

2011 HOUSE POLITICAL SUBDIVISIONS

HB 1156

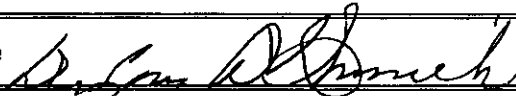
# 2011 HOUSE STANDING COMMITTEE MINUTES

## House Political Subdivisions Committee Prairie Room, State Capitol

HB 1156  
January 20, 2011  
Job #13181

☐ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to the confidentiality of emergency services communication systems and to emergency services communication system coordinators; and to provide a penalty.

### Minutes:

Testimony #1, 2, 3, 4, 5, 6, 7

Chairman Johnson: Opened the hearing on HB 1156.

Rep. Klemin: Introduced the bill. (See testimony #1) Went over and read his testimony.

Rep. Koppelman: If this bill would pass either in this form or your amended form would records be available for criminal cases; could they be subpoenaed under the exempt status.

Rep. Klemin: I am not sure whether they could be subject to subpoena. I think there are some rules relating to exempt records set out somewhere in the Century Code, but off the top of my head I don't know what those are. I would expect if there was a subpoena for exempt records at that point in time the public entity would have the discursion as to whether or not that subpoena material would be released. If not then the agency would have the ability to tell the person submitting the subpoena that those records are going to continue to be exempt and not released. At that point procedurally the person would have the opportunity to go to court enforce the subpoena. You cannot just subpoena any time or anything you want to for any old reason. There are rules you have to follow for subpoenas.

Rep. Beadle: The issue of privacy is not something that is new to ND. Is there a precedent at all of making recordings such as this exempt at the state level like this bill is trying to do based of other states. Is there any precedent at all?

Rep. Klemin: I don't have that information. There maybe people that will follow me that might have dealings with 911 call routinely.

Rep. Heilman: Let's say for example the law enforcement agency that responded to the call messed up somehow and wanted to cover it up and now that the public couldn't have excess to the recording there was no proof of their mess up or whatever. In your

interpretation of the language would there be some way that some other entity could excess that for proof of verification of following procedure or something like that?

Rep. Klemin: It can be released for law enforcement purposes. You are saying in the event of a cover up by law enforcement they would be attempting to hide their misconduct, is that what you are saying. There should be appropriate remedies to handle that sort of a situation.

Rep. Porter: One of my responsibilities to Bismarck and Burleigh is to chair their 911 board. It is a joint board made up of memberships from police, fire, sheriff's department, rural fire and the ambulance service. Our responsibility as a 911 PSAP is to receive 911 calls for Burleigh County and the city of Bismarck. We also record those calls because sometimes if you cannot understand what a person is saying a dispatcher has the ability to hit a key and instantly listen to the tape that was just made so they can try to get the information off that particular tape. There is been some sensationalizing what this bill will actually do. This bill protects the victim of the crime; it protects the person that called 911. It allows them to not be sensationalized by the media or by an internet site or by someone who is just using it for their promotion of their business. I have some examples that will follow and I want to pre warn you that they aren't pretty and they are real and they are on the internet. When you think about someone calling 911 they are requesting specific services in an emergency situation and I am going to give an example of what some of those could be. Someone finds their child not breathing or drought in their swimming pool; they call 911. The dispatcher can walk a person through how to assist in these emergency cases. Think about that family when you are thinking about this law. No matter what the outcome is on that call; having someone who they don't know have excess to that tape to be able to put it out on the internet and play it over and over again. Once it is on the internet it is there forever so there is no stopping how this would take place. We had a bill in front of us a few years ago and dealt with autopsy pictures and this is no different than that one. Those pictures did not belong to the state. They were not protecting them on behalf of the victim nothing so now this is the internet version of an autopsy photo. Go to Google on your computer and type in 911 calls; funny 911 calls or disturbing 911 calls and then type in murder on 911 and listen to a few of those calls

Rep. Shirley Meyer: Would you explain to me how does it get on the internet? Dopes someone make a request or call to the State Radio or PSAP center. It isn't just given out there is it?

Rep. Porter: No. Someone has to request the information. You don't have to have a reason; you don't have to have a connection to the call. It is an open public record; you make the call, they give you the tape. There could be a charge for the services rendered by the dispatch center. The tape is in your hands and you can do with it what you want. There seems to be a morbid subculture that must like to list to them because the one I going to pop up for you has been listened to 43,000 times. Played a computer version of some 911 calls for the committee to hear. I did that by typing in on Utube 911 murder calls and that is where it was at. When Mike Dannenfelzer came to me with this and said it was disturbing that these records could be available to anyone at any time without giving any regard to the victims of the crimes that are being committed or without any regard to the outcome of the situation in the case of a child dying or the traumatic injuries involved in a motor vehicle crash I felt completed to bring a bill forward. I don't disagree that the tapes

be available, but I think it should be restricted to who they are available to. I don't think they should be able to be used by just anyone without that victim's consent.

Rep. Koppelman: Are you satisfied that law enforcement could still obtain these records if they needed them or prosecution or defense in the criminal case?

Rep. Porter: I want to make sure that is available. I certainly appreciate what the news media does and what their jobs are but I also think in the sensationalizing of a crime there needs to be a line drawn at least giving the victim the opportunity to say yes or not if they want that tape released. I can take it to the news media if I want to but it is with my full knowledge and understanding that I want to be part of it.

Rep. Koppelman: I am very supportive of our open records and open meeting laws in ND, but I am also the sponsor of the autopsy photo bill that you referred to so I think a balance has to be struck. Do you think this struck the right balance between the people's right to know and their right to privacy and how we deal with that in public policy and with public records?

Rep. Porter: I think it does. It says there are some things that need to be obtained before they can be used. By having the individual's approval, I think goes a long ways in protecting them in the future from being yet a victim every day while somebody is listening to the tape. Discussed how fast something can hit on the computer and be worldwide.

Rep. Kilichowski: Is there any other state that excludes these 911 calls?

Rep. Porter: I am not aware of that answer.

Rep. Kilichowski: How many calls in a week are requested by somebody other than a department or an attorney if it is going into litigation?

Rep. Porter: If it is something going into litigation that there is a victim to case that to go into litigation and under this law would have the right to get this tape. I don't know how many requests there are.

Rep. Mock: In Subsection 3 it adds the language personal information, identify or telephone number and in the audio that you played for us none of that information was in there. I understand Subsection 4 would require that they simply cannot be released without the victim or legal representative; but if the purpose of this is to prevent information from being leaked out and being used over the internet; none of that information can be linked to one individual. Isn't this a dangerous precedent we are setting with any open records?

Rep. Porter: I would have to disagree. I think that they can be linked. I don't think it takes a rock scientist to link them. I think the media has enough excess to enough information that there are enough things going on in a community that someone could figure it out.

Rep. Mock: I think it is terrible that people misuse the 911 calls. There are so many other open records out there that could be misused; even court proceedings or divorce

proceedings or Supreme Court proceedings. As a sponsor I want to make sure we are not drawing the line in the wrong spot.

Rep. Porter: You are never going to have enough laws to stop everything. Someone can go and recreate something on their own they can certainly do that. I don't know if that solves anything. I do think when you have the actual call and the actual situation without then having access to it would be tough for them to put that same emotion and fear back on to a tap. We are dealing with reality; not Hollywood sensationalism.

Rep. Zaiser: Assuming there are states that have not provided these preclusion to the open records; why would a state do so?

Rep. Porter: I have to go back to Rep. Koppelman autopsy. People have been doing autopsies for a long time and all of a sudden there was a need for a law to stop people from publishing pictures of any autopsies. I think it goes to the same tone.

Rep. Hatelstad: Are you aware of any tapes that have been sensationalized by the news media or perhaps an incident of the media using the tape?

Rep. Porter: Not right off hand.

Rep. Beadle: Page 2 lines 19; you said could be used for public safety purposes and for law enforcement, fire and medical and emergency services. Do you know what the intent was in the phase public service safety purposes?

Rep. Porter: I would leave that for Rep. Klemin or Mike Dannenfelzer.

Rep. Heilman: I don't know how 911 calls are used for insurance claims, but would this affect that process.

Rep. Porter: In that situation you are talking about a crime that has been committed so it would be investigated by law enforcement or fire marshal as a crime so I would not see that as being needed by the insurance company to settle a claim. We are protecting the victim of the crime that is the intent of this bill.

Rep. Devlin: Do you see a danger if domestic disputes where the victim, after the fact, is too scared to talk again. I could see cases where the victim would not dare give permission to have this released later.

Rep. Porter: I am sure there could always be cohesion of some type that could exist. The whole next level of crime that is being committed is the threats to not release the tape because you now control it. This could be used as the victim, but law enforcement should follow through with it.

