

<b>Meeting Date</b>	3/15/2016	<b>Time</b>	1:00-3:00pm	<b>Location or Call In</b>	Justice Building – Johnson Conference Room
<b>Meeting Name</b>	Public Records Task Force Sub-Committee				
<b>Meeting Owner</b>	Michael Kron	<b>Minutes:</b> Emily Anderson			
<b>Attendees</b>	In person: Michael Kron, Jeb Bladine, David Rosenfeld, Betty Reynolds, Robert Taylor, Josh Nasbe, Emily Anderson				

**Michael Kron** opens the subcommittee by saying he has printed copies of three spreadsheets – without titles, scrawled out titles. One is a combination of notes from subgroup members. Went through exemptions and categorized based on discussion last time. Reasonable standalone exemptions, ones that could be eliminated entirely, and ones that could be combined with others, and ones that could be made more consistent with other exemptions.

The second spreadsheet is Jeb’s notes on public interest tests. The third spreadsheet is Michael’s attempt at combining some of the exemptions and putting them together in groups and characterizing them.

A little about the numbers: 108 exemptions is about one fifth of the total exemptions. Will need to think of another way to get through all of these if that is something the large group wants us to do, we may need two or three of these committees.

Of all 108 exemptions, there were only three of them one of us didn’t think could be eliminated or combined. At least one of us thought the rest were questionable. 14 got one vote for one change, 20 got two votes. 17 got three votes. Four of five members thought a change was warranted in 32 exemptions. There were 19 exemptions with five votes for a change. Some got double votes. One exemption got seven votes – very unanimous that it should be changed.

Michael voted for the fewest to be eliminated, but the most that should be made consistent or combined.

Jeb voted to eliminate 30, to leave 36 alone, and to combine 35. Betty had a lot of multiple votes and a lot of questions. They showed sensible and correct sensitivity to that we are doing this a little bit in a vacuum and a bigger discussion will have to happen at some point. Betty voted to eliminate 27 exemptions, to combine or make consistent 62, and leave 23 alone.

Dave voted to eliminate 31, which was the most of anyone; combine 10, and leave 56 alone. Robert voted to eliminate 11, including four marked to either eliminate or make consistent; voted leave 54 alone – 11 of those marked make more consistent; a make 43 more consistent or combine.

There is definitely clear agreement that exemptions are not in good shape, and we all expected to find that. Clear ideas to whether eliminating or combining exemptions is really the way to go. Robert and I were inclined to make things consistent; you didn't think the exemptions were necessary in the first place.

My goal was informed by my work on Kroger's initiative 10 years. He didn't suggest any substantive changes to make things consistent, so it was a list under categories. That approach may have been on my mind.

**Betty Reynolds** – It was a humbling experience. Going through them made me appreciate that every one of them probably had a constituency that feels passionately about its inclusion. A lot of them had to do with legal process, and for those I will defer to those with legal expertise. My role is to represent the public interest, and I want to keep that in mind. I have respect to those of you who might have been advocates for their inclusion. I wanted to be mindful of what a significant task this is. I do like the way Senate Bill 41 was organized. I think you nailed it in your effort to combine. Jeb, a lot of my comments had to do with a public interest test, and the possibility of making the exemption temporary until the need for the exemption passes.

**Michael Kron** – For the record, I realize I didn't note who was here. Also in attendance is **Betty Reynolds** who just spoke, **Dave Rosenfeld**, **Robert Taylor**, **Jeb Bladine**, and myself **Michael Kron**. Scott Winkels has not yet joined us.

**Dave Rosenfeld** – Principles I was using was (1) anything related to law enforcement and criminal activity, I deferred to what was in the statute. On the plain face of it, it made sense. I figured Law enforcement has its reasons for wanting to do certain things. Anything that seemed related to protecting a vulnerable person or victim or whistleblower, I tended to defer to statute. That counted for most of the things I gave a pass to. I didn't spend much time thinking about the combination, I knew that there were other people here thinking about that. I thought my time was better spent making black and white determination on what was problematic and what was not. When I was assigning something as problematic, I didn't always find it completely problematic, just problematic enough to have questions on it. I wanted to place a flag with questions.

