

## ONE HOUR CLE PROGRAM OUTLINE

### ACCESS TO GOVERNMENT INFORMATION AND DECISION MAKING

#### I. ETHICAL BASIS OF FREEDOM OF INFORMATION LAW

- 5 Minutes
- A. The Freedom of Information Law is based largely on ethical considerations involving the relationship between the government and the public
  - B. Grounds for withholding records are based on possibility of harm to an individual, a commercial entity or the ability of government to carry out its duties
  - C. Examples of ethical considerations and fundamental fairness will be referenced in discussions of the basis for denying access to records and excluding the public from meetings

#### II. FREEDOM OF INFORMATION LAW

- 20 Minutes
- A. Original Law enacted in 1974
  - B. Repealed and replaced with current law, 1978
    - 1. Presumption of access
  - C. Definitions
    - 1. What is covered - agency
      - a. exclusion of State Legislature and Judiciary
    - 2. Record
      - a. creation of records
      - b. electronic information issues
  - D. Procedural Issues
    - 1. Time limits for response
    - 2. Email requests
  - E. General Rule - Access and Common Sense
    - 1. Presumption of access - would disclosure hurt?
    - 2. Portions of records
  - F. Grounds for Denial
    - 1. Statutory exemption
      - a. confidentiality
      - b. examples
- 35 Minutes
- 2. Unwarranted invasion of personal privacy
    - a. permissible invasion
    - b. re public employees - is it unethical for government to shield information from taxpayers that deal with the

- performance of public employees' duties?
- c. re public generally - is it fair and ethical to disclose intimate details of peoples' lives?
- 3. Impair contract awards or collective bargaining - ensuring fairness in contracting and negotiations
- 4. Trade secrets -
  - a. standard - substantial injury to com competitive position
  - b. lack of standard in federal Act
- 5. Records compiled for law enforcement purposes
- 6. Endanger life or safety
- 7. Inter-agency and intra-agency materials
  - a. heart of the law
  - b. secret law concept
- 8. Examination questions and answers - ethical consideration ensures fairness
- 9. Security of electronic information

5 Minutes

G. Burden of proof

- 1. On the agency - the government belongs to the public, and a high ethical standard is imposed on government
- 2. Cannot merely assert - must prove harmful effects of disclosure
- 3. Attorney's fees