  
4 presumably would not have.

5 MS. CARRIN: Well, you would not think the  
6 Governor's office would, necessarily, but  
7 what -- people write about everything and you  
8 see, you know pictures of their driver's license  
9 and Social Security cards and --

10 CHAIRPERSON PETERSEN: Drivers license  
11 numbers are exempt. Okay.

12 MS. CARRIN: Well, I'm told only if they're  
13 with the highway, safety --

14 CHAIRPERSON PETERSEN: I found this to be  
15 very helpful in terms of seeing the examples of  
16 the correspondence that were the kinds of things  
17 that the Governor gets. I feel better because I  
18 get some correspondence.

19 SENATOR DOCKERY: I can share some of mine  
20 with you.

21 CHAIRPERSON PETERSEN: Any questions about  
22 the report? Any questions about the  
23 information? We will, again, you know, be  
24 processing, and I think it might be helpful  
25 right now for me to tell you that we're getting

1 all of this information and we will be  
2 distilling it in coming up with a list of  
3 recommendations that have been brought to us by  
4 people who have testified before the Commission,  
5 and by the commissioners themselves.

6 And then after our May meeting, which is  
7 our last public hearing, we'll have a couple of  
8 meetings at which those recommendations then  
9 will be fleshed out. Everybody in the  
10 Commission will get a copy of it. And then you  
11 can, you know -- we'll hash it all out. We'll  
12 have two meetings at which to do that where we  
13 will not be taking public testimony.

14 I will now talk very briefly, and then  
15 JoAnn has one last item, but the two items on  
16 the agenda -- or three, actually, one I didn't  
17 realize I was supposed to do anything about, so  
18 we're not going to talk about that, and that's  
19 the inventory of statutory fees. I have as I  
20 told you started collecting information on how  
21 other states handle the fee provisions. I've  
22 got a small database of that. It's kind of all  
23 over the map.

24 But at probably our February meeting, we'll  
25 condense this and give you a list of the

1 statutory fee. The current statutory fee scheme  
2 says if an agency has statutory authority, they  
3 can charge the statutorily prescribed fee.

4 That's where FDLE has the authority to charge  
5 \$23 a record for criminal history records.  
6 There are only about 10 agencies that have  
7 statutory fees, including the clerks of the  
8 court under Chapter 28. The rest fall under the  
9 general fee provision.

10 So we will have a list of those and what  
11 those agencies with the statutory fee authority  
12 are allowed to charge by law. I thought that  
13 defining the terms exempt and exempt and  
14 confidential currently there is no under --  
15 under -- the term confidential is sort of an  
16 archaic term now.

17 Under our Constitution, information is  
18 either exempt or it's exempt and confidential.  
19 We did a search of the 1,000 plus exemptions in  
20 Florida's public records law and came up with  
21 there are 349 exemptions where the information  
22 of record is exempt from public disclosure, 92  
23 where it is confidential, and 633 where it is  
24 confidential and exempt.

25 If it is merely exempt, there is some

1 discretion on the part of the custodial agency  
2 to release it. Best example, as I said in  
3 August, as law enforcement active criminal  
4 investigative information can be released if law  
5 enforcement wants to release it, but they're not  
6 required to release the information.

7 If it is exempt and confidential, it cannot  
8 be released except as specifically stated in the  
9 exemption. When we're talking about 14.20(a),  
10 that information is confidential and exempt and  
11 can be only be released under the authority of  
12 the governor.

13 So my -- what I'm trying to do is make some  
14 sense of this and to get some uniformity. For  
15 example, under 119.07(1), there are -- it's a  
16 little short list of government employees whose  
17 home addresses and certain other information are  
18 exempt from disclosure. Some of those are  
19 merely exempt. Others are exempt and  
20 confidential. And we wonder why, you know, this  
21 employee has greater protection. I think a code  
22 enforcement officer is exempt and confidential,  
23 but a law enforcement officer is merely exempt.

24 And the problem really is in drafting the  
25 legislation, there is not enough attention paid

1 to the difference in the terms. The two terms  
2 exempt and exempt and confidential are not  
3 defined in the statutes.

4 And so what I'm trying to do, and it's very  
5 difficult because people don't like change, is  
6 try to define the two terms and come up with a  
7 statutory definition and then try to figure out  
8 how we might amend some of these exemptions so  
9 we have conformity and to look at those that are  
10 confidential and see what we can do.

11 And JoAnn and I will be working with, I  
12 think, some of the agencies on this, and it  
13 is -- I mean, it's a huge project to go through  
14 all 1,000 and some exemptions. That's one of  
15 the issues.

16 The other issue I was supposed to address  
17 is the redundant exemptions. And again, we have  
18 come up with a list, and I can provide this,  
19 they were too big to put in. When I say we're  
20 not profit, I mean we're not profit, and I don't  
21 have the technology or the ability sometimes, to  
22 put these in a format that's easily copied. But  
23 I do have all of these documents on disk or on  
24 my computer. I can e-mail them to anybody who  
25 wants them.