**Michael Kron** – When you had questions or comments, they do appear in spreadsheet.

**Robert Taylor** – It was a chore. It was humbling to see all of these. It is reminiscent of the tax code, loop holes and tax breaks special interests have been able to carve out. All of those exemptions were hard fought by some constituency; have to be respectful of that legislative choice. There were a lot of categories. There are number of exemptions for security plans, and I wonder why you need three statutes to say that? Why do you need the other ones? Duplication makes it hard for people to administer. It should be simpler. Easier to administer, easier to understand why they are denied or given information. Same thing in mediation, there are so many different exemptions – it's all kind of the same thing. Why do we need 15 different exemptions?

**Michael Kron** – AG is tasked by statute with adopting rules which agencies can adopt to make their mediations confidential. I had the opportunity to tell a few people in the mediation field that there seems to be a lot of questions from this group about why there is the need to have all these rules around mediation confidentiality. What you say is going to come out, at least at the end of the day.

**Jeb Bladine** – It was humbling; to see a lot of these for the first time. Did the public interest part first, that was fairly easy; clearly identifying the different language used to describe the nature of the public interest. It was pretty straightforward, it took while. I found that I have this huge bias for there being some public interest in far more exemptions. All of the ones that have no public interest test seem to me like there needs a review with a possible public interest test. We don't know what public interest is exactly. Everyone has different understandings of that. I pictured 435 public hearing in front of the legislature at some point. A bill could die of the weight to fix all of these exemptions. I would hate to see the task force try to solve all of this, we wouldn't have anything for 2017. I think 192.502(9) ought to be moved up to 192.501. There's been a lot invested in getting all these exemptions. Not easy to talk to all of these constituencies, it could be quite a task.

**Michael Kron** – could you move that debate by moving 509...

**Jeb Bladine** – It would stretch it out, it would take a while to look at 435. Maybe we can do that.

**Michael Kron** – I think what you're suggesting is the enormity of making substantive changes exemption by exemption is difficult to contemplate. We all would share that assessment. The question, then, is what are we going to offer that is worthwhile? Every interest group would realize it if we just tried to move sub (9) into 501 and they would be here.

**Jeb Bladine** – I don't know if they were intended not to have public interest. Some of them have specific mention. Not sure if that was the intent, that there is no public interest.

**Michael Kron** – it would be hard to tell, to piece that together.

**Jeb Bladine** – That would bring people out of the woodwork. I didn't get to your piece and I hope to spend some time with it now.

**Michael Kron** – I'm happy to talk about it. Anything I marked with a three should be combined with other; anything I marked with a four should be consistent with others. I pulled all those out and looked at them independently. I haven't said what I want to combine it with. I found 88 exemptions that I put into 18 different groups.

Kroger's catalogue had 10 categories, and 10 seems better than 18. These might be better viewed as subcategories to the broader categories we have been talking about. We decided to break out because the bigger group got hung up on what the reasons are that the Legislature should consider an exemption. We agree that private economic affairs and protecting personal privacy and safety were legitimate basis for exemptions. Public safety was a necessary category,

grouped a bunch into administration. The idea of sub categories is best viewed within those larger categories.

I found exemptions related to computer programs and data. There were some interesting questions about these that I want to get to.

Second was notices prosecuting attorneys send in anti-trust or unfair trade practice. Basically, if you're looking into a company for an unfair trade practice or an anti-trust practice, you have to send notice early on. This statute provides that the notice is confidential until the case is actually filed.

Competitive procurement exemptions – prevents bidders from undercutting each other when trying to get business with the state. It makes a lot of sense for people to be able to do business fairly.

Confidential submissions – I want to talk about this one, there were a lot of questions. If someone wants to provide something to the government in secret, and the government is willing to accept it and keep it secret, there can be an exemption for that.

Reports to public bodies about other people's conduct. It's usually reports by witnesses. You may want to protect identity of witnesses. It is really necessary for blanket protection in some and limited protection in others?

Test materials – questions and scoring keys. Unclear if it applies to people's completed tests.