Rep. Shirley Meyer: Is there a required time limit on how long these audio recording are kept?

Rep. Porter: I do not know. I think it is an individual policy by each PSAP.

Rep. Koppelman: Are these tapes typically used at all after the initial purpose of dispatching that services etc. Are they deleted regularly?

Rep. Porter: I would believe that the vast majority of them are deleted regularly after so many days. Law enforcement would ask for tapes right away if they needed them to be part of their investigation so they could use it in the trail. I think each PSAP has their own policy on how long they would keep them. 99.9% of them have no reason to be kept.

Sen. Olafson: I am a co sponsor on the bill and to express some of the concerns I have and some have already been expressed and asked that you address some of those concerns. I certainly do not have formal training in the law or legal expertise the Rep. Klemin has nor do I have experience with emergency type services that Rep. Porter has. When Rep. Klemin brought the bill to me I immediately in my mind formed a scenario where a victim calls 911 and is screaming that my ex boyfriend is at the door and he has a gun and the next sound you hear is the sound of the door crashing in; gunshots are fired; the victim is screaming and we later learn that the victim has been killed. As things stand right now anyone with morbid curiosity off the street can walk in and get the tape and post it all over the internet and have it go viral and I think that is wrong and should not be allowed. I don't have great concerns about the news media having excess to the 911 tapes. I think we are very fortunate to have a very responsible news media who I think are sensitive to the victims of these terrible crimes. I think they understand if they don't we will be back next session with another bill. We need to find that balance where we are not allowing a John Doe off the street motivated by morbid curiosity to settle a grudge or someone who really dislikes another individual and knows that they have made an embarrassing 911 call and they want to get even.

Mike Dannenfelzer, Manager of the Combined Communications Center in Bismarck, ND: I am here in support of HB 1156. (See testimony #2) Also attached is a letter from the National Emergency Number Association that outlines some additional issues and support of this bill. (See testimony #3).

Rep. Shirley Meyer: Would you expound a little bit; is there a time limitation or if it is up to the PSAP center to destroy records whenever they want. Does it take place when someone comes in for a tape we can say well we destroyed it. Does that take place?

Mike Dannenfelzer: There really is no concrete length of time that these PSAP keeps the records the records. There is a requirement that we define a retention time for our records, but our center, as an example, we have about a six month time of records because we use a digital media and we do a tape backup once. Once the oldest on their gets to the end of the buffer, it gets overwritten. If they have been requested for evidence in a trail or for whatever reason a tape has been made those are set aside and kept. Obviously a case that happened 10 years ago; that recording does not exist.

Rep. Shirley Meyer: In that case the operator of the PSAP; without a request, do they ever make the call that I am going to save this one so I know where it is? Like it is a murder or violent crime or something and neither perhaps neither the police nor anyone else has requested it. Is there a conscience choice made?

Mike Dannenfelzer: When we have a case that rises to the level of an arrest; in most instances we get a request from a law enforcement agency within a day for those reports. We make a copy of that report and they then take custody of that report. I would say we have a pretty good idea what tapes are going to be requested so if a call does occur.

Rep. Mock: In your examples your first one references a situation about three years ago you had a 911 recording. You could hear the fist of the suspect hitting the victim in a domestic assault and you listed here if you listen close enough it is like facial bones breaking through the receiver. You received a request from outside ND, but it was not released to the person making the request on the instruction of the Burleigh County State's Attorney. How was that record exempt?

Mike Dannenfelzer: The States Attorney advises me and they can then make that argument. Attorneys have different opinions obviously on what is and what is not part of an exemption. The States Attorney's office takes a little more perspective if it involves part of an investigation it is the whole record. There are things in a recording that may not be covered under current exemptions and that is where you get into an issue of editing when it comes to releases.

Rep. Mock: Sounds like you may not be the person to ask but this seems to have done what the intent of the bill was is to protect a victim from open records request.

Rep. Hatelstad: I asked Mr. Porter if he was aware of any incident that has been sensationalized here in ND. How about during your experience are you aware of any incident that has been sensationalized? In your time here are you aware of any?

Mike Dannenfelzer: No. We have always had a very good relationship with the media. They are not the target of this bill. It is simply the excess anyone has for this record.

Rep. Koppelman: Might the reminder that this is public information and anyone can request it has a chilling effect even on people reporting such incidents thinking well I don't want to get involved who might normally pick up the phone and call 911 and say there is something here you should know about. Might it actually hurt public safety?

Mike Dannenfelzer: I don't subscribe to some peoples theory on the chilling effect. I think in most circumstances most people when they encounter a situation will stop and call 911 because they know that number. In some other states where they have done studies in the inner cities where there is a high incident of crime and a lower incidents of reporting one of their concerns is the retaliation of gangs. They are open records in that state.

Rep. Koppelman: In your testimony on the bottom of page 1 you say that a transcript provides a better way and it is offered in the bill. As I read the bill the reference to the transcript makes that exempt also so am I misunderstanding what the bill does?

Mike Dannenfelzer: No I put that in but today we don't have it. We can certainly provide a transcript today. Within the bill it makes the audio and transcript except. There may be circumstances based on an ongoing criminal investigation or things that you would not want

to release any of that so putting the exemption in the hands of the public would allow us to release it or hold a backup if we have to based on some other reason.

Rep. Koppelman: Let's say the media asked the 911 call regarding the shooting in south Bismarck last night for example; and the law somehow would allow you to create a synopsis and was reported by a citizen at 8:02 and they reported hearing three shots and the police arrived 15 minutes later. Would you object to that type of thing being open as long as the names and addresses and the things that are currently allowed to repack could be or would you prefer to just have the control to say yes or no?

Mike Dannenfelzer: Typically in a situation like that the law enforcement will take the lead roll and be providing press releases or information to the media. It was in the Fargo Forum article talking about the recording. That the recording provides a better detail than the police report. If that is the case we have the bill on the table now to be discussed there might be a reason to do this.

Rep. Kilichowski: Do you know of any other states that have exempted emergency calls?

Mike Dannenfelzer: The last count I believe was 10 states that currently have something on the books. Six of them made them confidential. The other four or five had made them restricted in some way. Over the last few years there have been several states that have bills in but I don't know that status of those bills.

Rep. Kilichowski: Do you think this is a big problem in ND?

Mike Dannenfelzer: I think from the standpoint of the ability of anyone to come in and get a copy of the report and the fact that some of the circumstances out in. Jerry Bergquist from Jamestown is not here today. He had an instance where a person reported his boss getting in a vehicle and driving intoxicated. They found out who it was and he lost his job for doing what is right as far as public safety goes. That was not a media request so it isn't just the issue of the media. The issue where it comes to media is national and certainly in ND we don't have an issue with it as of yet.

Rep. Mock: If I were to call and request a 911 call can you disclose the name and number of the person reporting even if it wasn't included like the caller ID stamp that came in maybe was not included on the recording?

Mike Dannenfelzer: It depends on the situation. There are certain exemptions that apply under certain different cases so if it is a domestic abuse situation they may have different exemptions that apply compared to a juvenile case. If I remember correctly telephone numbers are protected in a lot of cases. The difficulty is that you are applying different exemptions to different calls.

Rep. Mock: Can you search activity at an address and not a specific call? Do you have any records over the last week where you dispatched police to 505 State Street without giving the recording? Can you just answer that question to the person calling?



Mike Dannenfelzer: Yes. We have the ability to go back and run history based on person, places, vehicles, addresses and common locations and things like that. If there were 10 calls in the last two years at that location without providing other things if that is what they are requesting.

Rep. Mock: If this were to pass this would still be the case. You just wouldn't be able to give the recordings.

Mike Dannenfelzer: Yes.

Rep. Klemin: We had a question about whether these 911 audio recordings could be kept to keep the public from knowing of a police cover up. Is there anything in this bill that allows the police department to have a say in whether these recordings are released or not?

Mike Dannenfelzer: No not really. When we added the consent to the caller we are going after that very specific thing. I am not going to lie to you and say we do not make mistakes bad, but if they happen the caller can consent to that and if it results in a law suit and becomes public it becomes public. If it is a mistake it needs to be corrected.

Rep. Klemin: Your 911 center is not run by the police department. Also there was a question about some of the terminology that was used in the exceptions where it says on line 19, maybe used only for public safety purposes. What was the intention for that?

Mike Dannenfelzer: I would fully agree if it is the desire of the committee for this section for on public safety purposes and needs. The intent in talking with the Attorney General's office during the drafting of the bill is fairly broad to include evidentially prosecution. If it needs to be used to help identify a suspect and be played over the air it could be used for that purpose even though it is not publically released. One of the training we have the staff do is it is called police legal scientist. It is a monthly analysis of actually calls that have occurred throughout the country. We obviously want our calls available for that to be analyses and used to retain telecommunicator across the country. If that needs to be clarified that can be an amendment.

