

<b>Meeting Date</b>	3/28/2016	<b>Time</b>	1:00-3:00pm	<b>Location or Call In</b>	Capitol – Hearing rm. 343
<b>Meeting Name</b>	Public Records Task Force Full-Committee				
<b>Meeting Owner</b>	Michael Kron		<b>Minutes:</b> Molly Manos		
<b>Attendees</b>	In person: Michael Kron, Jeb Bledine, David Rosenfeld, Betty Reynolds, Robert Taylor, Josh Nasbe, Emily Anderson, Molly Manos, Phyllis Nelson, Noah Ellenberg, Rob Bovett, Ken Helms, Scott Winkels, Mark Landauer				

**Michael Kron** opens the subcommittee with introductions, first: (Noah Ellenberg, new Public Records Counsel)

NE- I'm Noah Ellenberg, state of New Yorker, but I've been in Oregon since 2009. Last year of which has been working on the public records counsel in the governor's office so I'm familiar with the work and very excited to be here, both with DOJ and attending the task force.

ER- We're delighted to have Noah on board, I just got to swear him in 10 minutes ago or so, Thank you joining us and really looking forward to having you involved in our work.

MK- And the people here probably know better than most that the current governor came into office and inherited I don't even want to begin to speculate how many public records requests and Noah has been instrumental in helping that office catch up, and really has been gaining a lot of experience in a short time with the Oregon public records law.

I'm Michael Kron I'm special counsel for legal matters to the Attorney General in the Attorney General's office and she's my boss and she's next.

ER- Hi, Ellen Rosenblum, Attorney General, nice to be back, Robert.

RT- Hi, I'm Robert Taylor, I'm the Deputy Secretary of State.

BR- Betty Reynolds, I'm a public member on the task force.

DR- Dave Rosenfeld, directory of **OSPREY**.

JB- Jeb Bladine from News Register in McMinnville representing Oregon Newspapers Publishers Association.

RB- Rob Bovett legal counsel with the association of Oregon counties.

JN- Josh Nasbe with the Judicial Department.

ML- Mark Landuer with the Special Districts Association of Oregon.

KH- Ken Helms state representative of district 34 in Beaverton.

MK- Representative, thank you everybody. Um, so the first thing I'd like, Oh yeah, ok let's ask our audience members other than Noah who already did, if they'd like to introduce themselves, feel free to stand up, feel free to not.

ER- If you want to be anonymous that's ok too.

MK- Wave at me if you want to tell us who you are. I know most of you already. Oh somebody is waving.

Audience member- I'm Ellen Milton, representing the Oregon Association of Broadcasters.

MK- Ah yes, so the Oregon Association of Broadcasters has a new, they're representative from the task force is no longer able to serve and they'll be replacing him with another one but probably starting at the next meeting. So Ellen can hopefully report back to the leadership and that organization on this meeting. Actually one of the, oh you would like to go (points towards audience member) introduce yourself too.

Audience member- My name is Jennifer Johnston, city of Portland.

MK- Hi Jennifer.

Audience member- I'm Morgan \_\_\_\_\_ and I'm a lobbyist for the Oregon School Boards Association here on behalf of K-12.

MK- Morgan, (smiles and nods).

ER- A hand over here (motions to the back left corner).

Audience member- Elsa Wilson I represent the Newspapers Publishers Association.

MK- Oh ok.

ER- We all know Christina Adkinson our communications director, I think you've met her before, just want to make sure.

RB- And is there anyone on the phone?

MK- Uh is there anyone on the phone, there was going to be someone on the phone, are we dialed in?

EA- We're not dialed in.

MK- We're not dialed in, oh no, that's really bad, so who's going to be on the phone? Um...

Emily Anderson dials number.

Audience member says- Oh Les just emailed.

MK- Les is on the phone, yeah.

Audience member- He's trying to call.

MK- Tell him it will be up in a moment, please, sorry. Les is uh, duties as a reporter have him out in a Mauer county.

ER- Is there something going on over there?

RT- Yeah.

Emily activates the line as host.

MK- Ok, can you tell Les its up. So I'll introduce Les in Les's absence. He's here on behalf of the society of professional journalists, highly respected long time Oregonian investigative reporter. Who I believe like I said is out in Mauer county and I think was the reporter who broke the Mauer county wildlife refuge take over story, what feels like an eternity ago now. Ok, I'm actually glad, Ellen, that you're here and we have a lot of newspaper publishers and stuff because that will be one of the things we want to talk about today on the agenda second item is to discuss outreach. Getting word out about the work of this task force, so I'm excited to have you guys help with that. First thing on my agenda is to approve our prior minutes, these are from our meeting in December. Perhaps and I haven't had any comments from the task force members on those minutes. I was looking at them today and found a couple typos but they looked substently good so if I can float a provisional suggestion that we improve subject to correcting graphical errors that agreeable, are \*disagreeable to anyone.

JB- Sole moved.

MK- Sole moved, second? Alright, I don't really know how to do this part.

ER- You're doing great.

MK- So the minutes will be approved subject to typos then we can move on to the issue of our, making outreach efforts, getting public comment. A couple of you participated I think Rob and Jeb representative Huffman and Rob Taylor, you came to, I think for the last time we had a public comment meeting. We didn't have a lot of a lot of attendance. We definitely want to get

around the state more. We'd like to get better attendance. Jeb at our sub group meeting just almost two weeks ago you mentioned that you felt like we should be doing a better job of getting the word out about the work of this task force. I think that, that's one of the ways we can do it. Um, but, you and the newspaper publisher side and uh, oh Les is that you?

LZ- This is Les.

MK- Hi Les, sorry about the snafoo with the uh, with the phone system there. You haven't missed much we introduced each other, we approved our minutes subject to me correcting some typo and I was just getting on to the discussion of how we're going to do public outreach and getting the word out about the task force. I was just about to ask Jeb if he, you would be willing to sort of share his comment and talk about ways we could improve public understanding and what we're doing and get good attendance at events around the state.

JB-Uh yeah, I think first of all that OMPA would certainly help with sending out information we have a regular network of communications to publishers to editors. Certainly would make sense to have state wide kind of a release when, if there's a schedule set for places around the state. Along with a little bit of push over peak , get a push for people to give it some coverage. We don't set anybody's editorial policy but we could certainly encourage them to cover this, if there's an area of interest in the association. So whatever body of that content in terms of information of what the task force has done to date and would hope to do in the future would probably go in there. Then I'd suggest a follow up to newspapers wherever if there's meetings set in different places for there to be a good strong follow up a week ahead pretty standard stuff. And not just newspapers of course but you got radio stations and television stations and I suppose that a notice could out to the various other local governing bodies so that they would know that there's some public input being taken. Again, I think that ONPA, if you get stuff set up would be fairly easy for ONPA to help with that.

MK- One of things that I think I hear in there is the idea that we should come up with some kind of content for what we're asking people to push is that..?

JB- Yeah I think there should be at least some generalities of, ya' know if we're going to ask. If we're not asking people to come in and speak extensively on individual exemptions, I mean we may or may not be but you don't want people to waste a lot of time if the task force is going in a certain direction. If we know what the task force is going to be tackling, if we're going to tackle fees, and we're going to tackle timing and we're going to tackle whatever the sort of big ticket items then it's good to let people know.

MK- And I think one of the things that our office is planning to do is invite members of that task force to join the Attorney General in this, is actually setting up meetings hopefully to coincide as much as possible with what we may travel around the state. We've talked a little bit about various places we'd like to go, out east probably, would possibly work. I think we have some trips planned to the Pendleton/Hermiston, Bend, the Dalles, not quite as far east. Probably to Eugene, maybe the coast, any communities that are of particular interest in interested task force members. The goal here is to get out to as many places in the state as we can where we think we're going to have enough people to come together and share thoughts with us but.

KH- A lot of people have been going to Burns lately.

MK- Mauer

LZ- I don't think it is Burns any more.

MK- Is that where you are Les? I told them I thought you might be out in Mauer county. He's not out there.