Regulatory investigations – This is as opposed to criminal investigations. I included the waste, fraud, and abuse hotline in this category, but also the Dental Board investigations and things of that nature. There are some you won't see in here, such as midwives and massage therapists. A lot of systems are more set up to protect economic interests of those who are in these professions, as opposed to confidentiality while the public body is investigating.

Legislative process – Legislative counsel and fiscal office get proposals from legislators and their staff. Those communications are generally treated as confidential, but there are four or five statutes.

Mediation and litigation should be combined. Basically, dispute resolution.

Security matters. There are several different exemptions, I think they could be combined.

Accident reports for boats and cars. These should be combined, but also most of the information is available in police reports, which are public. Two separate statutes where there could be one.

Business transactions – This is one people had a lot of questions about. Some of them make a lot of sense. If you get a real estate appraisal as a public body, you don't necessarily want the other party to the transaction to know about it. More questions about things that give OCE an exemption for their sensitive business information. This is designed to foster ability to compete

with private businesses. The category is designed to capture those kinds of interactions where a public body is participating in the market somehow.

I thought we could combine all the ones related to undercover law enforcement – There is a separate exemption for their fictitious ID, for their undercover license plate, for their identities. I think they could be easily combined

Voter pamphlet material – This is so you don't get to read what people want to publish in favor of their measures before the voters pamphlet goes to press. **Robert** could probably speak to that better than me.

Things designed to protect species or the environment – There were about three in that category

Wire tap records – application obviously needs to be confidential. Information getting out is confidential for slightly different reasons.

Patient safety data, actually several. I couldn't tell from the text of the exemption if it was to protect patients, or data about adverse patient incidents. It seemed to be more about data.

Last category is criminal investigatory information. There is one generic exemption, and then there are a few specific this.

Those are the categories I came up with – I would view them as mostly subcategories of working administration category.

**Jeb Bladine** – Can you get the other 4/5 under these categories?

**Michael Kron** – No, but we could do similar work.

**Betty Reynolds** – This feels like progress, the list for combining or consolidating. I have a lot of confidence in your ability to do the same thing with the rest of them. I would be comfortable with you taking a shot at the rest of it, and us make comment afterward. We are looking at a workload and timing crunch.

**Michael Kron** – Not something I am super excited to hear. The good news is we have a new public records counsel starting, so I will have some help. Having done it once, it might be something we could commit to having that – we need to have more streamlined process if we are going to do the remaining four fifths. Any categories you would like to specifically discuss?

**Robert Taylor** – I would comment on one. The one that I think is interesting is the investigatory/investigatory exemptions. Secretary of State has the hotline. Members of the public can file a complaint against a business, and then the regulatory agency can investigate. It seems like you're balancing the desire to encourage and promote complaints (speak up if you think you've been done poorly) – confidentiality for people to feel free to make complaints. The other side, from a business prospective. Encourage people to file complaints – the only ones I want public are the ones that are founded that I actually did something wrong. My inclination

would be to ask if we can find a balance in all of those regulatory investigations. Maybe the massage therapist balance is different than the balance for dentists, or for plumbers. Legislature might find a different balance between those competing interests depending on what the interest are.

My overall vision or preference would be to, almost feel like there are so many exceptions, cobbled together other the years. Maybe you just start over. A part of me thinks this is crazy and we should start over, we might be able to do better. I don't think it would be pretty in the legislature. What would be a practical approach? Maybe instead of trying to boil them all down, maybe we start with these – we have 20% boiled down. And let's see if we can get this trough. Reorganize and – let's do that in 2017, and build on that in 2019.

**Michael Kron** – We kind of intentionally chose to take the most controversial and least controversial as our first groups. I think that is an interesting way to approach this. The reality is that I don't have all the regulatory ones categorized. There are a number of different regulated groups. I think that's a fantastic idea to take to the larger group.

**Jeb Bladine** – I agree that we should do it in pieces, but I wouldn't stop that process. It's pretty straightforward. It's not like trying to think through all the pluses and minuses.

**Michael Kron** – There are some that are related in ways, but are best serving different policies. The ones in here are sort of limited in some time. The ones that are not included are the ones that are not limited in time. There are some complaints that you will never get the substance of. You really can't do this without balancing the interests that are at play. We have such different rules profession to profession.

