



Date: June 28, 2016

To: Michael Kron
Attorney General's Public Records Law Reform Task Force

From: Jason Davis
Legal Counsel, Oregon Health & Science University

Subject: Proposed Streamlining Concept

Thank you for the opportunity to comment on the proposed "streamlining" of public record exemptions the Task Force is considering.

Oregon Health & Science University is the state's only public academic health center. As part of our public missions, OHSU strives for excellence in health care, education, research and scholarship, clinical practice and community service focusing on serving the health care needs of all Oregonians.

In 1995 the Oregon State Legislature made OHSU a Public Corporation in order to allow nimbleness in the fast paced, highly competitive health care market and provide the ability to serve the health care needs of Oregonians more effectively. A public corporation is granted increased operating flexibility in order to best ensure its success, while retaining principles of public accountability and fundamental public policy. As a result OHSU has grown to over 15,000 employees, trains more than 2,400 future health care providers, and serves more than 500,000 patients every year.

Protecting a public mission in a private sector environment

The health care market in Oregon is consolidating. The 1995 public corporation transformation succeeded at OHSU in large part because it freed the institution to create a world-class clinical enterprise, which provides the support for the development of world-class education and research programs. The clinical enterprise not only supports OHSU's other missions financially, it is the platform through which students are trained and research is brought to the bedside. In order to maintain this critical platform as a resource to all Oregonians in the current competitive health care environment, OHSU must continue to partner with other health care institutions across the state or risk being shut out of the market.

These critical clinical partnerships often have multiple components and involve sensitive business conversations and terms amongst the stakeholders sometimes for years prior to any decisions and after. Acknowledging the competitive marketplace in which OHSU

operates and to assist in providing a level playing field for OHSU in the commercial marketplace, OHSU was provided a specific business records exemption under the public records law. This exemption allows OHSU to communicate, negotiate and work with partners in a similar manner other private sector competitors do.

Without this limited and clearly defined exemption there would be a chilling effect on OHSU's ability to maintain and expand partnerships that are vital to maintaining a vibrant clinical enterprise and fulfill its public missions.

Committed to transparency in government

OHSU has dedicated personnel and clear policies and procedures to ensure our institution is responsive to public record requests. OHSU employs an individual to respond to public record requests. This individual works with requestors to get them the information they need in a timely and efficient manner. Importantly, they work to refine requests so they remain affordable while delivering the information needed.

OHSU understands the need to and is largely supportive of efforts to improve the timeliness of responses and to provide a fair cost structure in order to make Oregon's public records process more understandable and accessible for the public.

Concerns about proposed "First Proposed Exemption"

The current OHSU business records exemption is clear and succinct. In the proposed "streamlining" provided in the First Proposed Exemption, several exemptions are substantively changed for inclusion in a single exemption. Rather than helping make Oregon's public records system more understandable, these changes instead create unclear language, could create confusion for the public as to who and how the exemption is applied, create uncertainty as to how the exemption will be interpreted, and most concerning, would deter existing and potential business partners from entering into business discussions with OHSU. Deterring private sector companies from negotiating, discussing, and contracting with OHSU would result in a significant competitive disadvantage for OHSU, hindering OHSU's ability to build a clinical infrastructure vital to its public missions and resulting in decreased access for Oregonians to health care education and services.

In summary, while OHSU is generally supportive of efforts to improve the timeliness of responses, to provide a fair cost structure, and to assist the public in understanding exemptions through organizing or cataloguing existing exemptions, OHSU is concerned that substantive changes to existing exemptions as contemplated in the "First Proposed Exemption" actually decrease the certainty and clarity of the existing exemptions and will create a chilling effect on OHSU's public purpose and mission.