Rep. Klemin: One concern I have is what if the caller is not the victim; rather the caller is the criminal and the caller wants to preclude the prosecution from using that audio recording at the criminal's trial. Can the criminal keep that audio recording out of evidence by not consenting?

Mike Dannenfelzer: I would say no. If an amendment needs to be made to make that clear that if the actually suspect is the caller, if it needs to be made clearer for law enforcement for prosecution that they can have those recordings. That was not the intention of the bill.

Opposition:

Jack McDonald: (See testimony #4, #5 & # 6) I think there is some room in this bill where you might say that the transcripts would be available but not the audio tapes. I did try to do research on what other states have done. Mike gave a good explanation on this. There

are about 10 states and according to his testimony in six states the records are closed; four of the states they vary. There is one little chart that is about nine months old that covers Alabama, Florida, Kentucky, Ohio and Wisconsin and I will give this out. Transcripts are available in five of those cases. If the fear that the audio recording being on the internet and played over and over again maybe there is not a reason to say the written transcript could not be released. If they release the written transcript they could still protect it under the current state laws. The consent of the person making the it say that it could be released upon the consent that is certainly true, but we know that the consent is not likely to be given if you can find the person who made that call. A lot of the times these calls are being made and sometimes they go to a specific address and other times you are not given an address. You are just phoning in. So how would you get the consent of the person making the call is not a viable option? I would ask that you take a look at the issue of the transcripts. These are made exempt and the language of our law means their release is in the discretion of the record holder. At the discretion of the 911 center they could certainly release those tapes. I would like to see this bill be defeated. I don't think it is needed at this time. I would be glad to work with the committee and with the sponsors of the bill to see if you couldn't work something around that would make the transcripts available. Another option would be to allow the tapes to be heard, but not released. Maybe there could be a consideration that you listen to the tapes, but not get a copy of them.

Rep. Heilman: You made reference on your second point on your written testimony about the 911 events. My interpellation of the public safety purposes of the bill that is what would qualify for me; hey somebody is flying planes into buildings. It is public safety and is that how you see it?

Jack McDonald: Possibly. The phrase public safety in the Century Code means somewhat like you said, but it also could mean to warn people at the same time. I think the intent in this case was to deal with public safety other than law enforcement or fire people. I think it was intended to cover those people as well as law enforcement, medical and airports security is a public safety issue.

Rep. Koppelman: In the testimony you handed out you have on the back side an editorial from a newspaper on which you are quoted and these aren't your words, but part of the editorial says the underlining motivation is not privacy, it is more likely to shield first responders, law enforcement, and others in official capacities from public scrutiny of their work. Is that your position?

Jack McDonald: I included that editorial because it made some of the points that I am making here and it quoted me accurately as it always does. I am not necessarily espousing all those things in the article. I will say that is a possibility whenever there are closed records that always raise that issue. I am espousing what I said in my testimony.

Rep. Koppelman: If this bill were to pass for purposes of investigating a crime and legal proceedings; is it your understanding of exempt records that they are excluded from subpoena and should some language be added to clarify that if so?

Jack McDonald: First of all I don't think anything in this bill would exempt these records from a court order or subpoena. I think that is understood can trump this kind of language.

Because the definition of exempt it would be in the discretion of the 911 center so it does say it can be used for law enforcement services. You could make it very clear by putting it in.

Rep. Koppelman: would suffice in our view if it would be a blow by blow explanation of what the call contains versus the persons actual words?

Jack McDonald: I wouldn't quite agree on that because the synopsis could be like a police report or similar investigative report. I think the importance of them would be the actual transcript. What was said? In the other states that I mentioned earlier they talk about transcripts and not about synopsis?

Rep. Shirley Meyer: Are transcripts done at the same time the 911 call done or are transcripts never done until there is a request of that 911 recording?

Jack McDonald: You might want to ask Mike about that. It depends maybe upon the facility involved and the equipment they have.

Rep. Klemin: I think all your testimony seems to be directed at the new Subsection 4 on the audio recording. I think you noted that some of these things are already in other statute that I cited myself. Looking at Subsection 3 what would be your concern about the additional language there that would make the personal information identify and telephone number subject to being redacted as well as the address.

Jack McDonald: When I looked at the bill I looked on it as the whole so if the bill passed as it is written Subsection 3 wouldn't make much difference because everything is closed so we wouldn't get anything so it did not make any difference if you added personnel information because we aren't going to get anything from them. I guess I did not look at it that much. If Subsection 4 was not there I would probably oppose that, but may be not as much as we would have. If Subsection 4 stated that we could get the information but just that information redacted would be fine.

Rep. Klemin: Subsection 3 is the open record law and to mean a lot more than audio recordings. What is your concern about other personnel information being redacted?

Jack McDonald: My concern would be what is defined as personnel information. There is another section of the Century Code in the open record law that does somewhat define personnel information.

Rep. Klemin: So this does put it all in one place what is now found in several other places if you were to look for them.

Jack McDonald: It does, but it only puts in the context of these records. This section would apply use to the 911 records.

Chad Nodland, as a citizen, lawyer and a blogger: As a citizen I can tell you that not long ago I was behind a car that ran a red light at the intersection of expressway and 9<sup>th</sup> street in Bismarck. First thing I did was call 911 and I reported it. As I was on the phone talking to

the dispatcher I relayed information as it was happening; I gave the license plate number for the vehicle in front of me and gave my impressions as to whether people in either of the two people would have been injured. I described things as they were happening and it could have been available to anyone later including an insurance company; a representative, lawyer or injured parties. I probably gave my name; and so if somebody later would have wanted to get a copy of that recording, under current status of our law they would not have had a problem. If HB 1156 is adopted, as a lawyer if I would have wanted to track down the phone call later on the problem that I would have had would have been; identify of the caller could be withheld from the insurance agent or lawyer or other person investigating the accident. No one would be able to get my name and they are not going to get the recording unless at the discussion of the dispatcher they decide to give it to the insurance representative or the injured party who doesn't remember what happened. The other question was can't people just get them under subpoena's. Many personnel injury cases settle long before there is a lawsuit initiated. As a blogger I have been interviewed twice specifically about this bill. As a blogger I obtained a copy of the recording of the 911 call made by Rep. Dave Weiler's wife and both of the reporters indicated that those recordings had been posted on my website. I want to make perfectly clear that I never posted the audio recordings on my website. The reason I say that this is a solution in search of a problem. There is no problem right now even with the evil internet everyone is afraid of apparently. The 911 call was not released. I did obtain it; some of the information had already been edited out, but the main point is the problem we are supposed to be addressing is apparently my release of this audio recording and not a problem. There were a number of audio recording played for you by Rep. Porter. It was a phone call from the perpetrator. The woman called and said I killed my children. What this bill would do it is written to protect the perpetrator. That is a difficult thing to decide who it the victim or the perpetrator; judges and juries sometimes have to decide who is who. I think there is a problem giving that authority to the 911 centers. As a lawyer sometimes the statements made in the recording of the 911 phone call is different from the information they provide in the depiction six months later or trail or with the police officer two days later. The recording is the best evidence. To allow the best evidence to allow it to be withheld from people who are injured and lost their memory it is a bad position for the state to be in.

Kris Kitko: (See testimony #7).

Rep. Shirley Meyer: Who is the transcript handled when we are doing an audio recording. Are they done right away?

Mike Dannenfelzer: I think in the 10 years I have been there we has had the request for one transcript. Transcripts aren't requested because they need to be audio. It has been done by hand. Today I would be looking at something that could do that automatically.

Rep. Hatelstad: If this was an accommodation to what the news media is interested in can you give us an idea of time and cost, trouble and difficulty in doing this?

Mike Dannenfelzer: It would not be a great cost to do this. Some of the other centers support this whole bill. We would all figure out ways that the transcripts get done.

Rep. Koppelman: Is that voice recognition you are talking about?

Mike Dannenfelzer: We would have to look into that.

Rep. Klemin: Subsection 3 of this bill. What kind of records is covered under this section?

Mike Dannenfelzer: All that information including the name, phone number etc. becomes part of that police record for law enforcement.

Rep. Klemin: What kind of records is now covered by this law?

Mike Dannenfelzer: We have electronic and paper records; any digital record that is not an audio file.

Rep. Klemin: Is there some capability to know the phone number of the person that was calling in on 911?

Mike Dannenfelzer: Yes there are some technical problems with that; those with uninitialized phones that can still call 911 we basically get an electronic serial number, but not a phone number.