1 I tried to figure out -- we tried to look  
2 at all of the exemptions again and figure out  
3 where there was redundancy. For example, audit  
4 reports, audit reports are generally exempt  
5 until the audit becomes final.

6 We have 21 different exemptions for audit  
7 reports. We have 48 exemptions for Social  
8 Security numbers, 32 exemptions for the identity  
9 of donors who wish to remain anonymous, 84  
10 exemptions for medical records or medical  
11 information, 21 exemptions for personal  
12 financial information, 56 exemptions for trade  
13 secrets, 40 exemptions for proprietary business  
14 information, 16 exemptions for claims files.

15 My hope -- I'm going through each one of  
16 these exemptions, and to see if we could, for  
17 example, repeal the 21 audit exemptions and come  
18 up with one exemption that provides the same  
19 standard for all government agencies. If we  
20 agree that audit reports in their draft form  
21 should be exempt, then let's come up with one  
22 exemption that applies to every agency and put  
23 it in Chapter 119 where it is more easily found.  
24 That's the problem.

25 We've got Chapter 11, Chapter 20, Chapter

1 119, 206, 215, 265, 288. The list goes on and  
2 on. They're very difficult to find. So that is  
3 what I'm working on right now, also, is trying  
4 to come up with identifying what we can repeal  
5 hopefully and create a universal exemption.

6 One of the most obvious is the security  
7 systems plans. That exemption under Chapter 281  
8 was in place prior to 9/11. It was expanded  
9 slightly and moved into Chapter 119 in response  
10 to 9/11. But we didn't repeal 281. So we have  
11 nearly identical exemptions and it can cause  
12 confusion because we -- recently with the bridge  
13 inspection reports, they were relying on the old  
14 language under 281 instead of the slightly  
15 expanded language under Chapter 119.

16 So we are trying to clean it up as part of  
17 our mission, and I had planned on having the  
18 redundant database finished by now, and I got  
19 through the audit reports. So it's slow. But  
20 we will be -- have more information for you in  
21 February.

22 I would strongly recommend that everybody  
23 read this Senate report that came out improving  
24 access to public records. We will have a  
25 discussion of that in February, and we will have

1 legislation will be followed presumably by then  
2 and we will probably take action whether to  
3 endorse it or not at that point.

4 MS. CARRIN: We passed this out yesterday.

5 CHAIRPERSON PETERSEN: Yes. And then the  
6 final item is JoAnn's, and she's going to be  
7 brief on that, too, the House Select committee.

8 MS. CARRIN: Very brief. I just wanted to  
9 bring to your attention that the speaker did  
10 create the Select committee to protect personal  
11 information. We are monitoring what the  
12 committee is doing. Their main interest is what  
13 government records are collected, what would  
14 they do with personal information, how they  
15 protect information once a government agency  
16 receives the personal information, and then how  
17 they dispose of it. I very much focussed on  
18 identity theft issues, but it is related in a  
19 lot of ways to what the Office of Open  
20 Government and the Commission is doing. So I'll  
21 just keep you updated on those activities as  
22 they occur. Thank you.

23 CHAIRPERSON PETERSEN: The next meeting  
24 will be in Sarasota, February 12th and 13th.  
25 Senator Dockery has recommended that we allow

1 more time in the evening for public testimony  
2 and so we will adjust the schedule slightly as  
3 we discussed -- JoAnn and I discussed, again,  
4 last night we had two hours, we took an hour.  
5 So we can always adjust it as needed when we're  
6 done when everybody has had the chance to speak.

7 But you'll see under Tab 1 where the next  
8 meeting will be, when it will be, and where, the  
9 hotel accommodations.

10 So do we have any other questions or  
11 comments? Do we have a motion then to adjourn  
12 until February? Senator Dockery?

13 SENATOR DOCKERY: So moved.

14 GENERAL BUTTERWORTH: Seconded.

15 CHAIRPERSON PETERSEN: Thank you all very  
16 very much.

17 (This concludes Volume II of II of the  
18 Commission on Open Government Meeting held on  
19 November 28, 2007. The meeting concluded at  
20 3:18 p.m.)  
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**CERTIFICATE OF REPORTER**

STATE OF FLORIDA

ss:

COUNTY OF ORANGE

I, CYNTHIA R. GREEN, court reporter, hereby certify that I was authorized to and did report the Commission on Open Government Meeting, and the foregoing proceeding, and that the transcript is a true and accurate transcription of my notes and recordings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel, nor am I financially interested in the outcome of the foregoing action.

DATED this 31st day of December, 2007.

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CYNTHIA R. GREEN, Court Reporter  
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