



Iowa Legislative Services Agency

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Inside this Addendum to Briefing

- Introduction
- **General Assembly's Open Deliberation a Matter of Constitutional Authority and Separation of Powers**
- **Constitutional Authority to Create Its Own Rules of Proceedings**
- **Legislative Privilege**
- **Attorney-Client Privilege**
- **Legislative Branch Access Policies**
- **Legislative Services Agency Bound to Protect Legislative Privileges**
- **Drafting Files**
- **Computer System Files**

Note to Reader:

Although a briefing may identify issues for consideration by the General Assembly, its contents should not be interpreted as advocating a particular course of action. The reader is cautioned against using information contained in a briefing to draw conclusions as to the legality of a particular behavior or set of circumstances.

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Addendum to Legal Background Briefing on...

Information Technology Access, Confidentiality, and Privacy in the Legislative Environment

Introduction

In November 2003 the Legislative Services Agency published a legal background briefing entitled Information Technology Access, Confidentiality, and Privacy in the Legislative Environment. The 2003 briefing sets out legal principles applicable to the legislative branch with regard to the use, access to, and disclosure of legislative information. The briefing specifically describes separation of powers and legislative privilege issues which are unique to the legislative branch.

This addendum summarizes the legal principles referenced in the 2003 briefing and describes the policies of the Legislative Services Agency that have been adopted to implement these legal principles. This addendum does not describe policies of the Senate or House related to these legal principles.

General Assembly's Open Deliberation a Matter of Constitutional Authority and Separation of Powers

The General Assembly subscribes to open deliberation with regard to law making and public policy debate. Article III, sections 9, 11, and 13 of the Iowa Constitution provide that each house of the

General Assembly has authority to determine its own rules of proceedings, that the members retain certain privileges with regard to legislative acts, and that in each house legislative deliberations not requiring secrecy shall be open. The judicial branch relies on its authority under Article V, sections 1, 4, and 14 of the Iowa Constitution in its exercise of judicial power, issuance of process, and supervision of inferior courts and practice before the courts. The executive power of the state is vested under Article IV, sections 1, 8, and 9 in the Governor who is charged with transacting state executive business and taking care that the laws are faithfully executed. Statutory, rather than constitutional, authority controls public access to executive branch meetings and records through the open meetings and public records laws in Iowa Code chapters 21 and 22.

Constitutional Authority to Create Its Own Rules of Proceedings

The Senate and House of Representatives, as bodies created by the Iowa Constitution, have the constitutional authority and responsibility under Article III, section 9, to determine their own rules of proceedings. The Iowa Supreme Court, in its 1996 case, *Des Moines Register and Tribune Company v. Dwyer* (542 N.W.2d 491), determined that the Senate's policy on public access to telephone records constituted a Senate rule of proceeding and, based upon separation of powers principles and the political question doctrine, was beyond the reach of either the judiciary or the executive branch. This case confirms the legislative branch's authority to determine policies regarding confidentiality and legislative proceedings.

Legislative Privilege

This protection of the lawmaking function is based on legislative privilege or immunity which emanates from the Speech or Debate Clause of the United States Constitution (Article I, section 6) and from Article III, section 11, of the Iowa Constitution, as partially codified in Iowa Code section 2.17. Legislative privilege, as defined by the United States Supreme Court in 1972 in *Gravel v. United States* (408 U.S. 606), protects legislative acts, such as legislative communications, due to their "integral part of the deliberative and communicative process by which members participate in committee House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House." This legislative privilege of members to maintain confidentiality is absolute and specific to each individual legislator and can only be waived by the individual legislator.

Attorney-Client Privilege

The attorney-client privilege also applies in some legislative situations where legislators or legislative staff receive legal advice from attorneys in confidence. The legislator as the client is the only person who can waive this privilege.

Legislative Branch Access Policies

The legislative branch has instituted public access and confidentiality policies to provide access to legislative information and to protect its lawmaking functions. These policies have either been adopted through Senate and House written policy or custom or through the Legislative

Council in its oversight of the central non-partisan staff agencies. This addendum, however, only describes policies relating directly to the Legislative Services Agency.

Legislative Services Agency Bound to Protect Legislative Privileges

Iowa Code section 2A.1(3) protects and preserves the privileges of the legislative branch vis-a-vis the Legislative Services Agency's provision of services, in the following language:

3. The legislative services agency shall provide services to the general assembly in such a manner as to preserve the authority of the senate and the house of representatives to determine their own rules of proceedings and to exercise all other powers necessary for a separate branch of the general assembly of a free and independent state, and to protect the legislative privileges of the members and employees of the general assembly. In providing services to the general assembly, the legislative services agency shall adhere to all applicable policies of the general assembly and its constituent bodies relating to public access to legislative information and related confidentiality restrictions.

bill drafting files are delivered to the State Archives. Legislators can waive confidentiality and allow access to individual files.

Computer System Files

The Legislative Services Agency and its Computer Services Division, which maintains the legislative computer network, have also adopted a policy "to protect the legislative privileges of the members and employees of the General Assembly, including adherence to the public access and confidentiality policies of the General Assembly." Individual legislators control all access to their computer system files and can assert rule of proceeding confidentiality or legislative privilege or waive the confidentiality or privilege and allow access.

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Drafting Files

The Legislative Council has adopted a confidentiality policy for the Legislative Services Agency which covers bill and amendment drafting files. That policy provides for general confidentiality for all amendment drafting files and limited confidentiality for bill drafting files until certain