Rep. Klemin: You need to know the phone number in case the person cannot respond and you need to know who it is.

Rep. Beadle: What about the idea of insurance agents and stuff so they get information to process a claim accurately? Based on your experience has requests by insurance providers been made for these audio recordings.

Mike Dannenfelzer: If there is not case originally involved in that accident or whatever it was that record will no longer exist once that civil incident goes to trial. The requests have come well after our ability to keep those records.

Rep. Heilman: Are you representing yourself or the combined communication center?

Mike Dannenfelzer: I am the manger of the Combined Communication Center; the city of Bismarck is supporting this bill. We are a combined city and county entity.

Hearing closed.

# 2011 HOUSE STANDING COMMITTEE MINUTES

## House Political Subdivisions Committee Prairie Room, State Capitol

HB 1156  
January 28, 2011  
Job # 13637

☐ Conference Committee

Committee Clerk Signature



### Minutes:

Amendment #1

Chairman Johnson: reopened the hearing on HB 1156. That is the 911 audio.

Rep. Klemin: (Handed out amendment #1). These amendments are ones I worked on with Jack McDonald who is representing the newspapers and broadcasters. It would amend Subjection 4 of the bill. Went over the amendment and how it would read now.

Rep. Heilman: We are talking about a person listening to the audio recording. Basically that would be at the site.

Rep. Klemin: They would not be provided with a copy of the audio.

Rep. Heilman: Can this be misunderstood and say I want to listen to it over the phone and somebody sets there with a recording device...

Rep. Klemin: I think the agencies have enough discursion to say you want to listen to it fine; we will make it available to you here. I don't think you need to say those details in the bill itself.

Rep. Shirley Meyer: Currently when you go in at State Radio or these PSAP places it is so busy, is that the procedure where you go in there and set down and they let you listen to this 911 call? I was under the assumption if you want to listen to one of these they make you a digital copy and give it to you.

Rep. Klemin: Exactly and that is what this whole bill is about; we don't want to give digital copies to people that they can then put on the internet.

Rep. Shirley Meyer: There is no place currently to listen to this. Where do you do this at?

Rep. Klemin: It did not seem to be a problem with Burleigh County.

Rep. Mock: As long as the recording is not released; with this amendment, the PSAP operator could go with the individual to a conference room or lobby or somewhere and play the tape so that they can play it for the investigation so as long as they do not give out possession of the audio recording. Would that be accurate Rep. Klemin?

Rep. Klemin: That could happen. I don't think it is our duty to work out those kinds of administrative details as to how they do the listening.

Rep. Mock: would that be permissive and up to the facility to decide?

Rep. Klemin: Yes I think so.

Rep. Hatelstad: Rep. Klemin should we put in here that you could listen to the tape, but cannot make a recording?

Rep. Klemin: You are suggesting an amendment to this that would say however a person may listen to the audio recording upon record, but may not make a recording of it? I think that is a good idea.

Rep. Zaiser: I agree with Rep. Hatelstad that it should be clearly identified. I don't know if we need a penalty attached to that.

Rep. Klemin: there is probably a penalty somewhere already in the statute.

Rep. Beadle: Do you want to consider the written consent of the person at all or not. Is that something we want to address?

Rep. Klemin: It is still an exempt record which gives the agency discretion if it wants to turn over the audio recording to anybody.

Rep. Koppelman: You are eliminating the remainder of the language on 19-23. Does that prohibit law enforcement from having this? If we say you can't share that recording or nobody can listen to it does that mean no one can listen to it including law enforcement?

Rep. Klemin: It is an exempt record so it means it is not confidential in that kind of situation.

Chairman Johnson: Discussion on amendment wording.

Rep. Koppelman: I mentioned this discussion to Rep. Porter and Mr. Dannenfelzer to them that this was a possible amendment to the bill. Would a transcript not suffice? Would there be any good reason why anyone would need the official recording if the transcript was made public and it is still an exempt record at the discussion of the agency they can allow that. It might be easier to give them a typed copy other than a recording for convenience at the site.

Rep. Zaiser: I think that would suffice in most cases, but there might be situations where there would be some questions about really what was said or the details and there might be a dispute and they might want the audio portion to collaborate so there might be reasons for it.

Rep. Klemin: I did go over this with all interested people and they are all in agreement.

Chairman Johnson: Take a look at the amendment and put in but may not copy or record the audio after request.

Do Pass Motion on the amendment made By Rep. Maragos: Seconded by Rep. Koppelman: to adopt the amendment with the additional language in it.

Voice Vote Carried.

Do Pass As Amended By Rep. Koppelman: Seconded by Rep. Hatelstad:

Discussion:

Chairman Johnson: the amendment says you can listen to it while it is still in the position of the PSAP or State Radio but you can't make a recording of it you can get a transcript of it and take it with you.

Rep. Klemin: It is an exempt record so the audio recording could be released also at the discussion of the agency.

Rep. Shirley Meyer: I plan to oppose this simply because I don't think we have a problem here. When I U tubed I could not find one 911 call that has ever been released in ND. Why make more regulations?

Vote: 10 Yes 3 No 1 Absent Carrier: Rep. Hatelstad:

Hearing closed.



January 28, 2011

VR  
1/28/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1156

Page 2, line 18, remove ", or a written transcript of such an audio recording,"

Page 2, line 19, remove "and may be used only for public safety purposes and for"

Page 2, remove lines 20 through 22

Page 2, line 23, remove "the person that made the request or report without the written consent of that person"

Page 2, line 23, after the underscored period insert "However, upon request, a person may listen to the audio recording, but may not copy or record the audio. A person also may request a written transcript of the audio recording, which must be provided to the person within a reasonable time."

Renumber accordingly

Date: 1-28-11  
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1156

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☐ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt  
Amendment

☐ Rerefer to Appropriations ☐ Reconsider \_\_\_\_\_

Motion Made By Rep. Maragos Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Kilichowski		
Vice Chairman Hatelstad			Rep. Shirley Meyer		
Rep. Beadle			Rep. Mock		
Rep. Devlin			Rep. Zaiser		
Rep. Heilman					
Rep. Klemin					
Rep. Koppelman					
Rep. Kretschmar					
Rep. Maragos					
Rep. Pietsch					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*Vote  
Vote  
Carried!*

Date: 1-28-11  
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1156

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt  
Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Koppelman Seconded By Rep. Hatelstad

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson	✓		Rep. Kilichowski	✓	
Vice Chairman Hatelstad	✓		Rep. Shirley Meyer		✓
Rep. Beadle	✓		Rep. Mock		✓
Rep. Devlin		✓	Rep. Zaiser	✓	
Rep. Heilman	✓				
Rep. Klemm	✓				
Rep. Koppelman	✓				
Rep. Kretschmar					
Rep. Maragos	✓				
Rep. Pietsch	✓				

Total (Yes) 10 No 3

Absent 1

Floor Assignment Rep. Hatelstad

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1156: Political Subdivisions Committee (Rep. N. Johnson, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1156 was placed on the Sixth order on the calendar.

Page 2, line 18, remove ", or a written transcript of such an audio recording."

Page 2, line 19, remove "and may be used only for public safety purposes and for"

Page 2, remove lines 20 through 22

Page 2, line 23, remove "the person that made the request or report without the written consent of that person"

Page 2, line 23, after the underscored period insert "However, upon request, a person may listen to the audio recording, but may not copy or record the audio. A person also may request a written transcript of the audio recording, which must be provided to the person within a reasonable time."

Renumber accordingly

2011 SENATE HUMAN SERVICES

HB 1156

# 2011 SENATE STANDING COMMITTEE MINUTES

## Senate Human Services Committee Red River Room, State Capitol

HB 1156  
3-8-2011  
Job Number 15130

☐ Conference Committee

Committee Clerk Signature

*T. Anderson*

### Explanation or reason for introduction of bill/resolution:

Relating to the confidentiality of emergency services communication systems and to emergency services communication system coordinators.

### Minutes:

Attachments

**Senator Judy Lee** opened the hearing on HB 1156.

**Rep. Lawrence Klemin** (District 47) testified in support of HB 1156. Attachment #1

**Senator Dick Dever** stated that sometimes when he sees bills that exempt records he sees special reference made to the ability to subpoena to use it in court etc. He asked if that is a provision elsewhere.

**Rep. Klemin** thought they could still be subject to subpoena for use in court even as an exempt record but not as a confidential record.

**Senator Spencer Berry** asked if there is a reason they want to use the exempt status versus the confidential status.

**Rep. Klemin** thought the reason might be there may not be reason to keep the record confidential in many cases and it could be released in the discretion of the public agency. If it was confidential then the public agency would not have that discretion. It would have to be kept confidential and couldn't be released.