**Robert Taylor** – Maybe there's a good reason for it. We just know what the legislative impression of that balance is.

**Betty Reynolds** – When a central contested case hearings division was proposed, it does tend to bring out regulatory agencies and passionate professions say that our issues are unique, we can't have a central hearing agency. I'm just anticipating that if there was an effort to consolidate, I think you would expect to hear from 130 or so licensing boards.

**Michael Kron** – Phil Keesling tried that, and that is kind of what happened.

**Betty Reynolds** – I'm familiar with some of the issues of SB 41, particularly timeliness and fees, but could you say what percentage of the concern related to the 10 categories?

**Michael Kron** – The way the three things were combined into one bill allowed opponents to pick and choose what they were concerned about. We did hear that by repealing catchall exemption without substantive changes and replacing it with a catalogue, means there were unintentional changes. Honestly, they probably were right to be. The catalogue from SB 41 is about 70% of what we have now.

**Betty Reynolds** – I would like to see us tackle the entire group, not just 1/5 of them.

**Jeb Bladine** – Find out how the approach works at least legislatively. Let the task force get to some of the really tough stuff. I would like to incorporate some public interest notes in what you have here.

**Michael Kron** – I tried to sort mine by the descriptions before I reviewed it. I definitely will do that.

**Jeb Bladine** – There could be some issues with those.

**Michael Kron** – It's another inconsistency. I think I'm torn between the wisdom that both of you are saying. I'm a lot more confident in this catalog than the last one. Need to eventually get rid of the catchall to make this work. The catchall could be repealed two sessions from now. No one stated they were opposed to the streamlining based on principle. If we just propose catalogue, we aren't proposing any meaningful, substantive changes. We could propose individual changes; we could separately provide a report where we think the previous exemptions are not consistent with the policy statement. I realize however much process we provide through subgroup, the process with the legislature is still there, no matter how much we give them here. Anyone disappointed with our views is probably still going to turn up at the Legislature.

**Robert Taylor** – That gives you a certain freedom, if everyone has the opportunity to appeal to the Legislature.

**Michael Kron** – We all want to get some improvement out of this process. I wanted to mention some common concerns, and give us the opportunity to talk about them. Big picture strategy is an ongoing conversation and need entire group.

The first one I noticed was mediation. Of the top twenty or so, four or five were related to mediation. There were a lot of questions about what is the policy here? I wanted to give you the opportunity to talk about them as a group.

**Jeb Bladine** – A great deal of them say it doesn't apply to public bodies, so I got sidetracked a little bit.

**Michael Kron** – On the agreements, that's right. Most agreements to mediate that involve a public body are public. There are some exceptions for mediating workplace interpersonal disputes. If it's not a state agency, it's assumed to be confidential. If it is a state agency, only confidential if consistent with the rules of our office. Mediation communications of public bodies can be confidential. If they are a state agency, they are confidential only to the extent that rules of the AG's office allow. Very few exemptions let a public body decide for itself what is exempt, but this one does. The AG's office designates the scope of that confidentiality.

**David Rosenfeld** – Section 36, I was at a loss of what the stated principle is. I think you took a stab, but what I'm looking at isn't clear. Why would you want to make that a completely closed system with no disclosure whatsoever, even the outcomes?

**Robert Taylor** – The outcome is disclosed.

**Michael Kron** – If there is an agreement that comes out of it, that agreement gets disclosed. If nothing comes out of it, you don't really get to know what happened in it.

**David Rosenfeld** – Is anyone complaining about the process?

**Michael Kron** – We've heard complaints. Long v. Kroger was a public records and tort dispute between a public employee who was investigated criminally and ultimately not charged, filed some public records requests of the AG's office, sued the Attorney General's Office under tort law. That dispute was mediated and ultimately settled for I think a million dollar payment to Mr. Long, and in the aftermath of that there was a lot of discontent from reporters. The basis for the payment was not apparent because it happened in the context of mediation, and there was a million dollar check processed. Big things can be mediated. I think there are occasional complaints, but there are a lot more cases where everyone walks away who was involved feeling the outcome was worthwhile.

If the mediation people were here they would say that they need to get peoples true opinions. It fosters dispute resolution without taking time up in the courts.

