



**Legal Affairs Committee
January 12, 2017**

The Legal Affairs Committee convened at 4:05 pm.

Legal Affairs Committee Members Present:

Karen Feldman, Chair, Arthur Lussi, John Ernst and Sandi Allen (DOS)

Other Members and Designees Present:

Sherman Craig, Chairman, Chad Dawson, Barbara Rice, William Thomas, Dan Wilt, Bradley Austin (ESD) and Robert Stegemann (DEC)

Local Government Review Board:

Frederick Monroe, Executive Director

Agency Staff Present:

Terry Martino, James Townsend, Paul Van Cott, Mary Palmer.

Jurisdiction Report

Ms. Feldman noted the increase of Jurisdictional Inquiries received and the decrease of FOIL requests made in 2016 compared to 2015.

Ms. Feldman said that Mr. Van Cott was going to update the Board on FOIL regulations.

Proposed Freedom of Information Law (FOIL) Regulation

Paul Van Cott updated the Board on the status of the proposed FOIL Regulations since they were last presented in May 2016. He noted that Agency rules go far beyond what FOIL requires. He added that FOIL and Committee on Open Government (COG) rules have changed many times, but Agency rules have not, resulting in a number of outdated references and other inconsistencies between our rules and those that we are supposed to follow.

Mr. Van Cott said much of how the Agency administers FOIL in 2017 relies on the web and e-mail, which are tools that the 1979 rules did not contemplate. He said with these issues in mind, staff set 3 goals for our rule making effort. He said the proposed rule

eliminates rules that duplicate substance and procedures in FOIL and/or COG's rules; keeps and updates rules that FOIL requires agencies to have; and directs the public to FOIL and COG's rules for the substance and procedures APA follows in implementing FOIL.

Mr. Van Cott said that additional changes reference the Agency's website and email address used for FOIL requests, and streamlines the fee structure. He said that people can download the form from the website, fill it out and send it in, or they can send an email directly to the email address. Mr. Townsend added that any records that are already on the Agency website are handled outside of FOIL.

Mr. Lussi asked how the Agency handles fees for requests and if people were inclined to use email. Mr. Van Cott said the revised fee structure encourages requests for electronic copies of records by making them free. He said that requests for up to 50 pages of normal-sized documents are also free, and all other fees are discretionary. He pointed out that in most cases it costs more to process a fee than it does for reproduction of the records.

Mr. Van Cott said that the Agency's existing rules only give the counsel seven business days to respond to a FOIL appeal, while FOIL provides 10 business days. He said given the potential complexity and large number of records involved responding to an appeal, our proposed rule would give the counsel the full 10 days that FOIL allows.

Mr. Van Cott said that staff ask the Legal Affairs Committee to recommend the resolution to the full Agency for approval, noting that the resolution would adopt the proposed rule and provide authority to the Chairman and staff to take the necessary steps to fully promulgate the proposed rule.

Ms. Feldman said that this really is important. She said staff have brought FOIL up to date and removed the inconsistencies with all the changes that have been made to FOIL. She added that it has been a lot of work starting out as a Consensus Rule, and by receiving comments on that it had to go through a formal rule making process. She thanked Mr. Van Cott for his hard work and perseverance.

Ms. Feldman asked for a motion to approve the resolution and proceed with the adoption of the FOIL rule making. By motion of Mr. Lussi, seconded by Ms. Allen, all were in favor.

Old Business

None

New Business

None

Karen Feldman, Committee Chair adjourned the meeting at 4:30 pm.