He also pointed out that if they decide to release it they can prepare a written transcript for the person who wants it.

**Senator Spencer Berry** referenced the testimony that said in six other states the recordings are confidential. Does that mean they are exempt? Is it congruent language?

**Rep. Klemin** responded that the majority of the states now are open records. The six states that are mentioned are confidential.

**Rep. Todd Porter** (District 34) testified in support of HB 1156 as a co-sponsor. He explained that the original bill was more restrictive and was compromised with the media.

One of his primary concerns with the purpose for this bill is that any person for any reason could get a copy of 911 calls and do whatever they want with it.

Under the current form the tape is still available to the media for them to listen to and take notes off but that tragedy that prompted the individual to call 911 is no longer to be rebroadcasted in any way, shape, or form. That is an important component of this piece of legislation.

He urged a do pass.

**Senator Dick Dever** asked who is tuned in to 911 calls.

**Rep. Porter** said that is between the public service answering point and the person on the phone. There is no scan ability of that side of the conversation.

**Senator Dick Dever** asked at what point they are dispatching the services.

**Rep. Porter** replied that, depending on the public service answering point protocols, they will gather enough information to send out a quick dispatch and then follow up with more information as they get it.

Depending on the scenario, they stay on the phone up to the point that whoever they are calling for arrives on the scene.

Discussion followed on tracking of calls.

**Senator Tim Mathern** asked if this makes it available to everyone.

**Rep. Porter** pointed to page 2 where the language is and said it is as broad as a person.

Discussion followed on removing that language. It probably is a good starting point to live with for a few years to see how it works and then make the determination in the future.

There is a fine line what is available to the public and what an exempt or closed record is.

**Senator Gerald Uglem** stated that section 3 exempts personal information and asked if that is exempted out of the audio as well.

**Rep. Porter** said it was his understanding that it is but sometimes it doesn't take much to find out who was behind the phone call. He gave examples.

**Mike Dannenfelzer** (Manager of the Bismarck/Burleigh Combined Communications Center) testified in support of HB 1156. Attachment #2

**Senator Tim Mathern** referred to line 13 on page 2 the words "personal information" and asked how he would define that.

**Mr. Dannenfelzer** responded that personal information would be fairly broad. They would have to take a look at information that could be misused by another. As a group of 911 answering points it will be their responsibility to develop a policy that fits and everybody applies to those cases.

**Jack McDonald** (ND Newspaper/ND Broadcaster Association) testified in opposition to HB 1156. He reported that they did not favor this bill at all on the House side. They did work hard in the House and now think it is a workable bill right now. This hasn't been a serious problem in ND. It is reacting to things out of state. There are already laws on the books that define what personal information is. There is a newsworthy use and he cited different situations. There is already a general penalty in state law for not following state law. Another issue is that it does involve state money and officials and agencies etc. so there is a sense that the public deserves to know how these people are working and responding to things.

**Senator Tim Mathern** asked if he was suggesting changes to this since he thought this was a workable bill. He wondered what workable means.

**Mr. McDonald** said what he meant by workable is that it is a bill that can work for the objective that it was aimed to meet. They didn't see a need for the bill in the House. They recognized the intent of the sponsors and worked hard to get it in a shape where it is, at least, not as objectionable on their part. He wasn't saying it is a perfect bill but he is not offering amendments at this time.

There was no further testimony. The hearing on HB 1156 was closed.

Committee discussion indicated they would like to see this tougher but it probably is as good as it can be right now. Section 4 – redacting information – was discussed.



## 2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee  
Red River Room, State Capitol

HB 1156  
3-9-2011  
Job Number 15220

☐ Conference Committee

Committee Clerk Signature

*ND Monson*

**Explanation or reason for introduction of bill/resolution:**

**Minutes:**

**Senator Judy Lee** opened committee discussion on HB 1156.

**Senator Tim Mathern** reported that he talked to Jack McDonald who said he would like to see the word "identity" out.

Discussion followed that a lot of work had been done on this in the House and the fact that Rep. Porter seemed comfortable with it as it is.

**Senator Tim Mathern** reported that part of his discussion with Mr. McDonald was that one of their issues was why a bill was being passed when there hasn't been a problem with this in ND.

The committee discussed that this is an effort to try to head off problems. Generally there aren't sensationalist media in ND but now there are some alternative media coming into play.

**Senator Spencer Berry** moved a Do Pass.

Seconded by **Senator Dick Dever**.

Roll call vote 5-0-0 – **Motion carried**.

Carrier is **Senator Dick Dever**.

Date: 3-9-2011

Roll Call Vote # \_\_\_\_\_

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1156

Senate HUMAN SERVICES

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Sen. Berry Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		Sen. Tim Mathern	✓	
Sen. Dick Dever	✓				
Sen. Gerald Uglem, V. Chair	✓				
Sen. Spencer Berry	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment Sen. Dever

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1156, as engrossed: Human Services Committee (Sen. J. Lee, Chairman)**  
recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed HB 1156 was placed on the Fourteenth order on the calendar.

**2011 TESTIMONY**

**HB 1156**

#1

not easy  
to simplify  
now

**Renumber accordingly**

#1

HOUSE BILL 1156  
TESTIMONY OF REP. LAWRENCE R. KLEMIN  
HOUSE POLITICAL SUBDIVISIONS COMMITTEE  
JANUARY 20, 2011

Madame Chairman and members of the committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am appearing before you today in support of House Bill 1156.

House Bill 1156 relates to emergency 911 services. The bill first makes some terminology amendments in the law in Section 1, subsections 1 through 3 of Section 2, and in Section 3 consistent with existing terminology. A "911 coordinator" is now referred to as an "emergency services communication system coordinator". An "answering point" is changed to a "public service answering point" or PSAP.

Subsection 3 of Section 2 on page 2, lines 12 through 16, currently provides that a record obtained for the purpose of providing emergency services which reveals the address of the person requesting the emergency services or reporting an emergency is exempt and that the address may be redacted before the record is released. The amendment to subsection 3 in the bill provides that personal information contained in the record, and the identity or telephone number of the person is also exempt.

Subsection 4 of Section 2 is new and provides that an audio recording of a 911 call, or a transcript of the audio recording, is exempt and may not be released without the consent of the person who made the 911 call. There is a limited exception for public safety purposes and for the delivery of law enforcement, fire, medical, or other emergency services.

911 audio recordings are currently open records under North Dakota law and must be released to anyone upon request. This bill will change that and will make 911 audio recordings exempt.

Article XI, Section 6 of the North Dakota Constitution provides:

Section 6. [Open records]

**Unless otherwise provided by law**, all records of public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours. (emphasis added)

This open records provision of the Constitution is also set out in Section 44-04-18 of the North Dakota Century Code. Both the Constitution and the statute permit the

Legislature to provide otherwise by law. Under North Dakota law, a public record is either an open record, which is the general rule, or it is a confidential record, or it is an exempt record.

A confidential record is defined in Section 44-04-17.1(3) as all or part of a record that is either expressly declared confidential or is prohibited from being open to the public. An exempt record is defined in Section 44-04-17.1(5) as all or part of a record that is neither required by law to be open to the public, nor is confidential, but may be open in the discretion of the public entity.

There are numerous situations in which the Legislature has expressly declared certain records to be either confidential or exempt under the law as set out in Sections 44-04-18.1 through 44-04-18.21. For example:

- Personal, medical, or employee assistance records of public employees are confidential.
- Records of juvenile court supervisors, probation officers, law enforcement and correctional employees are confidential.
- Law enforcement work schedules are exempt.
- The identity of informants is confidential.
- Any record of a public entity that is a compilation of minor's names, addresses, telephone numbers, or any combination thereof, is exempt.
- Any donor or prospective donor name, address, telephone number, electronic mail address, estate planning information, tax record or financial information, or other personal information or correspondence received or retained by the Board of Higher Education is exempt.
- Patient records at student health services and university system clinics are confidential.
- Personal and financial information submitted to a state agency as part of a consumer complaint are exempt.
- An autopsy photograph or other visual image or a video or audio recording of an autopsy is confidential. I recall that this was enacted in 2003 due to incidents in other states where autopsy images for certain famous or infamous persons were being sold to the media.
- Records relating to individual recipients of economic assistance or benefits are exempt.
- The address, telephone number, or any identifying information that, if released, could reasonably be used to locate a victim or alleged victim of domestic violence contained in any record maintained by a law enforcement facility is exempt.
- The electronic mail address or telephone number of an individual which is provided to a public entity for the purpose of or in the course of communicating with that public entity is an exempt record.