**Robert Taylor** – The question in my mind – if you believe that each one of those represents some legislative balance that was struck, what then is so offensive that we have 400 o 500? Is it just that there are so many? The number itself is not that offensive to me. You can do it the Fed's way, everything has to fit in some narrow category, or the Oregon way where everyone gets a boutique exemption. It's confusing to navigate.

**Betty Reynolds** – I think that was one of the findings in your audit. It was a training issue. For anyone to comply with those requests, it's hard to comply timely and accurately. Can we make it more sensible?

**Robert Taylor** – I agree with that, and that is what the audit found. If all we did was make it simpler for the public to understand, and the substance largely remained the same, I think you've done a service.

**Michael Kron** – that's so nice of you, but I don't think I've done anything alone.

**Robert Taylor** – I think it's fair to say that it took the Legislature 40 years to dig this hole, its fair for it to take 4 or 5 sessions to dig out of it. And we don't have to change the substance all at once, and upset all these people, and you just make it simpler, that's not bad.

**Michael Kron** – I see the appeal of what you're saying, and I don't disagree that it would be accomplishing something. I think it would be accomplishing more if we could at least make them consistent within these categories, which does entail substantive tinkering.



**Jeb Bladine** – That’s the first level of service. And the next level is consistency and combing. And then there’s the public interest issues, of at least maybe confirming there doesn’t need a public interest test in some of these. Each one is a higher level service and it might take three or four sessions.

**Michael Kron** – I think that is a solid approach. I am sensing that Mr. Taylor is done looking through the exemptions.

The deadline for placeholder bill is June, substantive deadline we have to assume is September.

**Dave Rosenfeld** – When you say consolidate, in some cases it can mean getting the statute out of the weeds. Can you give an example of what that might look like?

**Michael Kron** – I think making them more consistent is a piece of what I would like our work product to do. Maybe we have two bills because I think the catalogue will certainly pass. I think if we do it well, it would be more consistency. Is consolidation going to include some form of consistency, is that what you’re asking?

**Dave Rosenfeld** – That’s one part of it. When I think consolidation, it means taking some specificity out of the statute and instead just saying, in general this is the principle that we are using. Maybe that’s not what you mean.

**Michael Kron** – I think when I talk about consistency, it would require that, right? To make a consistent exemption that is about both undercover officer identities and about the license plates that are issues for undercover police cars, you have to take some specificity out of each statute to make just one exemption that covers both things. Some investigations have a public interest test and will be disclosed at the end of the day, and some will never be disclosed. That’s the kind of consistency I think we need. Maybe we do it in two pieces. First is just the catalogue and some consolidating. And we have a second bill to make more consistency in one agency to another and from one profession to another. I see doing them separately.

**Jeb Bladine** – Would you say then a third bill for the other issues? Because they’ll get weighted down otherwise.

**Michael Kron** – I think yeah. I think separating the other issues from the exemption issues is important. In SB 41, a conscious choice was made to have an omnibus bill, but I think it was an error. It allowed people who didn’t like the timeframes to complain.

I think this on its own has some basic principles where everyone with an interest will be in agreement. I think everyone will be on board for that first level of service. I think we can get people on board for a policy statement for the Legislature going forward. I’m not going to make these decisions; I think the larger taskforce is going to make them. I think people don’t want to discuss some of the other issues so much, is the bigger picture.

**Betty Reynolds** – The public interest test, would that be mitigated in your mind by a temporary test? This exemption shall apply until the need creating the exemption no longer exists. Maybe just the 20% form the lenses of will this be temporary.

**Jeb Bladine** – I'm not in any huge rush to try and legislate the public interest test. I just wish there was some recognition and understanding. What we find in the media, is that it's easy for officials to say there is not public interest in this and not look into it.

**Betty Reynolds** – I'm wondering if that is maybe one more task that we could take on, but it doesn't sound like it.

**Jeb Bladine** – In the combining and the consistencies, I think the public interest is an important part of that. It might be that some things could be temporary. I like that three bill approach. The other approach is to throw it all out and start over, the bulldozer approach.

