



Testimony to Ad Hoc Committee on  
Public Records Exemptions

Thank you for this opportunity to provide input on the issue of existing and future public records exemptions. My name is Marian Ott and I have the pleasure of being the President of the League of Women Voters of Tennessee. Vivian Shipe, a league member from Knoxville, is the League's representative on the Advisory Committee for Open Government but is unable to be here due to work commitments. I also had the privilege of being the League's representative on the 2008 Joint Legislative Study Committee on Open Government.

The League of Women Voters, as a nonpartisan organization, encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy. OUR VISION is a democracy where every person has the desire, the right, **the knowledge** and the confidence to participate.

Access to public records is an essential component of active, informed citizen participation. The League believes that governmental bodies must protect the citizen's right to know by giving adequate notice of proposed actions, holding open meetings and making public records accessible

We are concerned about the process of establishing exemptions. The League is primarily a volunteer group. We are very appreciative of the TN General Assembly website that allows us to track proposed legislation of interest to our members. However, as a volunteer group, we are dependent on the information on the website – particularly the captions and bill descriptions. When a proposed exemption is not included in the summary information it may

be unnoticed by citizen groups such as the League and as a result not receive an important source of input on the impact of the exemption.

And even when there is explicit consideration of public records exemptions, implementation can have unintended consequences. For example a 2007 law (TN Code 11-1-102 ) which dealt with low level radioactive waste in landfills intended to only exempt information that federal law required be kept exempt. However, years later the statute was reinterpreted to require the previously public information on radioactive waste levels in landfills to be exempt from public records. Fortunately, this situation has been corrected, but it is warning about the importance of providing careful consideration of legislative language when public records exemptions are proposed.

The 2008 Joint Legislative Study Committee on Open Government realized the complexity of determining the appropriateness of public records exemptions. The work of the committee led to the establishment of the Office of Open Records and the Advisory Committee on Open Government. It was envisioned that jointly they would serve as a venue to discuss issues related to open records.

In fact, the 2008 Joint Study Committee Report identified several issues related to open records for further study and review. Among the issues identified for further consideration:

- “Consider and develop procedures for the general assembly to follow for legislation creating new statutory exemptions. The procedures would balance the public necessity for openness with legitimate privacy concerns, anticipate unintended consequences and try and ensure that exemptions are not broader than necessary
- Make new statutory exemptions to the Open Records Law subject to a sunset review”

10 years later, except for this committee right now, there has been no focus on a better process to create new exemptions. And the number of exemptions has grown exponentially. Along with setting up a process of reviewing current exemptions, we think setting up a different process

going forward for new exemptions and creating automatic sunsets for new exemptions could be the most important things this committee does. With careful thought, this committee could have a significant, lasting impact toward preserving open government in Tennessee.

The League of Women Voters of Tennessee supports the recommendations of the Tennessee Coalition for Open Government. Namely:

- That criteria be created to evaluate existing and future exemptions
- Based on these criteria, there should be a Sunset review of all new and/or existing exemptions. The existing 538+ exemptions should be organized by agency or topic to assure stakeholder input. Just as it is a daunting task for the committee to consider the exemptions – it is for volunteers as well.
- Establish a process to evaluate proposed new exemptions. The process for creating new exemptions should allow for adequate public notice – perhaps with a “transparency” notice similar to the fiscal note – and maybe even a review of the proposed exemption by ACOG?
- Finally, we would encourage greater use of the Advisory Committee on Open Government. This group intentionally includes representatives of governmental entities, law enforcement, press, and other citizen groups like the League which should result in robust consideration of the issues concerning the need or appropriateness of public records exemptions. With the recent changes to ACOG which provide more structure, we think that it could provide a more meaningful service to the legislature.

Finally thank you for your time and interest in this very fundamental issue for democracy.

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