There is a common theme present in all of these exceptions to the open records law. That exception is based on the **right to privacy**. Release of a 911 audio recording could be devastating to the caller, could put the caller at the risk of harm or further harm, or could result in embarrassment or public ridicule. How often have you heard the audio from a desperate caller played over and over on a radio or television program while we listen to screams – or worse? How often have you heard a 911 audio recording on a late night television show used for “entertainment” purposes?

**A person should not lose the right to privacy by making a 911 call.**

Arguably, there are some things in a 911 audio recording that may be confidential or exempt now under some of the existing provisions in the law. However, an express statement in the law that a 911 audio recording is exempt will make clear what is now arguable.

There is one matter that has been raised since the time the bill was introduced. As written, the audio recording cannot be released to another person without the written consent of the caller. What if the caller is deceased or incapacitated and can't consent? The committee may wish to amend the bill at the end of line 23 on page 2 by adding the words: “or that person's legal representative”.

There are other persons here today who will elaborate on the reasons for House Bill 1156 and the need to protect the right to privacy for 911 callers. I urge your support for House Bill 1156. This could happen to any of us.

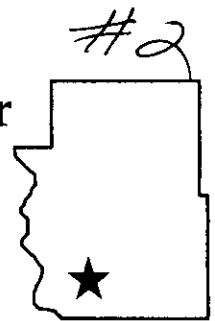




## Combined Communications Center

2301 University Dr., Bldg 21 ★ Bismarck, ND 58504-7595

Phone: 701-222-6727 ★ Fax: 701-221-6804



### Support of HB 1156

Madam Chairman and Members of the Committee, for the record my name is Mike Dannenfelzer. I am the Manager of the Bismarck/Burleigh Combined Communications Center and am here in **support of House Bill 1156**.

Across this country each day, hundreds of thousands of 9-1-1 calls are made to request emergency assistance through public safety answering points (PSAPs). Oftentimes, these calls contain very graphic and emotional testimony to a moment in time that simply should not serve as fodder for public display. This bill aims to provide these callers a sense of privacy in the information they provide. A caller to 9-1-1 should not be assumed to have given consent to the public display of their experience simply due to the fact they had to call 9-1-1. This bill protects the victim and those who choose to remain anonymous...it does no more; it does no less.

The North Dakota 9-1-1 Association has mulled this issue over a number of years. I had a bill drafted prior to the last Legislative Session that would have made these records confidential but never sought the introduction simply because the Bismarck City Attorney and I didn't think it would succeed. **HB 1156**, I believe places the appropriate balance on this issue and allows the caller to provide consent to the public release of their call, after the call has been made.

Over the ten plus years I have served in this capacity, I've received many requests for recordings of 9-1-1 audio, too many to provide examples of all. Here are some problem examples:

- More than three years ago, I received a request of a 9-1-1 recording where you could hear the fist of a suspect hitting the victim in a domestic assault. If you listened close enough, it sounded like facial bones breaking. This request came from a firm from outside of North Dakota. It was not released based on instruction of the Burleigh County State's Attorney.
- I've received many of these types of requests over the years: "I want to know what happened with our neighbor last night."
- Again, many requests over the years: "I want to find out who reported I was driving drunk."
- I've received requests for "who reported that I had a loud party."
- Ex-spouses trying to find out what happened at the other's residence.
- Many callers request to remain anonymous

I want to be clear on this issue: This bill is not simply targeting the media. These records can be requested by anyone, with no special media pass required. The point here is that these records are currently very much open with little protection for a victim in existing law. Even providing the ability to edit that which is subject to current open records exemptions, it is not possible to remove all that may connect to that exemption. A transcript provides a better way and is offered within **HB 1156**.

---

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You might hear testimony from those concerned with this bill that closing public records is always a bad policy. You might also hear that it is the public's way to know what its government is up to. First, **HB 1156** does not close a record. It provides an exemption to these records and puts the release in the hands of the caller to 9-1-1. It does not impair the ability to use such recordings during an investigation or as evidence in court. The bill primarily concerns itself with the public release and how that will occur. Second, **HB 1156** provides for the caller to 9-1-1 to provide consent to release the audio recording. This was included in the bill as a way for the caller to obtain the recording in the event they believe an error was made or they were in some way mistreated, and it resulted in an adverse outcome for them or the person(s) in need of emergency assistance.

I have attached a letter of support from the Dakota Chapter of the National Emergency Number Association (NENA) that outlines some additional issues and conceptual support of **HB 1156**.

Personally, and professionally, I believe **HB 1156** has the right balance. It targets the privacy of individual and their call to 9-1-1. It says that as a caller to 9-1-1, you can expect what you say and how you say it will remain out of public display unless you want it there, and I as a citizen can't go listen to it without you consenting to that.

Thank you and I would be happy to answer any questions you might have.

Mike Dannenfelzer  
Communications Manager  
Bismarck/Burleigh Combined Communications Center  
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January 20, 2010

#3



## NATIONAL EMERGENCY NUMBER ASSOCIATION

North Dakota ~ The Dakota Chapter ~ South Dakota

November 10, 2010

Wayne Stenehjem  
North Dakota Attorney General  
State Capitol  
600 E Boulevard Ave., Dept 125  
Bismarck, ND 58505

Dear Mr. Stenehjem,

This letter is in support of draft legislation to further restrict the public release of records obtained through the delivery of E9-1-1 services in North Dakota.

Without question, the argument to further restrict the release of audio recordings of E9-1-1 calls is a compelling one. Each day across this country, hundreds of thousands of E9-1-1 calls are made to summon emergency assistance through public safety answering points (PSAP). These calls can vary greatly in the gravity of the situation and in many instances contain information that a caller would not normally convey to someone whom they do not know. They convey this information because of trust in a system that can provide them the help they need. They shouldn't be made to think twice about the information they provide, or question whether to make that call, wondering whether or not their call will end up being replayed on the internet, network television, radio, or other medium for others to hear.

Next Generation 9-1-1 (NG9-1-1) will further compound the problems with public release of these records. When video, text, real time medical records, and telemetry devices begin feeding data through the PSAP, the potential exploitation of this data becomes of great concern.

The State of North Dakota already has an established reputation of enacting legislation that protects its citizens against the exploitation of certain personal data. We can imagine nothing more personal than what our PSAP employees hear from callers on a daily basis.

We do agree that citizens served by their government must have the ability to ensure that their government operates efficiently and is effective in the provision of services. System operational standards, personnel training and certification standards, and quality control are ways to accomplish these ideals without placing the victim square in the public eye.

2009 - 2010 Chapter Officers  
Ted Ruffedt, Jr., ENP, President  
Mike Dannenfelzer, ND Vice President ~ Edie Jenniges, SD Vice President  
Marian Hamilton, Secretary/Treasurer

[REDACTED] number of these standards are already in place and the ongoing review and development of these standards is the responsibility of the Emergency Services Communications Coordinating Committee (ESCCC) in North Dakota.

With the appropriate standards and control mechanisms in place, we believe that given the likely intimate nature of many of these calls, a callers' right to relative privacy in that information outweighs the interest the public may have in hearing these calls.

Sincerely,



Ted Ruffelt, Jr., ENP  
President, Dakotas Chapter of NENA  
300 Kansas City St., Ste. 201  
Rapid City, SD 57701

[REDACTED] Mr. Mike Dannenfelzer

#4

Tuesday, January 20, 2011

HOUSE POLITICAL SUBDIVISIONS COMMITTEE  
HB 1156

CHAIRMAN JOHNSON AND COMMITTEE MEMBERS:

My name is Jack McDonald. I am appearing today on behalf of the North Dakota Newspaper Association and the North Dakota Broadcasters Association. We strongly oppose HB 1156 and urge a **do not pass**.

We understand this is an emotional issue. However, it is also a basic issue of public access to public information created and supported by public funds...your tax dollars, your constituent's tax dollars and my tax dollars, as well as those of my clients.

First, this is not a problem in North Dakota. These records have always been open and there have been no real problems. We should not change our North Dakota laws simply because of problems in other states.

Secondly, these tapes most often provide the best and most accurate information in breaking news stories about who said what to whom and when. They add impact to the breaking stories and supply the public with information about events affecting them that are not available anywhere else. Think about how the 9-1-1 tapes played a vital role in informing the American public of the enormity of the 9/11 bombings and helped officials put together what actually happened. Think of how the 9-1-1 tapes brought home the full impact of the recent shootings in Tucson.

Thirdly, North Dakota already has laws that allow medical and personal information to be kept confidential and redacted from public records. The 9-1-1 agencies can use these already existing laws to protect much of the information on these tapes.

Finally, it is important to keep these records open to keep the public informed on how well these agencies are performing and how they are protecting and serving the public.

In sum, this is a bill with a solution trying to find a problem to solve. It won't find one in North Dakota. I've attached on the reverse side of this testimony a recent editorial from The Forum of Fargo-Moorhead on this issue for your information.