ER- If I could just make a comment. Hi Les it's Ellen. Ya' know I would be happy to go anywhere in the state. We do have some as Michael mentioned I have some scam jams as we call them scheduled around the state so it would be great to coordinate with those because we are really trying to get around with those. We've traveled around in major cities but now we're starting to do what we call scam jam light. Where we teach consumers how to avoid getting scammed and we have a really great program. So we'll let you know where we're going with those but I would like to get your thoughts on the places where you think maybe the top 3, because I don't know that we could necessarily do more than that. The other comment I would have is that, is that it just seems like people are going to be more enthusiastic about coming more motivated to come if they do have as much specific information about like which exemptions we're zeroing in on. As we know it's a big effort to get to a meeting and so the general 'here's what we're looking at' might not have the general urgency of something more specific. So the question I would have is do we want to wait a little while longer so that we have specific some more specific information for them before we invite them to come. 'Cause I think that was part of the problem last time we had the meeting over here in Salem and it may be that we didn't get the word out as well enough as, as we should have but it was still so early that we didn't really have an agenda that was particularly, you know, motivational.

Les- This is Les, I agree with you Ellen, I think public records is not a, the **barn and border** issue for many people, and so, as I was listening to this conversation I'm thinking well what we are trying to accomplish with this public outreach. I think you are going to get better participation and have a more informed response if you have some package for people to react to. I mean otherwise you can anticipate what you're going to hear: "Well it's hard to get records, they're expensive, I want to get stuff that I can't get". You can almost script the responses without them going out.

-Michael laughs, Ellen agrees: Yup.

MK- I don't know if the legislature would find the scripted responses as persuasive as actually hearing it from people from people directly but I think that's a good point and one of the things I that I was wondering is about maybe asking a few of the sort of press affiliated members of this group to think on the side what some content might look like and report back to us with that, and I'd be happy to participate to of course but I, to the extent we need a package of information to get out there I think that's probably not something for this entire group to develop but I think it would be useful for the people who have that sort of experience or are willing to help, and I know the newspaper publishers are here and the broadcasters are not but we may want to loop

them in at the next meeting to. But I wonder about maybe me and Jeb and Les working up some materials and in consultation with our communications director Christina, coming up with a little bit of a plan.

ER- Are you talking about being fairly specific as to purposed exemptions in terms of combining some eliminating some so that, that would be on the list?

MK- Well I think it could be. I mean what I would like is for the people who mentioned what it would take to get people interested to get us the information that we want. I think that has probably going to get us more useful input if we can be specific, but I think it would be helpful to be developing that as we're doing our other work and not spending time trying to put it together at the end.

ER- Ok.

MK- Feeling a little bit of a time crunch with the legislature.

ER- mmhmm.

MK- And I know it feels probably to most of you like it's a ways away but those of you who work in the building know that it's really not (laughs), not that far away. I see Mark nodding his head. So the first sort of deadline for getting legislation is in June actually. Is the right Mark? Or May or June...

ML- Hasn't looked at the rules for when everything has to be submitted.

MK- So it doesn't have to be, still in denial..

ML- Billing denial from...

MK- So I haven't hear anything from Scott since legislature broke and I'm guessing he is similarly in a state of denial. But basically by May or June we need to have at least a placeholder concept in place if we're going to propose legislation for the 2017 session. So, there is a little bit of urgency which will inform some of the other things we're talking about.

ML- If I may add, the one thing that I do think we need to look at is amended version of HB 4130 that was considered by at least the house.

MK- Yeah actually uh HB 4130 you probably noticed that towards the bottom of the agenda I want to start talking about timing and fee issues. HB4130 is one of the things that I'm putting together some materials on that, and it's definitely one of the things that I think people will want to look at. So for those of you who don't know HB 4130 was considered in this previous legislative session. It was initially introduced and did two things that are directly relevant to our work. One is it purposed a timing deadline around public records requests, and it allowed for flexibility in a way that senate bill 41 in 2011 I think eventually got there but as initially introduced didn't really. Another thing 4130 did was to initially proposed was to set a cap on

hourly fees that both parties could charge for PRR's. The amendments that Mark is referring to I think got rid of the fee caps and created some exceptions for public bodies that would have a hard time complying with even the flexible deadlines that were in the bill. So I definitely think that's a concept that will merit our consideration and something I plan to talk about a little bit on that agenda item today. Oh Scott, hi!

SW- Sorry (takes seat).

ER- So Michael what if, if I can make a suggestion. What if we try to plan for two public meetings, public hearing meetings a month for three months? Starting in May which would give us enough time to sort of gear up with some fairly specific recommendations, or not recommendations but concepts that we would put out there. So you can meet with the little sub-committee, and we can then figure out the locations, and it really is optional for the task force to attend. So if you're available that's great, but if you guys don't mind we won't like float out dates to try to get everybody on board 'cause I think it does involve travel and is going to be complicated. If we can get even a couple people at every one of them that would be great. Obviously as many as can come, but if we did that I think that, I know I could definitely come up with dates that would correspond with some of these other things and that way by July we would have done 6. Does that work for people? Anybody, what about you Jeb, does that make sense to you?

JB- Yeah, I think it also makes more sense to wait until we have more specificity for what we're going to be looking at.

MK- I agree with that, I do think it might be useful for those who are willing to help come up with some sort of a package of content that we want. Just to start talking about what that might look like. I haven't heard enthusiasm from Jeb or Scott, and I guess Ellen Milton (audience member) I can't make you speak for your member but, are you guys willing to help?

ER- Right, yup.

MK-I wish the broadcasters association was in the audience. Um so if you guys would be willing to help me that'd be great otherwise I suppose I can come back with some content proposals for the next meeting but I think it would be useful to have your buy in and your contacts if you're willing.

JB- I would be willing to do that. It would actually help to do a little bit more formal surveying of our members. Sort of a confession here, it's real hard to get this information of what the problems are. We've, we'll ask, we'll send out stuff to all publishers. You know there will be a couple two or three things I'm sure that the cities and counties might do a similar thing. Loose matter of, well this is a problem here er' this is a problem there. We don't really have a real solid database internally of what the newspaper editors around the state consider their principal public records challenges. They're so antidotal it'll be criminal justice in one place and it will be attorney client legal privilege someplace else. The privacy and the body that they're working with on those individuals as much as the law. So I've done a few things like that, maybe we

could come up with something. I think it would be a little bit more formal, that we could send out...

MK- OMP

JB- to our newspapers, OMP and get some, hopefully get some better reformation. These are people that are using the law and we can weed out but it's uhh..

MK-That does sound like a good, very useful to the extent that we can make it happen within the timeframe. Les I almost hate to even ask you this 'cause I know how busy you are but do you think either there is any way that we could get some your time or maybe a surrogate from the society of professional journalists that would be willing to work with me and Jeb and hopefully with the broadcasters association to report back to this group?

LZ- Well assuming that the folks in federal custody of strict standard control. I would be happy to help, that frames the issue responsibly that we need to do our work, not only our work but to help craft a package to send to the legislature. I do want to be involved as much as I can be.

MK- Excellent, I will definitely take that as a yes. And then Ellen, I know you can't ask you to commit on behalf of your committee member but if there's any chance you could relay this ask back then that would be great.

EM- I would be happy to do that, I just want to be clear that you're asking for assistance in getting it out to the general public. That would give our members much more of an opportunity to..

MK- That's..yes.

EM- Provide feedback to the general board.

MK- And to come up with sort of the content of that messaging, yeah.

EM- I think we can bring that up when we meet next.

MK-Thank you. Alright, so that sounds like a plan to me. Hopefully the three or four of us depending on the broadcasters association will come up with some good stuff and get back to this group in April. And I think the AG's plan that we will be doing two outreach meetings per month, starting in May through July. I think that, ya know, we'll be happy to have you guys participate as much as you can and in that otherwise we'll just make it happen.

KH- Scott had his hand up for a minute and I would be one curious for both Rob and Scott when you have ideas or concerns to add these public forms. It seems to me that these forms could serve at least one purpose. One, we get citizens out to tell us what they think but it's also a good opportunity for citizens to understand what the cities and counties are up against when they get out of an ordinary public records request and there's a chance for education there.



