

**August 24, 2022**  
**Location: WebEx**  
**Sunshine Committee Members**

Eileen Eakins, Northwest Local Government Legal Advisors LLC / Co-chair  
Charlie Fisher, OSPIRG State Director / Co-chair  
Morgan Smith, Polk County Counsel  
Karin Johnson, Independence City Recorder  
Stephanie Clark, State Archivist  
Michael Kron, Department of Justice  
Bennett Hall, Newspaper Publishers Association

**Guests**

Cameron Miles, Office of Legislative Counsel  
Isabela Romero, Department of Justice  
Sofie Parra  
Phil Donovan  
Michael Ritchey  
Les Ruark

**Agenda**

**AUDIO STREAM 0:00:00-01:40:33**

**First Agenda Item –Administrative Business**

1. July 2022 Minutes approved as presented.
  - a. **Mr. Kron** 1<sup>st</sup> motion to approve.
  - b. **Chair Hall** 2<sup>nd</sup> motion to approve.
  - c. **All member's** agreed to approve.
2. Membership update:
  - a. **Mr. Kron** confirmed all memberships are currently full. Chair Brent Walth will continue to serve in committee, has informed he is looking to step down from serving. Chair Walth will serve until a replacement is found. Working with SPJ (Society of Professional Journalism) to appoint someone to keep the best interest of the journalist community.
  - b. **Mr. Kron** another update, Ex-officio member Kim Wallen was replaced Karr Wilson. Unclear who the ex-officio legislative members of committee will be. Will depend on elections and committee assignments. More updates to come.
  - c. **Chair Fisher** if anyone is interested in volunteering for chair for Sub Legislative Review Committee, to let him know.

**Second Agenda Item – Subcommittees Update**

1. *Legislative Review Committee* – **Mr. Kron** stated there were e-mails out for the upcoming session. **Chair Miles** confirmed that was for the 2022 session. **Chair Fisher** would like to have someone chairing this sub-committee by the time the next session comes around and ready to review the upcoming bills. Hoping to have someone replace Chair Walth by the next meeting. **Mr. Smith** proposed to think about the figuring out what is needed for full committee approval of recommendations to come out since timelines are so short and meeting quarterly and not effective to get anything back to legislature. **Mr. Kron** considering possibly chairing this committee. Will be checking with AG but feels he relates more to journalistic side instead of the government side. **Chair Fisher** would be happy to be a member but not interested in chairing this committee.
2. *Special Projects Subcommittee* – Mr. Smith lists members (Morgan, Bennett, Selena, Karin) and shares there are no special projects at this time.

**Third Agenda Item – 2022 Report to PR Discussion**

**Chair Fisher:** Report was not done and accidentally neglected submitting the report to the legislature. **Mr. Kron** recalled Chair Fisher would be reviewing the 2020 report and polishing that up for submission as there was not enough work done during COVID. **Mr. Smith** agreed and concurred with Mr. Kron. **Chair Fisher** will be completing the report by the next meeting and recalls doing any updates that seem out of date and to submit without committee approval? **Mr. Kron** pulled previous minutes to see what was previously agreed at the last meeting. **Ms. Romero** found minutes and confirmed what Mr. Kron stated, that Chair Fisher was to polish up and finalize the 2020 Report to PR and submit to Mr. Miles. **Mr. Kron** 1<sup>st</sup> motion for Chair Fisher to make updates as he deems appropriate to the 2020 Report to be submitted as the 2022 Report. **Mr. Smith** 2<sup>nd</sup> motion for approval. **All members** agreed.

#### **Fourth Agenda Item – Health Exemptions Review & Journalist Survey**

**Chair Fisher:** The question in hand was to what extent did these overlap with Federal HIPAA protections and other federal privacy protections that would prevent committee from making meaningful recommendations on state level exemptions? **Mr. Smith** Reviewed statutes. Works with HIPAA daily but is not an expert. Attempted to have a colleague who is an expert in HIPAA attend last meeting and this meeting but was not available. Quick overview of how HIPAA works, only applicable to “covered entities” meaning insurance carriers, health database clearinghouses, and medical practitioners. Protects all identifiable information for an individual. Anyone outside of these “covered entities it’s more of a gray area. There is a long list of exemption for times you can share information with people with or without consent. One big exemption is health activities, you can share information to state or local entity who is responsible for gathering health oversight activities, they are allowed to disseminate otherwise protected information to an oversight entity which are the bulk of what the statutes are. What level of the privacy rule is applicable once the information is in the hands of the health oversight entity? It’s a gray area. His understanding is it’s outside of the circle of trust for HIPAA and those protection no longer apply. Other question; Is OHA a covered entity under the protection of HIPAA? OHA is a hybrid entity, meaning parts of them are covered and other parts are not. More of the related protected part of OHA would be through OHP as the covered entity relating to direct patient care, payments etc. **Mr. Kron** added, State Hospital is also a direct provider that is ran through OHA. Agrees with Mr. Smith’s statements in terms of the hybrid status for OHA. There is another exception that allows disclosures that are required by state law. State appellate courts and Supreme Court have resolved by saying if the state law doesn’t have an exemption then the federal law would allow the disclosure. Something to keep in mind as why there will be an overlap. **Mr. Smith,** Unsure how much more he can offer to the conversation. If everyone is operating from a standpoint that everyone agrees that personal health information and individually identifiable health information is something that is protected by federal law and probably shouldn’t be in the public domain, then there isn’t too much to go over, unless it needs to be broken down more. Almost all of the statutes discuss personal identifiable health information that you receive as part of the program is confidential and cannot be release. He saw the same language over and over again in the statutes. Very similar statutory language with HIPAA. Overall, not much is protected by federal law when it comes to information that oversight entities such as OHA, DCBS, or mandatory reporting information is received. Mr. Smith did receive a question on whether disability rights Oregon was a public entity for the purposes of public records law? In the end, the large majority is state gathering statistical information that has people’s names attached that came from a protected source and should it still be protected?