Therefore, we urge you to give this bill a **DO NOT PASS**. If you have any questions, I will be happy to try to answer them.

THANK YOU FOR YOUR TIME AND CONSIDERATION.

(OVER)



The Forum of Fargo-Moorhead

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Published January 16 2011

## Forum editorial: No sound reason to close access to 911 recordings

A proposal to effectively shut down public and media access to recordings of 911 calls in North Dakota looks like a solution in search of a problem.

A proposal to effectively shut down public and media access to recordings of 911 calls in North Dakota looks like a solution in search of a problem. Indeed, the genesis of the North Dakota legislation appears to be a national push by emergency services and law enforcement organizations to block access to the calls in every state. But what might be appropriate in one state might not be in another.

The North Dakota bill would close down access to 911 calls unless the caller provided written consent to release the call. In practical application, few if any callers would agree to release, thus the recordings, which now are public records, would never see the light of day.

The legislation is sponsored by four Republican legislators, one of whom is part owner of a Mandan ambulance service, which, like all ambulance services, is involved with 911 call systems. Rep. Todd Porter describes his bill as "a bill to protect victims." He and his sponsors say it's a matter of protecting personal privacy. But the underlying motivation is not privacy. It's more likely a way to shield first responders, law enforcement and others in official capacities from public scrutiny of their work.

Furthermore, examples of misuse of emotional and often tragic 911 recordings are not from North Dakota. When pressed, sponsors of the bill and representatives of emergency services agencies that support the bill can't cite convincing North Dakota examples in which media or members of the public have abused or misused 911 recordings to the detriment of ongoing cases or families involved in tragic situations.

It is true that such examples are easy to find in other parts of the country. But for the most part, North Dakota broadcasters and other media – and the public – have been respectful of privacy regarding sensitive, emotional or sensational 911 recordings. That's not to say tapes are not reviewed by newspaper, radio and television news people. But as a 30-year veteran of radio, KFGO-AM News Director Paul Jurgens of Fargo said, "I don't recall it ever being a problem. The media is very selective when we request them (911 tapes)."

Jack McDonald, attorney for the North Dakota Newspaper Association, said 911 tapes give incident details "far better" than a police report, and he's not aware of any abuse among the state's newspapers.

Tinkering with North Dakota's excellent open records and open meetings laws should not be done because of a national initiative. The exceptions and exemptions to the laws are few and very narrowly defined. For the most part, North Dakotans trust government. But the state's sunshine laws are the means of verification. Supporters of locking up 911 call recordings have not made a case that the open records law should be eroded. The bill should be defeated.

Forum editorials represent the opinion of Forum management and the newspaper's Editorial Board.

**Tags:** 911 calls, nd legislature, opinion, editorials

#5

January 20, 2011 HOUSE POLITICAL SUBDIVISIONS COMMITTEE

Representative Johnson and committee members:

My name is Rob Port. I'm am the editor of SayAnythingBlog.com, North Dakota's most popular political blog as well as one of the top 100 political blogs in the nation, and a talk radio host working on the Scott Hennen Show as well as my own programs. I am also a freelance writer with my articles appearing in publications such as the *Washington Examiner* and the *Dakota Beacon*.

I have prepared this testimony in opposition to HB1156 which would deny the public, and the media, access to 911 call transcripts and recordings.

My first impulse was to use this testimony to argue for all the reasons why the public/media should have continued access to this information - which is plentiful and certainly pertinent - but then I realized that is the wrong paradigm for this debate. I feel it is up to the proponents of this bill to justify why the public should be denied this information.

I do not feel like the proponents of HB1156 have done any such thing.

The public, as supporters of the government, have a fundamental right to know about all aspects of government. Good reason must be given to justify the removal of that right in any instance. If no compelling reason can be given to deny access to information, then the public should have that information in as open a manner as possible.

Recordings and transcripts of 911 calls have long been a matter of public record. In recent years, however, all manner of public record has become more accessible and more widely disseminated thanks to the internet. This expansion in access in dissemination has made some, particularly those suspicious of the internet in general, rather nervous. Information that once took a trip to the court house, and sifting through filing cabinets in dusty back rooms, can now be accessed almost instantaneously.

But this new level of access should not deter openness in records. If it was appropriate for 911 records and transcripts to be public 10 years ago, then it's appropriate today in this new hyper-digital media environment. Nothing has changed but the level of access.

Arguing that the public can no longer access information because more people in the public are accessing that information seems more than a little silly and counter-intuitive. There are a lot of reasons why this information was allowed to be public in the first place, and those reasons continue to exist today even if more people are accessing it.

I sincerely hope that this committee gives HB1156 a do not pass recommendation, and I hope each of you committee members individually will vote against the bill once it reaches the floor for a vote.

#6

## THE NORTHWEST BROADCAST NEWS ASSOCIATION

January 19, 2011

Members of the North Dakota Legislature

The Northwest Broadcast News Association, representing news directors and reporters from radio and television stations in a six-state region, including North Dakota, raises its collective voice in opposition to HB 1156 which would limit or prohibit news organizations from gaining access to transcripts and recordings of calls made to 9-1-1.

Having access to these transcripts and recordings is an important part of reporting on events in the lives of North Dakota citizens. They convey a sense of drama in the voices and responses of the people impacted by the event. But there are more important reasons why news organizations need to have access to them. It is part of the watch dog function of the media.

We as reporters must be able to hear the content of the calls to 9-1-1 and the response of the emergency workers. We must be allowed to bring these items to the public in our news reports so the public can monitor the performance of the safety personnel who are on the front line of emergencies – the first contact most people have in calling for help. And in large measure, the recordings show that the people who staff these positions are professionals in every measure of the word. They bolster the confidence we have in our 9-1-1 operators.

When the response is less than we hope for, our citizens, who elect the people ultimately responsible for the 9-1-1 system, must be able to judge. Used in the proper context, the recordings and transcripts of 9-1-1 calls play a role in evaluating the effectiveness of the system.

Finally, recordings and transcripts are instructive. They let people hear how others deal with emergencies, both those making the calls and those responding.

Responsible news organizations do not want access to transcripts and records to pander to public prurience. As public documents, the same as police records, they are important part of helping the citizens stay informed on the function of government. LB 1156 should be defeated.

Sincerely,

Chris W. Allen  
President, NBNA



#7

January 20, 2011

**The Honorable Nancy Johnson**

Political Subdivisions Committee

**RE: Opposition to House Bill 1156**

**Chair Johnson and Members of the Committee:**

My name is Kris Kitko; I am a folksinger/songwriter and public commentator living in District 30 in Bismarck.

I urge you to make a "do not pass" recommendation on this piece of legislation, House Bill 1156.

I wonder why some members of our legislature are motivated to restrict our access to public records. What is the real reason? I've heard that they want to protect our privacy. Is it our privacy they are really concerned about? Is it the victims they want to protect? Or could it be the perpetrators?

I am suspicious of the timing of this bill. I wonder if it would be on the table before us if another member of this legislature had not had a 911 tape released in 2009 involving his assault of his wife. This same legislator said he was innocent until the 911 tape ended up in the hands of a blogger and written about for the public to see. Then he pleaded guilty.

It is my hope that our elected officials would never attempt to cover up perpetrators or the violent behavior of one of their own. It is my hope that our legislators have only the purest intentions with this bill.

If the sponsors of this bill do have the best interest of domestic violence victims in mind, I urge them to call for the resignation of any of their own who have committed acts of domestic violence while in office.

I urge you to make a "do not pass" recommendation on House Bill 1156.

# 1

HOUSE BILL 1156  
TESTIMONY OF REP. LAWRENCE R. KLEMIN  
SENATE HUMAN SERVICES COMMITTEE  
MARCH 8, 2011

Madame Chairman and members of the committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am appearing before you today in support of House Bill 1156.

House Bill 1156 relates to emergency 911 services. The bill first makes some terminology amendments in the law in Section 1, subsections 1 through 3 of Section 2, and in Section 3, which are consistent with current terminology. A "911 coordinator" is now referred to as an "emergency services communication system coordinator". An "answering point" is changed to a "public service answering point" or PSAP.

Subsection 3 of Section 2 on page 2, lines 12 through 16, currently provides that a record obtained for the purpose of providing emergency services which reveals the address of the person requesting the emergency services or reporting an emergency is exempt and that the address may be redacted before the record is released. The amendment to subsection 3 in the bill provides that personal information contained in the record, and the identity or telephone number of the person is also exempt.

Subsection 4 of Section 2 is new and provides that an audio recording of a 911 call is an exempt record. However, on request a person may listen to the audio recording, but may not copy or record it. The person may also obtain a written transcript of the audio recording on request.