SW-I did briefly have my hand up. I was hoping you were going to ask, I didn't want to curb Jeb offline but I was going to ask if we could talk about the problems. If it would include the different agencies where the problems exist. And if you're getting treatment or different responses, challenges from different levels of government. That's something we'd like, would be interested in. There's been some recent news story about some documents that were sought after at the state level and when I queried some of my recorders there was some perplexity as to why that complicated. I'm trying to gauge different levels and types.

MK- mmhmm, are you going to tell us more details or is that, looks like your...

SW- Well sure, I think it was an issue with the calendars...

MK-Oh

SW- and that getting an outlook calendar to a city recorder isn't a challenging process it's a \$2 request and so handling this the same way I think is important.

MK-Yeah that was an interesting story, I agree. Ok, so I think that sounds like a plan and Ken I think is a very good point, this task force in our work and something that we talk about quite often is the sort of two sides to this issue and I think it's a good reminder that we could use the opportunity. Not just to solicit feedback but also to do some education. I think with that I am excited to work with Jeb and Les, and Ellen could you remind who it is that's going to be..?

EM-Keith Shipman

MK- Keith Shipman from the broadcasters association that's hopefully going to be joining this task force is starting in April and will hopefully be joining us in the interim and we'll get back to you guys.

Let's see next: exemption subcommittee report: calls out for copies, invites audience members to grab one as well (report is passed around). This is the first work product of the task force that is, actually has some sort of formal substance to it. I want to take a moment to thank those who participated on this sub group and produced this draft, this report I should say. Robert Taylor, Jeb Bledine, Dave Rosenfeld, Scott Winkles but Scott was unfortunately unable to attend the first meeting but still participated in the meeting of the first sub group.

SW- Session got in the way

MK- Were you in HI?,

SW- Session got in the way, huh? But no I was not, I was in Disneyland, sorry.

MK- Well earned vacation after kind of a crazy short session, I think a lot of people in the building would agree.

Anyway, so I thank you to the sub group members. We unfortunately have a lot of work to do. I put together a little presentation I tried to get somebody else to agree to present this because I know I talk too much at these meetings. But nobody exactly was in a rush to be the one to do it.

I put together a little bit of a Power-point presentation and hopefully I can be heard in the microphone from over here. I'm going to close this door otherwise some people won't be able to see, but essentially the subgroup was tasked with reviewing exemptions. We decided to start with two of our preliminary categories of exemptions. The administration category which you guys will all probably recall was a category which engendered a lot of discussion at our meeting about exemptions in December. What is this category and what kinds of things can you report back to us. And then the Public safety ones which was kind of, as we expected, were less controversial.

So the five of the six sub-group members actually went through the 107 exemptions that we have preliminary placed in these two categories, read the entire thing and rated them. And we use basically four categories for our rating. 1. Was , you think it's a reasonable standalone exemption. Meaning it probably doesn't need to be changed and number 2. That it is information that shouldn't be exempt that it should be available to public. 3. That other exemptions are dealing with dealing with similar information so these could perhaps be combined 4. And that there are other exemptions but they deal with similar information a little bit differently so not should they be combined but they should be made or could be made consistent. So the survey says everyone thought that we should keep exactly two of the 107 exemptions that we looked at. So there were only two of that we unanimously agreed made sense as standalone exemptions. Shouldn't be combined with anything, didn't need to be made consistent with anything, two out of 107.

A majority thought that we should either change by combining or else eliminating 68/107 which is a majority for a majority. And if you break it down actually something even more interesting came out. If you look just at the ones that were preliminarily categorized for administration purposes. There were only 22/85 of them that a majority thought probably could be left alone.

From the public safety category there were roughly five that people thought should be changed by either eliminating, actually I think in a public safety context everyone that we thought should be changed could be combined with or made consistent with other exemptions. So that's one way to look at it.

I'm going to go through the next page because I have prettier pictures here. These are just pie charts showing those breakdowns that I just talked about on the left. You see that thin blue sliver represents the two exemptions that everyone thought that made sense as standalone exemptions. The grey, a majority of us thought made sense as standalone exemptions. And then the big orange part is things that we all thought could be improved. Either just by eliminating a particular exemption or by making it consistent with other things.

Audience member- and what is grey?

MK- Grey is where a majority of us thought they were ok but non unanimous. So the blue is unanimous keep. The grey is a majority thought could be kept. And the orange is the majority

thought that needed to be changed in some way. So I think these graphs especially the one on the right for the administration type exemptions speak to the complexity the members of your sub group found when we were looking at this. I think single most common word the members of the task force used when reviewing about a fifth of the total exemptions, was humbling. The process of going through just these to try to understand what they were was difficult actually a number of us had questions about exemptions, including myself. And those questions are reflected in the appendices of the report you guys are looking at. I did not print copies of the appendices because the shorter one ran to 104 printed pages and I didn't feel like we should kill all those trees. All this information is posted on the Attorney General's website however. So you can go and you look at the kinds of questions that people had.

So we also voted and this is just a graph showing how many exemptions received how many votes to either receive a change or eliminate it. I think I mentioned already there were two that didn't get any votes for change. There's actually a third one that didn't get anyone actually saying that we should change it but it got a couple questions maybe we should change it. So I didn't feel we were unanimous on that. One vote for change I think there were fourteen exemptions that only one person thought should be changed. I was usually that person and usually what I thought was we could combine this with other things. Two votes for change with twenty so less than a majority of votes there were all of thirty-seven out of the exemptions that we looked at that got less than two votes for change. So we found that as we expected there are problems.

The next slide talks a little bit about the things people had questions about, had concerns with, felt that could be changed or improved. One of them is a certain type of agreement that property owners can enter into where they essentially agree that they will self-regulate. They make this agreement with the public body that they will exceed or meet applicable regulatory requirements. And then they're essentially not regulated further. It's basically like if you agree to do this you kind of opt out of the general regulatory structure. You have a question Mark?

ML- inaudible

MK- Oh it's very specific actually it's.

ML- I think about a Brownfield maybe.

MK- Yeah, that's the kind of thing that it is, it's a water quality or environmental quality or species protection type of agreement between a property owner and a..

ML- Regulating agency

MK- Right, a regulating agency where they can essentially have this agreement and then the agreement is confidential in which they set forth how they're going to meet or exceed applicable regulatory requirements. So Brownfield is a perfect example I think that, that would be. Actually that one got seven from the five of us who looked at it, it got seven marks for some kind of a change. There was a couple people that were like well we either need to eliminate this or we need to change it but it doesn't look like a keep so there's a little bit of double counting in the

votes. Not when I'm talking about what a majority of us felt like but when I'm actually counting numbers of votes, because if someone voted both to change it and eliminate it I wanted to keep track of those separately. The first appendix spells out in more detail like what everyone's votes were. I think actually that it in of itself is probably a humbling document to read even after we've all gone through it and given our opinions of it.

The next thing was mediation confidentiality. The people in the sub groups asked questions about the difference between the mediation process and the litigation process and differences in confidentiality that are attached to those two processes. Next, communications between public bodies that relate to their interactions with small businesses was one that a lot of us looked at and had questions about. Well if two public bodies are talking about serving small businesses is that necessarily something that need to be confidential? Reports of public bodies of various suspected misconduct. I think here a lot of people just felt like there was inconsistencies honestly. That some kinds of reports to public bodies you make and they're confidential some of them you make in your identity is confidential but the report is not confidential and we noticed a lot of inconsistencies there. Same thing with non-criminal investigations that are conducted with public bodies. We found that there is a number of contexts in which the confidentiality rules are slightly different enough from one entity to another. It was suggested I think by Robert, ya know, that some of was probably done intentionally when it was initially done but when you go back and look at it then intent behind the differences can be somewhat hard to discern. When talking about the difference between massage therapy and dentists.

Software and computer data was one that I was interested in. The comments that came from the sub group members on this. Software especially ya know it's obviously Microsoft owns Microsoft Word it doesn't make sense for public bodies to be giving away copies of Microsoft Word as a public record even though it arguably pertains to their business in that they use it all the time. So I don't think anyone had any problems with that but there were questions among some of the members about: well what about software programs that a public body actually invests its own resources to develop and not where we have a software program that was developed by public body's funds. And there were also just the few instances of specific computer data being treated differently than other data and being called out as computer data and I think there were concerns about the consistency of that.