**Michael Kron** – It does have some appeal, doesn't it?

**Jeb Bladine** – You could do that in 1974, but starting over from scratch is hard.

**Dave Rosenfeld** – This seems so reasonable, it will be interesting to see how the task force reacts, and then to see how the legislature and public react to this. This would be meaningful, because you're ending up with less.

**Jeb Bladine** – It needs to be an infrastructure that is set up to fix things later, if we can't fix it all now.

**Dave Rosenfeld** – It's very difficult right now to have an informed public debate about our public records law.

**Michael Kron** – Should we talk about the next steps for our work?

**Robert Taylor** – I'm in favor of that, the next steps.

**Betty Reynolds** – My notes for the mediation exemptions were, can these be consolidated, and are these temporary? I have a feeling the conversation might lead us to the same place. But I've done the work.

**Dave Rosenfeld** – I'm very curious to see where we land on considering next steps, and then get into some of the specific questions. I might want to get into that later on.

**Michael Kron** – It's a little bit abstract. I can give you a roadmap of what it would look like. I would like to have something to take something back to our bigger group. I think the consensus is that we should be doing at least two things – first we should be going forward with the idea of a catalogue, which does not need to be legislated. It could be a document that you find of the Attorney General's website, but I think it's more useful for it to be legislated. I think putting an effective date on the repeal of the catch-all exemption is a good idea. The second thing is to

proceed with trying to combine the ones we think can be combined. I'm happy to work out a report of based on my spreadsheet that says here are the areas we can combine, here's a summary of what that would look like, and here are the reasons why this is the approach your subcommittee is recommending.

I don't know how to get you guys to see it before it gets presented as a draft, but maybe that's the thing to do, is to bring it as a draft report to the larger committee.

**Jeb Bladine** – You're talking about these hundred?

**Michael Kron** – These 108. I did not include the exemptions I thought should be left alone, or the exemptions that I thought should be eliminated, or the ones a lot of us agreed should be eliminated. In preparing that report, should I include that in my list of things to consolidate? I will put them in and flag them, and state how many people on the committee think it should be eliminated.

**Dave Rosenfeld** – I think people would be interested in that.

**Robert Taylor** - All 108? It may focus us better to say here is what the majority of us think should be eliminated.

**Michael Kron** – I will add the 20 that are not in this list, and attempt to write a draft report that's not just a spreadsheet. I think we should continue work similar to what we did here on other groups of exemptions. I think it will be helpful for me to make this kind of list before you guys look at it, so I that is something I will work on with my public records counsel.

**Jeb Bladine** – You got all the exemptions in big categories already? And you just haven't done the sub-categories? How many big categories are there?

**Michael Kron** – Preliminary. There are four big categories, so we have two left. Unfortunately they are the two big ones. You will have to be patient with me and Noah because we will be doing it without the guidance that I had when doing the one that's in front of you.

I color coded each group so people could sort how they wanted to and would be able to find it again. I will try and figure out something that will be compatible with our website.

I would like it if we can meet again next month. Does economic affairs sound okay to everyone as the next category?

**Jeb Bladine** – Maybe everyone could look at the public interest columns on this and you could say what you think about it. I'm happy to keep working on the other exemptions. It's fairly easy and straightforward.

**Michael Kron** – I feel like you did a good job here. You pulled out the statutory language but someone talked about the weirdness of the test we use. What we're really talking about is a

colorable claim of public interest, like kind of a one, two, three, four. A similar kind of rating, what does this mean and how does it appear?

**Jeb Bladine** – I wasn't trying to make an editorial comment, I was just trying to record what it says.

**Michael Kron** – I would be interested in the editorial comment.

**Jeb Bladine** – A lot of them are purely exempt because they aren't subject to a public interest test. Maybe a lawyer should tell us what the difference is between 'shall not divulge' and 'shall be treated as confidential'.

**Michael Kron** – I'm more interested in the public interest stuff. I just remember when we talked about the public interest in the larger group last time, that the words we use don't really seem to be what we're talking about. Words of the statute aren't always related to the question that we should be asking. Basically, how significant is this public interest, and how significant does it have to be to get over the exemption?

**Jeb Bladine** – There's a subcategory of that, unrelated to the underlying information and more related to the performance of the individual. That's the bulk of our public interest arguments. There's a lot of different nuances to the public interest.

