

From: [Carli Brosseau](#)
To: [Kron Michael C](#)
Subject: Public records task force testimony
Date: Monday, June 13, 2016 4:49:08 PM
Attachments: [BrosseauPublicRecordsTaskForceTestimony.pdf](#)

Hi Michael,

I finally managed to write up what I hoped to convey at the Portland listening session. I've attached the document that I would like to be included among the testimony. Let me know if I should send it somewhere else to get it entered. I hope you're doing well.

Thank you,

Carli



OREGONLIVE

The Oregonian

OREGONIAN MEDIA GROUP

June 13, 2016

Dear Attorney General Ellen Rosenblum:

I am a data reporter for The Oregonian/OregonLive. What that means in practice is that I frequently request spreadsheets and databases from government agencies in order to analyze them for patterns.

The questions I ask these data sets, alone or in combination, are often intended to help me draw conclusions about how well systems are working. Since I mostly work with information that is related to crime and justice, I frequently ask, "Are the effects of this system fair?" I also like to ask, "Are the observed effects the ones that policymakers intended?"

I believe that asking these questions – and having access to records that can help answer them – is valuable both to the public and to policymakers, many of whom are earnestly grappling with these questions. Data is the key to reaching better and more sophisticated questions, which can lead to more complete and useful answers; no anecdote, or ad hoc compilation of anecdotes, comes close.

As I mentioned in my oral testimony during your Portland listening session, the incentive system enshrined in Oregon's Public Records Law presents a significant obstacle for members of the public who seek access to data. The negotiation process can be long and frustrating, and access can be very expensive. Computers and databases are no longer rare in government offices. Accessing public information stored electronically should not be such an excruciating chore in 2016.

The fee structure in Oregon is a main contributor to these problems, I believe in large part because it encourages public employees to think about public access as being outside of government's core duties. I would argue that direct transparency and accountability are core responsibilities and much of what sets the public sector apart from the private sector.

Allowing agencies to charge the "actual cost" for searching for, reviewing, redacting and copying records effectively counteracts any theoretical bias



OREGONLIVE

The Oregonian

OREGONIAN MEDIA GROUP

toward disclosure the Public Records Law provides. Agencies are under no pressure to design a system that promotes easy or cheap disclosure of records that taxpayers have already paid for public employees to create and maintain. I have been told more than once that a table cannot be exported from a recently purchased database system; that should simply not be allowed, and it wouldn't happen if public employees considered public access to be central to their job. This fee structure also encourages a nearly automatic legal review process, for which the agency can charge the public – or perhaps avoid because the requester is discouraged from seeking the records by the estimated cost.

One way to shift the logic of Oregon's Public Records Law to truly reflect a bias toward disclosure is to allow agencies to charge only for the time and materials needed to provide a copy of the information requested. If an agency wants to do legal review, it can absorb the cost. If it designs or purchases an illogical or cumbersome organization system, it bears that cost, as well. This would incentivize quicker, easier and more routine disclosure. This fee structure works in Arizona, where I was a reporter for seven years.

Another major obstacle for accessing data in Oregon is the long list of conditional exemptions. In practice, this means I have to make a public interest case for several aspects of the data more than once, first to gain access and then in a bid to reduce the rapidly accumulating fees. But this issue goes far beyond my personal complaints: As information systems get more complex, the public effectively loses the ability to monitor its government's work. Accessing data should not require a law degree or intimate familiarity with public records law precedent.

A revised law should not continue to require the public to argue for openness based on information they are unlikely to have in the first place, but rather give public agencies the burden of demonstrating the need for secrecy. It seems to me that these many exemptions were probably written into the law because legislators saw that there was a specific harm that someone had experienced or was likely to experience in a specific case if a specific piece of information was made public. Why not make the relationship more direct? In place of these exemptions, I suggest requiring public agencies to demonstrate specific, actual harm if a specific piece of information were to be released. Agencies would be able to protect information that they can show requires protection, and the bias toward disclosure might step closer to reality.

In conclusion, I'd like to offer a few more limited ideas related to data that I would love to see reflected in a revised law or guidance from your office.



OREGONLIVE

The Oregonian

OREGONIAN MEDIA GROUP

First, information collected by government employees or funded by taxpayers is public record regardless of whether it is stored in software created by a third party. The right to control that information or to limit public access to that information cannot be turned over to any for-profit or not-for-profit organization or eroded through negotiation.

Second, the structure of the database used to hold information collected or maintained by public employees or paid for by taxpayers must also be made public and not be considered subject to copyright or trade secret conditions. Meta data – that is, data about the data – should also be explicitly public, as it is in other states, such as Arizona.

Third, government agencies should not be permitted to purchase software from which they cannot export their information in an efficient way.

Last, export queries should be considered the equivalent of copying a record, not creating a record. Making this explicit would put an end to many unproductive conversations about whether a record exists or what a record, in fact, is.

Thank you for taking the time to consider these questions and work toward improving the democracy in this state. If you have questions or would like additional information, I can be reached at 971-409-5622 or cbrosseau@oregonian.com.

Sincerely,

Carli Brosseau
Data Reporter

BEAVERTON LEADER
DRIVETIME
EXPLORE THE PEARL
FOREST GROVE LEADER
HILLSBORO ARGUS
THIS WEEK