The next one is that very specific information about child abuse multidisciplinary teams' compliance with their own established protocols and procedures. So for those of you who don't know multidisciplinary team in the child abuse context is a county entity and in every county they're required to have them, they look into child abuse cases in the county. This particular exemption actually applies though to their assessment within this team of how well is the team is complying with its own policies and procedures. So it's not the information about specific cases, but are we really doing a good job of following procedures that we've sat down? And those responses are made exempt from the disclosure law. And then the last one I put on this list is about people who are applying for particular positions, and it was again a very specific exemption another example where it doesn't appear that similar information is being treated the same way. it doesn't apply where. I think at this point there is more of my presentation I would like to present. So those are kind of the substance, I think at this point I have more of my presentation I'd like to pause for two purposes, one first is that if anyone from the subgroup

who'd like to make any additional comments about anything I've said so far or anything else they thing I may have skipped. I'd like to invite them to have that opportunity. Dave, Robert, Scott, Betty, Jeb, nobodies, oh Jeb.

JB- One thing that might have skewered some numbers for me anyway is that I marked a lot of them that I felt ones that should have public interest element but don't have a public interest element. And so that all by itself could be considered yay or nay but it didn't necessarily mean I thought it was a bad exemption or should never be exempt or so forth. I don't know that others had that similar situation but that would have skewered some of the numbers I put in.

ML- Could I just make sure I'm following you there Jeb. That you thought that there should, you're referring to exemptions that are out right exempted that you felt should have a public interest wait added to it, is that right?

JB- Yeah well or actually it's sort of the reverse. That there are all these exemptions that don't address public interest but by virtue of 1929 they explicitly have no public interest and those are the ones where....

ML- Ok, I think we're saying the same thing just different in a way.

JB- Right, right right, the exact same thing right.

ML- Thank you for that clarification.

MK-Anyone else besides Jeb from the sub group want to talk about any of these things that I've covered so far, add anything to this? I guess the other thing I'm interested in and if anything that we've said so far sort of provokes reaction from members of the task force who weren't on the sub-committee you know I, we definitely took seriously. I think Rob you were at one of our sub group meetings heard some of the conversation. I don't know if anybody else actually was in it. Josh you came to the second one, so a couple of you know a little bit about the proceedings independently. Betty.

BR- I was one of the members who threw your numbers off. I didn't give necessarily a single designation per exemption, often I would say two, three or four meaning they could be consolidated or they might be eliminated so they might be made consistent. It wasn't always a bright line.

MK- No and I think that is actually perhaps the most useful response in some ways, because the goal of this project is not where you're going to be able to come up with necessarily authoritative views, but understanding what this looks like to people who are trying to deal with it. Both for administering it and in trying to use the law to get information, and just kind of the apparent inconsistencies and the difficulty of comprehending this sort of uniformly applied policy to information. I think willfully came out and that's part of what made the experience humbling. Is that we're reading these things and you know the text was there, and I being kind of a law geek, and having affair working experience with lots of areas of law my position would often go and look up what the statute was. I think one of the exemptions we looked at the DOC is given

authority to make rules pertaining to the availability of inmate transfer information. Well I Don't know whether that's a good thing or not. I don't know what the basis for that is. But I did decide that I would figure out well what sort of rules does the department actually have in place, and it turns out so far anyway that the corrections department has used that authority to make that information available to people if the rules were good or bad but I got to look that info up. Information that has been made available. They have not made information about inmate transfers a secret, and so it's on this list a statutory exemption but in fact what's being implemented on the ground is that at this point anyways the corrections department is not protecting that information. But so even just seeing the text of the statute is not enough in all cases to know what's going on. I think that is a very important point but I think it also speaks a little bit to the importance of the work.

BR- One more comment to representative Helen: one thing I think that we, that part of the reason for the origin of the term humbling was a deep respect for the process that went into making it a statutory exemption. That there were stakeholders who may have felt passionately about it and respect for the legislative process that each of those exemptions went through. So I think we all took that responsibility and our comments very very seriously because of that.

MK- Well unless there is any other comment about this from any of you who are not in the sub group but I mean I would be happy to have further discussion and I can also continue. So I'm not hearing anyone chomping at the bit. I want to talk a little but about what the sub group thought were sort of the implications of our work for the task force and these are sort of memorialized in the form of recommendations. The first thing it did is we felt like the first thing this project did for us is confirm the importance of the work of these task forces. We started to get a solid hold on what these exemptions are and put them in a format that people can actually use and understand. I think, you know, 104 pages for one fifth of the exemptions is a pretty depressing size for the catalog

ML- I'll just not I got it down to 40pgs.

MK- Oh how did you that?

ML- I used big paper.

MK- and small

ER-That's cheating.

MK-I like it though, is it legible?

Mark- Yeah, with a magnifying glass or a, you know, an electron microscope.

MK- So we feel that a catalog is indeed a valuable thing to recommend even on its own. We don't necessarily think the task force should stop there, but a catalog that groups exemptions based on sort of their core underlying purpose and then even within those categories sub-categorizes further based on commonalities between exemptions. The second appendix B is

going to be inherently provided to you our first shot at that. At the kind of work product that we think this body should absolutely continue to pursue and adopt. And along with that a policy stamen in order to provide an architectural framework that keeps these things sensible going forward. And gives exemptions a natural place to live when they're coming into existence from the beginning and it provides guidance for interpretation by public officers, and also encouragement to future legislatures to keep in mind this overall philosophical I think architecture is a really good name for it. The design of the public records law in keeping it, keep it going in a way that to the extent possible useful and usable by everyone involved. So basically we think that we should continue this same sub group or possibly even other sub groups should do essentially the same work that was just done with respect to the other preliminary categories of exemptions that we've identified. Sub groups and categories identified. Given the timing and sort of intense nature of this work our feeling is that we need probably need another group to actually get it done in the timeframe we are talking about with the legislative deadlines. So I think the first recommendation from your sub group back to this task force is we need to continue this process of going through these exemptions one by one. We need to continue sorting them, identifying them as potential discrepancies and inconsistencies and we probably need help because we're running out of time in which to do it. So now I don't know what happens when I deliver the sub groups recommendation to myself the chair but I think it would be useful to hear from non-subgroup members how they react to that recommendation. No reaction....

ER- We all agree.

MK- The Attorney General has spoken. She says we all agree.

ER- Not necessarily.

MK- Is there anyone that gives their dissent from the Attorney General's position? So I think there are two pieces to what I just asked for. Number one is: are we going to continue doing this and number two is: are more of us willing to contribute to this effort. And maybe with the legislative session now behind us it is possible that some of you may have additional time? I'm certainly willing to work on both sub committees especially now that I have Noah to help me, Noahhh. Is anyone else who is not already serving on the sub-committee willing to volunteer some time? Les, I'm looking at you man.

Les- I'll help out. I was very impressed by the work of the sub-committee and would have some sign course to work ahead, I think it would be a good match to around and try and get a similar report.

MK- And it may be that one of our, we could probably spare one of our members from the existing sub-committee and then we could put that person with Les or me. Then we'd really be looking for probably two more volunteers from the larger group. Does that make sense to my sub-committee members first of all? Then we won't be looking at two groups of five people. Josh?

Josh- I would be happy to help. My challenge is that 98% of what comes out of this group we're not able to take a position on. So it's hard for me get in there and shoot at individual exemptions

even if partially I feel like they don't make a ton of sense. But I'm happy to help and engage in the conversation. I would just need the records reflect that I'm not taking a position on these exemptions.

ER- We understand about judge-y people, don't worry.

RB- Likewise for me, I'm happy to help but I would add to what Josh had to say in that the bulk of these exemptions really don't touch my members and I really don't know whose ox get scored to what degree by eliminating, restructuring, moving things from no- public interest to public interest. I just I can't speak to 80-90% of them because he I got no clue, and so that would be my, and then there's 10% of them I know full well having practiced municipal law for twenty-five years and they're just bread and butter stuff but I'm happy to help where I can.

