

April 27, 1979

LB 86

instance when a member of the public requests an open record, a public record, and is denied, the new language on the Journal as found on page 617 and 618 indicates that the recordkeeper would issue a letter of denial. The letter of denial forces the recordkeeper to name by their own admission who they are, the reason why they refuse to open the record and the legal basis under which they are making that judgment. Now you have to read the bill to know what they relate back to, and perhaps if you have done so, you know that Senator Murphy's bill has outlined a number of exemptions or exceptions to the open records rule, places where records do not have to be open to the public, and my amendments says in the letter of denial they simply have to show which of those exceptions they are relying upon when they refuse to grant the open record. The second, the second of the two amendments deals with an alternative remedy to someone who has been denied access to a public record. In the bill as originally drafted by Senator Murphy, the way in which somebody who had been unfairly denied an open record could gain a remedy was to go to court and to sue for a writ of mandamus which would authorize the court to demand that the recordkeeper open the records and to provide for the open inspection of records. If you will take a look on page 618 and 619 of the Journal, you will see that there is an election of remedies and a second remedy is allowed. The reason for this is because those kinds of people who are interested in open records that can afford to go to court are usually corporate kinds of entities, newspapers, radio stations perhaps, one business or another corporation checking up on some piece of information or whatever. However the private individual oftentimes does not have the personal means to do that so the election of remedies allows that individual to go to the Attorney General and tell their side of the story as to what has happened, what the record that was requested, and why it was denied and to allow the Attorney General then to decide whether or not it is that kind of record that falls into the list of exceptions. If the Attorney General decides that it falls into that list of exceptions, then the person can go back in and sue for a writ of mandamus. However, if the Attorney General feels that the record is an open record and the record holder has wrongfully withheld it, he can inform the record holder to release the record. If the record holder refuses to open the records even in the face of the Attorney General's analysis of the exceptions that Senator Murphy's bill authorizes, then the Attorney General can go into court and demand that the records be opened on behalf of the individual. I say that this election of remedies is necessary because of

4174