**Chair Fisher:** Main question would be to determine it was worth or us having an opinion mattered? To determine whether HIPAA is the law and if all these things were covered then what point is there in the committee looking at them because no matter the committee’s opinion, it wouldn’t be overturning HIPAA. Based on what Mr. Smith’s statements, it seems committee does have room to make

recommendations if needed that wouldn't counter federal law. Committee should proceed in making a determination on what would be the right view from the public records perspective. **Mr. Kron** agrees with Chair Fisher. There are some examples from the survey that Emily conducted among her peers. One being a breadth of information that the public health law allows OHA to decide they're not going to share. Would really like to particularly focus where areas public interest have been identified. **Chair Fisher** agrees with Mr. Kron. Going to review the journalist survey. Chair Fisher did invite the journalists who filled out the survey to come talk today. Doesn't appear a journalist is present at this time. Invited public to comment on exemptions prior to reviewing survey. No comments from public. Christian (inaudible last name) commented on survey about an outbreak of an infectious disease (exemption), there are a number of blanket exemptions as in anything related to that program is confidential. Seems overly broad.

**Mr. Smith** stated a lot of them did allow release of information in aggregate format or otherwise the identified format, which is analogous to federal privacy laws like HIPAA and FERPA. Believes less objection will come if it's not every piece of data you have it's going to be anything have that might relate back to an individual as long as you don't start finding out health or private information tied back to an individual it would be less heartburn about releasing that information.

**Mr. Kron** the pandemic is an interesting example. There was a lot of public interest in the matter. Would be cautious about pandemic response team occupied addressing public records request rather than addressing the state of emergency. Ultimately how these are handled should not affect the ability of the public health infrastructure to manage the pandemic first. **Mr. Smith** agrees with Mr. Kron. The confidentiality provisions in the communicable disease outbreaks pre-COVID made more sense. With COVID there was more of a push to get a little more information about the individuals that can potentially disclose more information to potentially be targeted. **Mr. Kron** stated that his point was more on the administrative side so the data that is being requested is more manageable while trying to provide the information requested. **Chair Fisher** open for a rule to define the ability of responding to the requests while still trying to manage the state of the emergency. **Chair Hall** in the context of OHA, how many PIO's do they have? If a PIO is tied up tracking up to 7 different requests for journalist and such, is that really hindering OHA ability to handle the pandemic? The journalist survey, one of the respondents Bryce Dohl, he was looking at the Department of Corrections, his concern might had been related to when he was still part of the Eastern Oregonian in Pendleton. He was looking at the response during the pandemic whether adequate care was provided to inmates. Chair Hall is frustrated with DOC practice limiting information about inmates who died of COVID. The practice previously has been announcing the death of an inmate but now with COVID they will not mention the inmates name whom they are reporting. They will report other people's death by name.

**Chair Fisher** anything further on the journalist survey? Or would like to add before moving onto a mor in depth re exemptions? No comments from committee or public. **Mr. Smith** proposed for the list of exemptions to be sent out to the committee for more time to review over the next week and have a discussion about the highlighted or more concerning exemptions with the Special Project Committee make a recommendation on that. **Chair Fisher** not opposed to doing that or can do it now? **Mr. Kron** agrees with Mr. Smith so he can be more prepared at a later time. **Chair Fisher** has noted some exemptions that are along the same lines about 6 or 7 of them that seem similar and are too broad of an exemption.

**Chair Fisher** suggested to invite OAH to next meeting or Special Projects Sub-Committee meetings to discuss in more detail. **Mr. Smith** who is chair of the Special Projects Sub-Committee agreed with Chair Fisher to invite OAH and make recommendations at that time for those reviews. **Chair Hall** would like

to also put together a list for the balancing test for the sub-committee. Would like to also pursue discussion on how to come up with a process to simplify the process or exemptions reviews and cut down the time of all the reviews possibly. **Chair Fisher** is in between and is difficult to come up with a broad process or apply balancing tests. **Mr. Smith** requested for committee to send him a list of questions for his sub-committee to review during their meeting time. Everyone agreed they would e-mail him questions.

**Chair Fisher** briefly went over what questions will be delegated to Special Projects Sub-Committee:

1. Looking at the blankets exemption to see if there is an aggregate data general statement to make.
2. Mr. Hall will be looking at to see if public interest balancing tests can be made.
3. Looking at tort claims related to these cases.

#### **Fifth Agenda Item –Future Business**

To possibly look over review law enforcement related exemptions.

**Mr. Hall** is interested in looking over the ongoing investigation exemption as its broad on what can't be released. **Mr. Kron** added there is more investigatory exemptions that can be reviewed, depending on how broad or narrow the material would review.

Next Sunshine Committee meeting date: October 19, 2022

**Mr. Smith** will be looking to schedule next sub-committee meeting.

Adjournment