MK- And then I think with this group maybe we should think about which one you guys might jump ship to this newly formed group. I don't know Dave or Betty maybe would make sense or just start thinking about group composition a little bit.

DR- I would suggest that you decide.

MK- You want me to decide?

RB- Are the two separate task forces working on different things?

MK- Ok well I will.

RB- Because they're both tasked with the same thing just dividing it up.

MK- It's going to be different. So one group will be looking at personal privacy exemptions which my expectations will probably find are less controversial than the government administration. I think one of the reasons we wanted to start with this administration category is because in our discussions in December as a larger task force it was the one that cause people the most consumption and generated the most questions. I think most of us recognize that the purpose of the public records law is not really to invade peoples personal privacy. It's to know what's going on in government. The administration category implicates that in a way that a lot of these probably don't. The other one is economic affairs which I think there will be a little more interest there. I think I'm going to ask Betty if you would be a member of the newly formed group? And that leaves me with Robert, Scott, Jeb and Dave on the existing one. The way that we decided to approach.

SW- Michael?

MK- Yeah

SW- If I can intrude a little.

MK- Oh are you going to



SW- We during the discussion of the whistle blower bill we found that there were a lot of folks who aren't part of this group who may have some very strong feelings on that economic, on the business exemptions, and so you may want to reach out to OAI or some of those other interests that might save us some complications down the road if they're brought in earlier.

MK- Thanks Scott, I think that actually leads me to my next comment that gets us neatly to my next recommendation, which is: '*Something to consider*'. One of the things that came up is to the extent we're not just analogging exemptions in ordering them in a way that makes them understandable to more people and we start consolidating them as you said Rob, adding the public interests tasks and making this exemption and this exemption into one exemption. You start to work some substantiate change in the law so we thought that this task force probably needs to think more about what is that going to look like, how much are we going to be able to do the kind of outreach that you're talking about Scott. How much of that is better addressed to the legislature? Consolidating and making exemptions consistent, there are a number of considerations that go into that. One is the utility for citizens. It's really undeniable that 533 exemptions is not to expect people to work with. Consolidate the categorizing that we do I think resulted in some twenty categories of administrative exemptions, as opposed to the eighty-five that we started out with. If you could actually get them down to twenty exemptions that's obviously better than having eighty-five exemptions cataloged in twenty-five categories. On the other hand though, it was brought up by members of the subgroup that the specificity of these exemptions in some ways serve to make them more comprehensible if you're able to find them then you can actually know specifically what it is that's exempt and broader categories of exemptions in some ways could work mischievously instead of now a public body is not simply applying an exemption that clearly applies to a specific record but is thinking about a principal and having to make a judgement call to some extent about whether it applies.

We also discussed and this why I think Scott's comment was a good segway is the constituencies for various exemptions we recognize the potential that differences between seemingly similar information may reflect considered policy choices. But this process of us reviewing the text of exemptions is not, as Betty pointed out, the perfect process for understanding the potentially complex determinations that went into them. Consolidating and making up a constituent that would change things up. Oh and I didn't mention, bulldoze and start over. One of our members said and this is a little bit daunting to imagine but if you look at other states laws there are some that have what we have and there are others that have much simpler exemption structures and far fewer exemptions and those states seem to get by day to day in their governing. And we could think about just essentially raising this cumbersome system of 543 exemptions and replacing it with something wholly new. You know, we are all talked about with what sort of legislative lift that is involved in these different ideas and the reason that this is a separate recommendation is I in the first recommendation. I want to be very clear about this, the committee, the sub-committee wants the catalog to be done with a policy statement and to be presented as its own thing. The additional changes should be proposed separately from that. So that we can get the simpler one actually accomplished because this is going to entail having to deal with constituencies either within this group or at the legislature or potentially both. That is as I said, we're looking at initial deadlines for legislation in June. The eighty-five administration exemptions that we looked at, just leaving the public safety ones aside for a minute now, we're talking about potentially dozens of stakeholders who have some interest in the proposed recommendation. So to the extent that

we need to think about how are we going to go about that and where are these people going to be heard? Certainly they'll have the opportunity to be heard in the legislature are we available to have them be heard in front of this task force. And I think that is a...

LZ- Michael, Can I address that Michael?

MK-Yeah, please.

LZ-As I read through the sub-committee report and I'm reflecting back on what the task force may need. I think there is pragmatic element to all this with your gambling is, how many constituents do you want to scramble at one time to achieve success. As I was looking at the task force report the sub-committee report it struck me that instead of reforming everything the same way why don't we take for example the administrative category. Two or three areas that are probably have the most effect on the most people and the most conflict. For example: The civil regulatory investigation, what if we focused on not only cataloging but actually condensing and refreshing the language in those. In the ones about reporting misconduct to government bodies, again that implicates a public interest in filing misconduct it just struck me that maybe we go for target successes again this time you highlighted that we're already going to be in a time compression here. So my recommendation I guess is that this structure works really well and maybe we can take a similar approach to solve the problem.

MK- So Les I think just to paraphrase for everybody in case you didn't come through clearly over the phone. Les is saying maybe we can identify a couple of the sub categories that we flagged as a sub group and try to purpose improvement in one or two areas as kind of a test case. That is something that we discussed a little bit as a sub-committee we were more I think talking about addressing the administrative category as a whole as a test case but I think this is a little more granular in that it would allow us to identify areas and hear from a more limited number of stakeholders. Dave?

DR- I would think at minimum this has less to do with how many categories we end up with that goes into the legislature but at minimum it would be a good idea over the next couple weeks as much as possible to try on for size what one of these areas might look like if you consolidated it. I mean nothing that anyone has to take too seriously but we could just see what it looks like and then see if that draws out of the woodwork either in the task force or elsewhere things that are really problematic or no, this is perfect and logical, let's keep doing this. And that might help address degree to Les's proposal about what makes sense to do.

MK- So before we commit to proposing it to the legislature let's see what it looks like if we do that.

JB- We talked about the horrible idea of trying to go to the legislature with here's a list fix all these that would just die in its own weight. With everybody coming in but. So we talked about the importance of cataloging I think overall to me there's two parts to this , cataloging and then there's policy analysis, and the cataloging is really fairly easy if you've got a particular part, for example I went through, how many were there one-hundred and..

MK- seven.

JB- Ok, 107. Went through all those and cataloged whether they had public interest or didn't. Pretty simple, yes or no and then kind of wrote in the different language that they used. Some of them used five or six or eight different statements that describe the nature of the public interest kind of all differently. So that kind of cataloging took time but it was relatively easy. Then I got to the analysis on these and all the sudden I was just oh my gosh. Now I have to read these, now I have to go to the statute, now I have to see what these look like and why and then they're all out of order for what you might be wanting to look for. So I think a cataloging like they've got a category they probably have a sub category and they probably have a purpose and purpose is, might be public safety, might be personal privacy. It might be at, because personal privacy is a purpose weather it's at administration or any of the other different categories, they all have personal privacy examples, and then they're either permissive or mandatory, they have a public interest or they don't and if we can catalog those things then it's a lot easier to, I'm kind of big on database sorting. So, I like to be able to sort a spreadsheet and all the sudden, boom, here's twelve that are in that category, sub category and then define its purpose and you can kind of see where there's issues of inconsistencies and instead of just kind of going down a giant list, even though they're under admin it's difficult and so....