911 audio recordings are currently open records under North Dakota law and must be released to anyone upon request. This bill will change that and will make 911 audio recordings exempt. The purpose of this change is to protect the rights of the person whom made the 911 call and to prevent sensationalism of the call. The audio of 911 calls is frequently distributed over the internet for all to hear, over and over again, forever. This can be harmful and embarrassing to the person who made the 911 call.

Article XI, Section 6 of the North Dakota Constitution provides:

Section 6. [Open records]

**Unless otherwise provided by law**, all records of public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours. (emphasis added)

This open records provision of the Constitution is also set out in Section 44-04-18 of the North Dakota Century Code. Both the Constitution and the statute permit the Legislature to provide otherwise by law. Under North Dakota law, a public record is either an open record, which is the general rule, or it is a confidential record, or it is an exempt record.

A confidential record is defined in Section 44-04-17.1(3) as all or part of a record that is either expressly declared confidential or is prohibited from being open to the public. An exempt record is defined in Section 44-04-17.1(5) as all or part of a record that is neither required by law to be open to the public, nor is confidential, but may be open to the public in the discretion of the public agency.

There are numerous situations in which the Legislature has expressly declared certain records to be either confidential or exempt under the law as set out in Sections 44-04-18.1 through 44-04-18.21. For example:

- Personal, medical, or employee assistance records of public employees are confidential.
- Records of juvenile court supervisors, probation officers, law enforcement and correctional employees are confidential.
- Law enforcement work schedules are exempt.
- The identity of informants is confidential.
- Any record of a public entity that is a compilation of minor's names, addresses, telephone numbers, or any combination thereof, is exempt.
- Any donor or prospective donor name, address, telephone number, electronic mail address, estate planning information, tax record or financial information, or other personal information or correspondence received or retained by the Board of Higher Education is exempt.
- Patient records at student health services and university system clinics are confidential.
- Personal and financial information submitted to a state agency as part of a consumer complaint are exempt.
- An autopsy photograph or other visual image or a video or audio recording of an autopsy is confidential. I recall that this was enacted in 2003 due to incidents in other states where autopsy images for certain famous or infamous persons were being sold to the media.
- Records relating to individual recipients of economic assistance or benefits are exempt.
- The address, telephone number, or any identifying information that, if released, could reasonably be used to locate a victim or alleged victim of domestic violence contained in any record maintained by a law enforcement facility is exempt.
- The electronic mail address or telephone number of an individual which is provided to a public entity for the purpose of or in the course of communicating with that public entity is an exempt record.

There is a common theme present in all of these exceptions to the open records law. That exception is based on the right to privacy. Release of a 911 audio recording could be devastating to the caller, could put the caller at the risk of harm or further harm, or could result in embarrassment or public ridicule. Whether the 911 audio recording is released or not will be in the sound discretion of the public agency, since it will now be an exempt record.

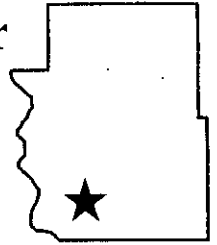
It is my understanding that in six states (Alabama, Mississippi, Missouri, Pennsylvania, Rhode Island and Wyoming) 911 call recordings are confidential. Four other states (Georgia, Maine, Minnesota and South Dakota) place restrictions on the release of 911 calls.

There are also other persons here today who will elaborate on the reasons for House Bill 1156. I urge your support for House Bill 1156.



## Combined Communications Center

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#2

### Support of HB 1156

Madam Chairman and Members of the Committee, for the record my name is Mike Dannenfelzer. I am the Manager of the Bismarck/Burleigh Combined Communications Center and am here in **support of House Bill 1156**.

Across this country each day, hundreds of thousands of 9-1-1 calls are made to request emergency assistance through public safety answering points (PSAPs). Oftentimes, these calls contain very graphic and emotional testimony to a moment in time that simply should not serve as fodder for public display. This bill aims to provide these callers a sense of privacy in the information they provide. A caller to 9-1-1 should not be assumed to have given consent to the public display of their experience simply due to the fact they had to call 9-1-1. This bill aims to protect victims and those who choose to remain anonymous.

**HB 1156** has been amended since introduction in the House of Representatives. The consent of the caller to a public release was removed and it now permits someone to request to listen to the call, but prohibits them from recording or copying the audio. The bill also allows the release of a transcript of the audio recording. Generally, the bill you have in front of you is "softer" than the original version but I think it still gets at the essence of the issue: privacy. In any case, it protects the privacy of a caller to 9-1-1 better than today.

Though you may hear or might have heard: We don't have a problem with this in North Dakota, so why are we changing the law? The reality is it is more about how you define the problem. I have had individuals request to find out what happened at their neighbor's house, who called to report them driving intoxicated, who reported their loud party, and ex-spouses trying to find out information about the other. And though you won't hear me testify to egregious acts on the part of our media outlets here in North Dakota, I have had several requests over the years from media and public relations firms from outside of our State.

So I want to be clear on this issue: This bill is not simply targeting the media. These records can be requested by anyone, with no special media pass required. The point here is that these records are currently very much open with little protection for a victim in existing law. With **HB 1156**, a victim or their family may at least have solace that they might not have to relive a 9-1-1 call involving them that is replayed on a newscast or posted to the internet.

I was a Police Officer in Bismarck for a number of years prior to managing the Combined Communications Center in Bismarck. I don't recall an incident to which I responded as an Officer or a 9-1-1 call I've reviewed in the years since, where the caller asked that their

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information be made publicly available or posted to the internet. Most people probably don't realize how open these records are.

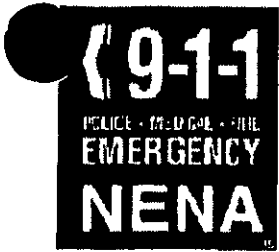
I have attached a letter of support from the Dakota Chapter of the National Emergency Number Association (NENA) that outlines some additional issues and conceptual support of **HB 1156**.

Please remember, not everyone who would request an audio record has the most righteous intent. I believe **HB 1156** provides callers to 9-1-1 some reasonable protection against the misuse of information they are providing in an emergency and would recommend **Do Pass**.

Thank you and I would be happy to answer any questions you might have.

Mike Dannenfelzer  
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March 8, 2011



## NATIONAL EMERGENCY NUMBER ASSOCIATION

North Dakota ~ The Dakota Chapter ~ South Dakota

November 10, 2010

Wayne Stenehjem  
North Dakota Attorney General  
State Capitol  
600 E Boulevard Ave., Dept 125  
Bismarck, ND 58505

Dear Mr. Stenehjem,

This letter is in support of draft legislation to further restrict the public release of records obtained through the delivery of E9-1-1 services in North Dakota.

Without question, the argument to further restrict the release of audio recordings of E9-1-1 calls is a compelling one. Each day across this country, hundreds of thousands of E9-1-1 calls are made to summon emergency assistance through public safety answering points (PSAP). These calls can vary greatly in the gravity of the situation and in many instances contain information that a caller would not normally convey to someone whom they do not know. They convey this information because of trust in a system that can provide them the help they need. They shouldn't be made to think twice about the information they provide, or question whether to make that call, wondering whether or not their call will end up being replayed on the internet, network television, radio, or other medium for others to hear.

Next Generation 9-1-1 (NG9-1-1) will further compound the problems with public release of these records. When video, text, real time medical records, and telemetry devices begin feeding data through the PSAP, the potential exploitation of this data becomes of great concern.

The State of North Dakota already has an established reputation of enacting legislation that protects its citizens against the exploitation of certain personal data. We can imagine nothing more personal than what our PSAP employees hear from callers on a daily basis.


We do agree that citizens served by their government must have the ability to ensure that their government operates efficiently and is effective in the provision of services. System operational standards, personnel training and certification standards, and quality control are ways to accomplish these ideals without placing the victim square in the public eye.

2009 – 2010 Chapter Officers  
Ted Ruffelt, Jr., ENP, President  
Mike Dannenfelzer, ND Vice President ~ Edie Jenniges, SD Vice President  
Marian Hamilton, Secretary/Treasurer

number of these standards are already in place and the ongoing review and development of these standards is the responsibility of the Emergency Services Communications Coordinating Committee (ESCCC) in North Dakota.

With the appropriate standards and control mechanisms in place, we believe that given the likely intimate nature of many of these calls, a callers' right to relative privacy in that information outweighs the interest the public may have in hearing these calls.

Sincerely,



Ted Ruffelt, Jr., ENP  
President, Dakotas Chapter of NENA  
300 Kansas City St., Ste. 201  
Rapid City, SD 57701

Mr. Mike Dannenfelzer