**Michael Kron** – It didn't sound like anyone else thought we should burden you with that task.

**Robert Taylor** – I have a comment on the public interest – seems like Jeb if you already don't think the public body did what they were supposed to do, and you want the records to demonstrate that, and it's up to the public body to get that stuff, you aren't going to believe them if they tell you it's not in the public interest. It seems unreasonable to me. You already don't trust them, and you aren't going to trust them when they say it's not in the public interest to give it to you. I would feel better if we had fewer exemptions, but make them categorical. Either off limits or you get it. Don't leave it up to the public body to do this balancing test, because you don't trust them anyways.

**Jeb Bladine** – I think that overstates. It's a check and balance process. We don't have hardcore distrust of a specific person. Generally that there is a public interest often in the way that government does things. Usually what we ask for is not about someone doing something really wrong; it's the way government adjudicates things and the way that it treats the public body that interests us.

**Dave Rosenfeld** – Most of the time that we are doing public records requests, it's because there are decisions that are consequential, and we want to see what the public official used to make their decision, so we can independently verify if we feel they made the right decision. Where we have gotten frustrated is when those officials wouldn't turn that information over. We weren't hostile to the decision, we just didn't know because we didn't have the information in front of us. We thought there was interest in getting a second opinion outside of the government. There's

just a lot of 'trust but verify'. Upon seeing the information that the public official used, we come to a different conclusion sometimes. That process has been useful in the ultimate outcome.

**Robert Taylor** – To me, that argues in favor of a rule that says if the public official relied on it, it gets disclosed.

**Michael Kron** – That's where people come to the AG's office or the DA's office to get an opinion on that. I think a lot of people trust us to make those calls objectively. I am nevertheless excited at the idea that there might be some kind of ombudsman-type position created following the Secretary of State's report. Ideally for me, I would love to see a process where that office will decide what is subject to disclosure and apply the rules independently.

There are cases where, one of the exemptions that comes up in, is discipline of public employees, it has a public interest balancing test. Our office has been pretty consistent over the decades now that whether it should be disclosed depends on the conduct and the nature of the position the person holds. It depends on those things taken together.

I think the public interest test, where I agree it may be problematic to ask agencies to make that determination themselves. DOE has been under scrutiny for a long time over the handling of these Betsy credits, and they acknowledge that the scrutiny is deserved. The requests go to them and they apply the public interest test – from the public's perspective, why do they get to apply this? And why do I have to go another step to get somebody neutral to take a look at it. I think it has problems.

**Betty Reynolds** – Jeb has said a couple of times that the public interest can't be defined. Looking at the definitions of 192, they're pretty bland. Maybe take a shot at defining public interest in there.

**Jeb Bladine** – There ought to be something that provides some kind of guidance. Even though public interest is very different in all kinds of situations. With discipline, doesn't it bother you that two people are accused of sexual abuse, and one person gets disciplined for it but he keeps his job. That is exempt, but one person doesn't get disciplined for it and that's public?

**Michael Kron** – I think the conduct you just described is egregious enough that it would bother me, yeah. Again, I have a hard time believing that's the conclusion our office would come to.

**Jeb Bladine** – The documents that lead to discipline are confidential. The same process that doesn't lead to discipline is arguably not.

**Michael Kron** – But it's an exemption that has a public interest test.

**Robert Taylor** – Maybe my gripe is less about the test itself, maybe it's more of who the decision maker is on that.

**Jeb Bladine** – It should go to the ombudsman.

**Robert Taylor** – Maybe there is opportunity for the larger group to make the recommendation on where that should go.

**Michael Kron** – Unfortunately Gina, our Governor’s Office representative, will not be at our taskforce meeting. But I was hoping to put that on the agenda. Maybe we will want to talk about it anyway in her absence. I haven’t set an agenda for our larger group meeting yet. Does anyone have the time?

We are almost out of time. I am very happy with both the process and the next steps we have identified. I think it’s the right approach from my perspective. I want to make sure that if anyone else wants to voice anything that we didn’t get to talk about.

**Josh Nasbe** – I have something. Two exemptions that are court specific and the judge makes that determination. Changing decision maker is a big deal. I would like you to consider that when combining things. We should have a longer conversation about that.