MK- Right, and that I think that the task force is sort of unanimously under the view that this cataloging is something that we can and should do, and I agree that the more sort of detail we can get in there the more useful it will be to people. Les, I noticed that in your examples of where you might start, you actually chose the same exact ones that Keasling chose to desperately go after in 1992 one or two. I think that you're right to say that those are going to affect a lot of people very directly. I think that's also probably where a fair number of those constituencies that just talked about, talking about are lurking. So I'm curious whether there are other people who had thoughts about other options and to talk about that it might help me to fast forward my slides a little bit. Because, one of the questions that we were trying to ask for purposes of helping this body craft a policy statement is: what kinds of exemptions currently exist for this purpose, administrative purpose anyway. So I identified eighteen that were in the administration category. One for computer programs and data, one for civil prosecuting attorney notices, this one is like in an anti-trust context and what's the other, there's like a security seal violation allegations. Basically, our office sends these notices the AG's office when we are about to sue a company for some sort of competitive practice violation. We send them a notice telling them it's going to happen, they have ten days to get back to us and propose what they're going to do to remedy it in all the turns involved involuntary compliance. Our notice is exempt from disclosure for those ten days. I'm just explaining that because it didn't seem very clear, exemptions for this purpose alone. Insurance of voluntary compliance, I explained because the short definition didn't seem clear. A competitive procurement document is when people are trying to do business with the state. We got a request for production and we respond to it. Information submitted in confidence, this is basically where someone give you something in confidence; we were going to keep it ruefully, otherwise reports of misconduct maybe government bodies. I think that's a fairly self-explanatory category. Test materials, this is so that people can't make a public records request and find out what their test is going to be at an educational institution for example that's public law or civil services exam. It has its own, civil and regulatory investigations are the kinds of things Les was just talking about. It could be a licensed professional, the secretary of states

office does a lot of these in the context of fraud and abuse. Legislative process, these are things for legislators primarily to enjoy confidentially with the legislative counsel, with the legislative fiscal office, legislative revenue office. They are designed to facilitate the legislative process. Dispute resolution and litigation, I talked a little but about our questions and mediation lawsuits. Accident reports, these are separate from police reports which you can get but the accident reports which you're required to submit are treated as confidential. Public bodies business transactions and public records, this might actually be an interesting one to look at. Although, it would definitely have constituents too. A lot of this is entities like the corrections enterprises that does business they are government or governmental agencies that actually do business of some kind or another and have confidentiality rules associated with that. To pick an expect example of inconsistency I think OHSU has an exemption for its sensitive business records and SAIF has an almost identical exemption. For instance, that are business records, but one of them has a public interest test and the other on does not. 1 – 18. I don't remember of the top of my head which one is which but there are a handful of those. Voter pamphlet information, I think this is just so that you can't find out what your opponent is saying in the voter pamphlet about your measure before it goes to press to prevent those things from just turning into a twitter fight essentially. Resource protection, I already talked a little bit about what those look like in response to Mark's question. Patient safety data, these are not patient specific information but in a lot of context just data about patient's safety may have to submitted to the health authority primarily and that data has a couple different exemptions. Information sharing between or within public bodies, these are things like frank advice from a subordinate to a superior is one example of that. A public body that has a confidential record sharing it with another public body is an example of that. Correctional institution records, other confidentiality laws is a very narrow category, basically there's an exemption to protect the executive session laws that allows public meetings to have small parts of them from which people can be excluded. There's one that allows for public bodies to respect federal prohibitions against disclosing information, and then there's the catch all exemption that I think we need to get rid of ultimately if we're going to have a meaningful catalog, which says anything that's anywhere else in the state statute that makes something confidential. For the last category is human resources and these are exemptions that would be designed to go out the human resource and discipline process is basically to function with some degree of confidentiality. So, Les you suggested that I think the seventh, the civil and regulatory investigations and the reports of misconduct as possible ones we could look at. Does anyone have any other ideas based on this list? I mean I think Les makes a good point about the significance of the category that he's chosen but I do think that there a lot of constituents there, and if we're doing what Dave suggests, what it looked like to do that then maybe we don't need to worry about that too much at this point.

ER- I would (Les cuts in) go ahead, go ahead Les.

Les- Well I guess my point would be, todays point ya know. Start down the road and if you find that you are walking into a buzz saw then that tells you a little bit about what we likely can and can't accomplish. So why not go big to start with and then if it seems like it's going to be an instrumental political task then we invest otherwise. Again, I'm looking at more, my limits test is what records do most people likely want to get to that would best inform them how the governments performing.

ER- I was just going to say I really like Dave's idea. I tend to be sort of visual and the idea of actually getting to see sort of what we're talking about. How it would look taking a group, piece of it, if that wouldn't be too, too hard to do.

MK- Yeah, and is the group sort of unanimously thinking that Les has picked the best one to do or is there any other suggestions on that?

RT- Is that where most of the disputes are or are? Between the requestors and the public agencies. They're trying to get that information? Or they're trying to get #11 the public bodies business transactions and records.

MK- I would say that #15 (information sharing within or between public bodies), #11 (business transactions and records). I think that Les has, I think the category just based on my experience is, that Les identified, is one that people are interested in and often it's a consumer protection issue. Like it's people wanting to know how many complaints are there on a particular service provider, what are those complaints, what did you find when you looked into them. So I do think there's interest in there but I think is interest in a couple of the other areas.

SW- I think if we're trying to see where the sharks are or how many are in the water. #11 would probably give us a good idea. If you're including things like non-disclosure agreements with economic development agencies these are the things, and you want to test how much to see where the opposition that's 11, is probably not, 11 will flush that out. Based on my exp, based on what we saw in the last session. So...

MK- These are the AOI types.

SW- I'm not criticizing them but it's the..

MK- No I know.

SW- The.. I think that's where a lot of the, where there's a lot of, some of the disconnect, or some of the conflict may exists.

MK- So I think we have a couple of suggestions that are on the table here, and I think we should just decide as a group. I haven't done this before but I want to call for a show of hands Really the two that have been mentioned are or three: 11, no, 11, ok so I'm not going to use my numbers because Les I don't even know if, I know you can't see any of this unless you're also watching the video, in which case he still may not be able to see them. So, show of hands for our civil and regulatory investigations. Les I'm counting yours as up for that.

RT- Michael, is the idea that, the way I understand it just so everybody's clear there eighty-eight different exemptions scattered through the statutes that dealt with some..

MK- Eighty-five

RT- Eighty-five administrative government interest, and you identified, we identified eighteen sub categories.

MK-Correct.

RT-So we should be able to put all eighty-five of those statutes somewhere under those eighteen.

MK-That's right.

RT-So, for like #11 public body business transactions and records, there's maybe six statutes scattered throughout the books on that topic, and if we pick that topic we're going to try and reconcile all six of those different.

MK- Right, one exemption.

RT-One exemption.

MK-Right.

RT- That fits all of those....ok.

MK- That is how I understand the plan here.

RT- That's great idea, I'm a yes.

ER- And how many do you want to pick?

MK- I think let's pick one.

ER-Just pick one.

MK-Honestly, I...

ER- Can you remind us though of how many there are?

JB-And among which group you're going to vote for, 11 or 7 or 15.

MK- Yeah.

ER- Do you know how many exemptions we're talking about?

MK- I don't have it right here but its definitely. It's in the appendixes. So Mark maybe did you print appendix B?

ER- I just think we should pick one that's manageable for the first try at this and that's not like overwhelming.

MK-Ok, computer programs which no one's really interested in doing is 4, 2 civil prosecuting, competitive procurement looks like 1, 2, 3, 4, 5, about 5. Let's just go to the ones we are interested in.

ER- Go to 7, 11 and maybe, what was the other one, 15?

MK- Ok, there are 13 for the investigations, and I should say, and I do mention this in the report. That there are even more than that are related to the investigations but are far less limited exemptions that are not in this list, but were put initially in the economic affairs list. So that category of investigations I would estimate probably really if you include everything is in the 30 or 40.

ER-Ok, what about 11?

MK-Yeah, oops, I may have gone too far. Court reports, ok 1, 2, 3, 4, 5, 6, 7, 8, 9 10. Ten in that one and that not going to have things elsewhere. And then you also asked about..

ER-15

MK- About information sharing and... 1, 2, 3, 4, 5. Five of those. I think based on that I would like to try number eleven. I think it's enough to be a challenge potentially. Is anyone opposed to that? Scott you had thought we'd find the sharks there so..

Scott-Well I thought that was the point. Sort of test out where, what sort of opposition...

MK- Ok so, rather than asking for hands I think I'm just going to ask if anyone objects to us doing that? Number 11 it is.

ER- If it's really fun, do 15 too.

