

From: [Lee van der Voo](#)
To: [Public Records Task Force](#)
Subject: Testimony on Public Records Reform
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Hello,

Please find my written testimony from the Thursday, May 26 public hearing on records reform below. Links have been added for reference material.

In addition to this testimony, I would like to add my endorsement of the written recommendations submitted by Steve Suo on May 26.

Best,

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My name is Lee van der Voo I am the managing director of InvestigateWest. I am testifying on my own behalf.

First, I want to thank the attorney general for convening a task force on transparency reform for Oregon. And to also thank the task force members for their service. I've followed along in the meeting minutes and can see this effort has been a lot of work and taken a lot of time. I think it takes a lot of fortitude to commit such time and effort to solving such an intractable problem. I am really grateful for your service and look forward to your proposals.

I'm a pretty big fan of the work you've done so far. I've been a journalist in Oregon since 1999 and much of my work involves public records. For that reason I am a past Sunshine Chair of the Oregon Territory chapter of the Society of Professional Journalists. In 2010, I led an SPJ work group that canvassed Oregon newsrooms for examples of the kinds of issues you're analyzing today: chiefly obstructive fees and unreasonable delays. During that effort we also gathered examples of public agencies that charged fees for records collection that exceeded the actual cost of labor at those agencies, which I think indicates that public records fees have become a revenue generating mechanism in some Oregon governments.

I think these would be a great help to you in illustrating problems with the law. You can find them in OLIS under testimony for HB3505 in the 2015 legislative session, submitted by me as exhibits to that bill. I also provided links to Les Zaitz and am attaching them here as direct links to [part one](#) and [part two](#) of the work.

I support a clear fee structure and deadlines in Oregon Public Records Law. In particular, I support the draft language the task force has proposed for timelines in the law, with the exception of items A) and B) exempting schools and colleges from compliance when classes aren't in session. There's no reason to add these exemptions when the law itself allows for public agencies to set their own reasonable timeline for compliance with requests. I think that's sufficient to address any difficulty in fulfilling requests while classes are not in session. Providing specific exemptions eliminates the incentive to do so, and I think would be most

detrimental to parents seeking information about school facilities for children.

I enthusiastically support the reorganization of the more than 550 exemptions of the law. I think it's a matter of practicality to reorganize this law so that we can begin to understand it, and so that public employees can have an easier time complying with it. Right now the way this law is organized creates a lot of confusion that stymies efforts to comply with its intent - which I believe is openness and transparency. We have public employees facing felonies in Oregon for failing to comply with certain elements of the law. I think that's triggering a lot of knee-jerk denials and requests for legal assistance that increase costs. A clearer, more organized law would reduce those problems.

Lastly, I support the task force's efforts to categorize exemptions and to develop a public interest statement identifying the purpose of the law. I think those two efforts are likely to foster greater stewardship of the public interest in transparency as more exemptions are proposed. I want to emphasize how important I think it is that the task force provide, in law, some guidance to future legislators in dealing with future exemptions. I also think that examining current exemptions to see how they fit with the four areas of exemption is fantastic work that allows us to see what protections these exemptions really offer, and when they run counter to the public interest in transparency.

And now I want to talk about something that is near and dear to me that the task force has not yet addressed: access to open data. Oregon does not have a functional open data law. That means Oregon lags behind at least 10 states that do have open data laws, and behind the United States government and a number of county and city governments with open data laws, including the city of Portland. (A list of state open data laws is available [here](#), courtesy of the National Conference of State Legislatures. A nationwide [map of all open data polices](#) can be found on the Sunlight Foundation website.)

To quote from the National Conference of State Legislatures: "Open data legislation aims to make nonconfidential government data available for public use in a format that is easily accessible. Open data formats allow government information to be combined, analyzed or presented in new ways by citizens, businesses and other organizations." For example, open data locally underpins the PDX Bus transit app, and apps about restaurant inspections, public art, and disaster preparedness.

Oregon Public Records Law theoretically guarantees Oregonians access to machine readable or electronic data under ORS 192.440(3)[1]. That law reads, "If the public record is maintained in a machine readable or electronic form, the custodian shall provide a copy of the public record in the form requested, if available." That means if you've got something in a database, and someone asks for it that way, or in a machine-readable format, you have to release it as requested.

But that's not how it plays out in Oregon.

Since 1987 Oregon's open data law has been subject to a balancing test that derives from an Attorney General opinion letter written in 1987 after a dispute over tax data. It's called the Kenney letter, or Letter of Advice (OP-6126), dated June 1, 1987. At the time of its writing, Jim Kenney was a supervisor of the Urban-Renewal Section at the Oregon Department of Revenue. The issue that presented itself to him at the time was whether appraisal data managed by the Lane County Department of Assessment and Taxation was a public record.

The Oregon Attorney General's Office, asked to weigh in, said, essentially, if you've got a computer program that generates records, those records are public, as is the underlying data. However, you're not required to provide new records if you have to use a computer program to create them.

The exact language from the Kenney letter is this: "When a public body uses a computer program to generate appraisal information on real property, the records generated are public records. The Public Records Law requires public bodies to make available nonexempt information and records, but does not require a public body to provide information that does not exist in the public body's records or database. The appraisal information on a particular property does not exist until the program is applied to generate that appraisal, and the Public Records Law does not require the public body to create that information."

Unfortunately, the way that the Kenney letter is read today means that very often public employees are rejecting requests for raw data because they don't understand that raw data underlies all computer programs, including Excel spreadsheets or other graphic interfaces, and therefore always exists. Instead, they presume that if they can't see the raw data, and don't deal with the information in a raw format every day, then the information does not exist in the raw. It does. All electronic programs contain raw data, whether the user typically looks at the data in the raw or not.

For example, while making one recent data request in Multnomah County, I was charged \$28 an hour over a period of weeks for a person to manually extract information I requested from a database, simply because they did not know how to export it raw. An employee in another public agency, working with the same dataset, provided the information to me for free in under an hour. Oregonians should not have to pay thousands of dollars to underwrite what is essentially an education gap in the government workforce. While more and more data is stored digitally in government business, I would urge the task force to update Oregon's open data law and clarify the policy position of the state with regard to data. My concern otherwise is that this task force, without a tandem look at open data, will have done all of its great work on exemptions and fines and delays only to enter an era where, instead is going to be concealed by computers instead.

This opinion is 29 years old. It predates the creation of Microsoft Excel. And is the only legal opinion we have regarding the availability of open data in Oregon. We really should update it.

As further testimony I'm going to provide links to columns I wrote about the [Kenney letter issue](#) and about the [status of Portland's open data law](#). At the very least, I think the task force, in making its recommendations to the governor regarding a public records advocate or ombudsman for the state, should recommend a format or a board structure that can apply expertise to this issue and to the interpretation of open data matters.