**Jennifer Johnston** – [Much of this comment is inaudible] Public bodies have a lot of information about the public we have in public trust. We have to be careful about releasing that, look at a lot of exemptions carefully. Rather than having to look at 50 different places, it would be nice if we knew when we got a request – we should give you their name, but not whatever we can reach consensus on.

**Michael Kron** – Personal privacy is going to be the last one that this subgroup tackles. The complete list is posted on website. I can’t guarantee nothing was missed, but I think it’s the best list of Oregon exemptions that is out there.

**Kevin Ohr** – We are watching this very closely because we think this is a very important issue. I was hearing some things that I want to pass back to you, that I think are very interesting. I heard the word “infrastructural approach” and categorical ways of approaching this. It seems like one of the things you could strive to accomplish is a philosophical approach and what I assumed you were doing by these 108 is a sampling technique. Going and getting something that would help you get a good idea of what’s out there and how you would improve the situation; but also apply that to the rest of the exemptions. I heard a lot of good ideas and I think it’s important to consolidate those into a set of principles. Those might end up being more important than anything else you do. Going forward, the public is going to want to understand why these exemptions exist. Ultimately they are the judge of what is in the public interest, is the public. If they can understand it, simpler is better. We may find that the public not knowing, or not caring, does not negate the public interest. The public doesn’t have to have an opinion, they just need to know.

**Michael Kron** – We are going to be rolling out an email address so people can send their written comments to the taskforce, and we will compile that commentary for the taskforce and for the public.

We are going to do another public outreach function. I appreciate that commentary and it relates back to the policy statement we are working on. While talking about what a policy statement

would be, the feeling of the taskforce of a whole was that it would be helpful to know what is in there.

**Kevin Ohr** – I heard a couple of different approaches and you could list the pros and cons of each one. I heard the bulldozer approach; let's fix 20% and then tackle the rest; another one might be this philosophical or categorical approach. If you were to present folks with these, they may appreciate the wisdom.

**Ben Bittig** – One thing Ms. Reynolds said is that the definitions are clear. I brought an example [inaudible]. What it is talking about is a governing body, and this organization pops out [inaudible]. The way this plays out is that the Oregon School Board Association is actually providing legal advice to school boards about how to pop out of the public records law, and that is kind of significant. The last page shows how it's happening with the Beaverton School Board. I'm concerned when you get into the definitions and there are holes in the public records law.

**Michael Kron** – I just want to correct you, this is a way to potentially get around the public meetings law, but the public records law would continue to apply. The issue you've identified is interesting in terms of the public meetings law, and I think you are correct that this body is not technically subject to the public meetings law, although we are complying with it, that this is not a public records law issue because the status of the records is not going to change.

**Ben Bittig** – My understanding is that in order to have public records, is that one door opens up another door. If you cut off the public meetings, then you have no public records. Am I correct?

**Michael Kron** – You're not required to take minutes. That is a records issue, but it's beyond the scope of this task force.

**Betty Reynolds** – just want to thank you for bringing that up. Chapter 192 covers both meetings and records.

**Michael Kron**- I have one minute.

**Dave Rosenfeld** – At almost every subcommittee and committee meeting there has been a lot of interest. A lot of the same faces and a lot of new faces. Threes only so much you can say, but if people have any more substantive comments, I would be interested in reading it. It would be good to get a reality check of if we are on track or not.

**Michael Kron** – I was planning on endorsing this categorizing idea, but I think it's a good suggestion to kind of talk about these other approaches.

**Betty Reynolds** – Back to Ben's comment – what I was talking about are the definitions in 192.410, which relates to public records. Potentially trying to define public interest, but I want to make sure it's not something we are going to proceed with.

**Michael Kron** – I think it's something to take back to the group.

**Dave Rosenfeld** – I've been trying to articulate that for 25 years.

**Betty Reynolds** – It's a huge concept that might defy definition.

**Jeb Bladine** – It's almost more concerning to me when people don't divulge stuff when there's no real reason for them not to, other than that they are allowed to. They're just allowed to not give it out.

**Michael Kron** adjourns meeting.

DRAFT