MK- If it's really fun, we'll do 15 too.

JB- I like 15 too.

ER- The other one had too many, I think for starters.

MK- Ok.

ER-Ok, you're having such a good time with it.

MK- I don't know that, that will be a problem (Attorney General related). Let's see, I feel like I think I skipped ahead there. I think recommendation two we're going to table or actually the way forward with it is this process. I think we're going to if we can come up with a test-run on these

exemptions and any information in the business transactions category. The third thing we recommended is something Jeb has talked about a lot, the public interest test. The sub-committee addressed a couple things. First: what is and how do we decide what is the public interest. Betty I think it was pointed out that we defined statutorily. It's not currently defined statutorily it could. Another thing the sub-committee discussed is this sort of awkward body who's being scrutinized and is also being asked to make this public interest determination. So there are those issues with respect to what is it people don't really, I don't think have a really good understanding of it, some of the public interest arguments I've seen certainly suggest that there are people in government who don't have a very good understanding of what it is. And also that there are sometimes people seeking records conflict their own interest with the public interest pretty frequently. So can we improve that, was one of the questions that we asked and then the second was just that face that Jeb has eluded to a number of times there actually are a number of different public interests tests. They don't necessarily relate to each other in any way that would be comprehensible to most people. I pulled out the three that I thought were different versions of the public interests tests within the administration exemption. One says, unless the public interest requires disclosure in a particular instance, record is exempt. Another is that, a record is exempt when the public interest would suffer by the disclosure. So what does that mean, is that inaugurated, does that mean it would suffer a little bit, there are also some public benefits that have to be disclosed because the public interest suffered something. And then the third one that I found is, things that were exempt when the interest of nondisclosure clearly outweighs the public interest and disclosure, and I think clearly outweighs is not the worst example of a test, the middle one to me is the one that really sticks out, what the heck does that mean, and the first one too.

So one of the ways in which we thought this group could purpose in proving the consistency of these is just figuring out if there was way to make these tests relate to one another rationally and providing people with a better understanding of what the legislature really has in mind when it talks about the public interest. I remember when our office, the AG's office was tasked a couple of years ago with coming up with administrative rules based on an exemption legislature passed for concealed hand-gun permit holder information, and there's an exception to that exemption if the public interest requires disclosure, and we were tasked with coming up with a rule interpret that and we had some advisory committee meetings and we had numerous discussions and none of us could really understand what the legislature had even honestly wanted us to do. And we ended up essentially adopting a rule that mirrors the language that's already in the statute, which is not particularly helpful but if you know the Department of Justice was struggling with this a few years ago. The idea that what is the legislature really talking about when it says public interest in this context. The subcommittee thought that this might be an area where we could provide some consistency. I'm interested in any feedback on that point too from any members of the larger task force, and I think the rest of us would be too. I see Mark nodding a lot.

ML- Yeah, well.

LZ- I'll pipe up. I agree that we would do our citizenry public issues a great service if we could come up with some sort of statutory guidelines for public interests. We've got court ruling that attempt to define it, certainly take a look around the country at other states who create a statutory language and I fully recognize that the challenge in planning that but at the end of the day I think it would greatly help to have some guidance to what that means.



ML- That was my, Les just sort of expressed my sentiment. I think it would be helpful both to those public bodies that are holding these types of records. Having a better understanding of what is and what is not the public interest so that those of us who don't have attorneys on staff all the time can make a straight-forward logical decision that likely won't be litigated and be expensive. So I think it's a good idea something that's worthy of at least looking into.

MK- Rob? I thought I got a meaningful look from Rob.

Rob- No

MK-I was reading too much into it.

RB- I agree with what Mark just said, its just...

MK- Sorry.

RB- No, I have a lot of thoughts but they're probably not fully baked.

MK- Well we could try and bake them together. I mean I think one of the things that really came out of the experience of looking at 107 of these, like we're really talking about essentially 20% of the total. Right, we're talking about a fifth of the exemptions that have been enacted. Almost all of them in the 43 years since the public records law was adopted. That's a lot of exemptions to be adopting every year, because I counted how many there were in 1973 and there were 55. There wasn't a catch all exemption, there wasn't a statute that said anything anywhere else is an exemption here. There was a list and it wasn't a short list but it wasn't a long one either. So if you do that math from 55 to 543 exemptions we've had about 10 a year or 20 a biennium that have been added over the last 40 years and a lot of them, some public interests tests. I forget now, I think we did have a count of that and it's noted on your appendix B weather they do or don't have public interests tests but even in that area we haven't managed to keep them consistent. So I...

RB-I'll just share an unbaked thought.

MK- Excellent.

RB-And probably do nothing with it, obviously it's too big a task. One of the things current public records law screams at to do is to rewrite and reformat all of it into an ORS chapter 1A. because over time you've had dozens and dozens of deputy legislative counsels who have different approaches within the legislative framework counsel drafting manual in terms of how things are crafted, I don't think you will find in terms of legislative history a substantive difference in what the legislature intended on any of these public interests tests. Which you'll find for deputy legislative counsel crafting differently. And so this is a statute, well a couple of statutes that are wrong. A whole series of statutes that if I had 40 spare hours and nothing else better to do I would actually take all of those areas, the cobbled stuff and I would write a whole new 192A, with no substantive changes just into separate distinct statutes and categories. Instead

of these long run-ons that make no sense. With a proposed public interest test, I would apply the public interest test to none of them and have policy makers say; this one should have a public interest test, this one should have a public interest test and this one, and make it a clean chapter with an ORS. But I realize that's a big job but that's what the darn statues scream to me to do, and that's not the only. I would love to rewrite ORS 191 chapter A at some point in time, I've been wanting to do that for 25 years. And it just gets worse and worse and worse and 192 is another one. It screams and we're picking out, and it seems to me like we're picking out little sub areas of this convoluted conglomeration of policies and propositions, pulling them out and trying to clean them up a little bit, when the whole thing needs to be thrown in the laundry and cleaned up.

MK-So it's not about.

RB-Cleaned up a little bit, but we still make it more useable.

MK-So it's not about the bulldoze, but it's not really it's more like deconstruct it and rebuild it.

RB-No, yeah! If we had a single deputy legislator, now I'm not suggesting you send them note because this is a monster. But..

ML- Who do you want to punish?

RB-It would be true punishment but just give me a bill to just clean it all up without any substantiated policy changes other than one. That being we define public interest and apply it to nothing until I give you further direction. I mean that would be that framework upon which if I were to just...

MK- So..

RB- And packed away in a nice a nice condo in Hawaii or something.

MK-I like this half baked idea.

RB-For 40 hours or something, let's do it because it just screams for it.

MK- So it's basically like take apart the Frankenstein building and build lots of neat little row houses. Sort of..

Rob- Yeah and leave some unanswered questions that I think this task force or some governing body can actually decide based on a uniform of standard and have it read like a normal chapter. Where you have, no I'm serious, it makes a difference when you pop out the ORS and you read the chapter and the chapter has definitions and then it has substance and then it has process and it reads cleanly. You know I just love the part dealing with counties saying district attorney if it's a local one you get it oh and you follow that process over there really designed for the AG. It's like what?! You know its cobbled together, forty years' worth of cobbling.

MK- So without making substantive changes you're actually going to still have the public interests test that exist which is ok.

RB- Yeah. I think if you look at the case law and you look at the core public interest test which is the one that applies to most of them and you actually put it in a definitional section which is the beginning of theoretical 192A and define it out. I suspect that most people won't have any problem with the definition. Where the battle will be is which of those do we consolidate, eliminate and clean up and I suspect that by virtue of duplication I don't know how many will be, lets pull a number out, 400 and you pack the 400 into separate statutes that actually make sense, have them together right, make it clean. And then you go through those sub sections and say yay yay yay and then you can restructure it from there. That is what makes sense to me but what I just described is a monster job.

MK-Yeah.

RB-I have no doubt it's a monster job. But if for a user, for someone not familiar with the public records law in Oregon I think that would just make it clear.

MK- Robert I second that.

DR-Certainly intentions wise

RB- I don't see much of a difference between..

DR-I understand it is very different, intentions wise in my head it just doesn't feel very different than the idea of cataloging, consolidating kind of thing. You're just saying do it all in one fell swoop. I don't quite think, it feels like a lot of work is going to go into this stuff no matter what. I guess without having ever done this particular task before I can't truly appreciate what a monster it is. It does seem quite logical and straightforward to do it that way especially if we're not changing the intent of the statute. So I guess I'm just saying if its working in consideration with perhaps makes it less of a monstrous task than it appears to be on the surface, that it's taken more seriously.

MK- I think when it comes to exemptions that is what we're talking about in a lot of ways because if we're talking about cataloging but the reality is the public records law deals with a lot of things besides exemptions and it doesn't deal with them in the kind of orderly way that. I mean Rob you seem like almost a visionary I'm describing.

RB- Oh no, I'm someone who's been from a different perspective equally frustrated with the public records law for most my career wearing 3 different hats and each of those hats there's been frustrations because I've always viewed cobbled together ad hawk policy decisions over the course of a generation. Which is fine it's just that but eventually people get frustrated enough that they rewrite the whole chapter. Weather it's the Oregon law commission or someone that just says lets clean this stuff up and that's what this ones calling for. To me, and even I would urge the legislature at some point ad hawk mission to rewrite this chapter even if there is no

substantive policy decisions that are changed, just to clean it up, make it user friendly. It's one of the most user un-friendly statutes I've ever run into.

MK- It doesn't really answer all the questions people have and the procedures definitely could be presented more orderly I don't disagree with you. But I do think as do exemptions if we do it well we could have something that looks a little more like that. But I think sort of my vision of what a catalog would look like would be tied back to a policy statement; these are the general policies within which the legislature should make narrow exemptions. Then the catalog would essentially be one for each category, each reason that we've identified as a basis for creating an exemption. So I think it not going to be the neat little row houses if we do it that way. Because the problem with neat little row houses is you can put them in the same block together I guess if they look alike because I guess one could be next to the other based on commonalities but I think it's similar but slightly different, but I kind of share his vision, I think it's a great idea.

DR- Sort of the same two things but to endorse that way of looking at things. You know years ago there was the decision to try to create a tax expenditure report, which if I'm understanding this all right is the equivalent to cataloging tax expenditures because it was crazy, you know it was just nuts. So somebody said there shall be a tax expenditure report, and at the time there were critics saying those are just addressing duh duh duh duh duh. In actuality it turned out to be incredibly useful for those of us who cared about the tax breaks kind of being out of control and there not being enough transparency or accountability for these kinds of things. Because you could just go in there and actually be able to go, oh we're giving away a half a billion dollars in tax breaks, here's what they are and then you could just go in and figure out what do we know about the details of these reports. You wouldn't have known to do that had you not had the TDR's and the tools. So just to endorse that point of view it is it might be of substance too, because it becomes a tool for future action potentially.

SW- Well I don't know if I agree with everything Rob has proposed but I do think if there was a way to break the provision up into stages that we could accomplish at each session as opposed to go in to do a massive, I mean 'cause we've really compressed, we have this short compressed short session and we've even compressed the long session in trying to undertake something of like that magnitude I find kind of intimidating. So if there was a way to do that in stages I think that we could explore that. I don't disagree with the whole statute but there are several things in the ORS that you could make that argument for.

RB- And I would agree with you Scott that's it not really realistic for 2017, what I would suggest 'cause even the law commission if they were to start something right now they'd be looking at 18 or 19 before anything actually showed up in this building.

MK- Yeah, I didn't understand you to be proposing that we actually do that but I did think it was a useful kind of illustration how you're thinking about it. I mean and it made sense.

RT- I think we should do it.

KH- I agree and think it should all be re-done.

RT-And it's a question whether do you do it all at once chunks or at all once. You could make the argument that we've taken 85 of the administrative exemptions and boiled them down to 18 categories and theoretically you could collect those put them altogether and stick them in 192A without any substantive change but just say here, we're just going to group them altogether and stick them in one place. And in 2017 of you do it for the administrative exemptions that's good. And then in 2019 you do them for public safety and in 2021 you do them for the next category. If it took you 40 years to create the mess you can take 4 legislative sessions to fix it and that's fair.

MK-So a lot of the stuff that is in there isn't anything that this task force has talked about addressing. I share that vision and in fact when senate bill 41 was proposed in 2011 there were internally we were thinking about well do we want to do everything all at once and that was the decision that was ultimately made but at one point we had just gone through all the procedural stuff. Not change any of it but just like put things together based on this is about fees so we're going to have a statute about fees. Instead of having a statute about fees that went into 192 440 which you know is kind of like..

RB- Miscellaneous

MK-The sausage of the public records law. It where there's information about getting electronic information, not electronic, about getting your initial response. Like your initial response to your request there's information about fees and federal law prohibiting you from even talking about whether you even have records. 440 is kind of like a mess right, and you could easily break it out to 5 statues without changing anything, it could be done and it would be a great idea. I think it's less intimidating to picture as something we do over four legislative sessions but the idea that this body is going to be continuing to me for that long scares me almost.

BR- I actually have a question for representative Helm. What's your opinion on doing it incrementally over multiple sessions.

KH- In my vast experience, I think it's more comfortable to do it incrementally. One of the, I love Rob's idea, my concern with it would be not the gathering all in one place because I think that's great it's that if we try to do anything else besides gather it into one place the colleagues will think, and you're reorganizing it and I don't recognize it anymore and you're slipping things in or taking things out of that process and even if our intentions were good. We came up with a list of this is what we're eliminating there would still be, I think that's what they would do.

RB- How about this, what if we did, I mean I'm just talking theoretically, if we had..

KH-I'm not trying to talk you guys out of it.

RB- But if we did more than one piece of legislation. If we did a piece of legislation that was an on the bus bill, at least on its face and promised to nothing other than reorganize, clarify, consolidate and then we had some substantive policies bill or bills that did various things.

KH- What I like about that is that leads me to another point I was going to make. Which is at every point that the sub groups, each one of the exemptions that you're going to grind through. I

think what we out to be asking every time is: Is this information already provided by a private source somewhere else, such that it is unnecessary for the government to keep private in some way. The massive changes that have occurred over the years, especially the last ten make all sorts of information already public. And one of the things that Rob's idea of having an ominous reorganization plus another piece of legislative that says on its face and we looked at all this have and there's 150 of these exemptions that are irrelevant now because we already have a way of looking up these exemptions somewhere else in another public forum. The government has nothing to do with it, and that way we would look efficient and constructive. And I think that's the way you would get more than one piece through one of many.

MK- So this is a massive suggestion but I think also sort of being the approach of recognizing that it's not something we're going to have done for 2017 certainly. I just looked at the clock and saw that we have 5 minutes left. I think we should continue this discussion. I am I think willing to take a look at. I don't even actually think it would take 40 hours to take 192 apart and put it together in different pieces. I'm willing to take a shot at that at least with Noah's help in figuring out which are the pieces about fees, which are the pieces about appeals process and just start putting all those things so they're together so you can understand them simply. I think I could probably have that, I'm reluctant to completely promise it but I think that the procedural pieces I think that are potentially doable before our next meeting. We are also before our next meeting going to have to have 2 sub-committee meetings. And we haven't even got to the last few items on the agenda today. Which I think is ok because I didn't really want to talk about, timing and fees and the potential for a public records advocate type position. What I wanted to tell you is that those are things we are hoping to start looking at and some prior Oregon proposal especially with respect to the timing and fees so that we can start to have people looking at those. I think the conversation maybe at the beginning or at some point in our next meeting will be are those sub group issues or are those issues that we want to discuss potentially as an entire committee. If anyone has immediate thoughts whether timing and fees issues and the advocate proposal that came really out of the secretary of state's audit, whether those are things we should have sub-committees for or a larger group discussion of, I would love to spend our last two minutes hearing if anyone has immediate reaction to that question.

ML-Well, timing and fees I think will have a robust discussion and probably ought to be with the larger group in my opinion.

MK- I'm seeing a lot of nods. I think that makes sense to me. I think that, that is going to be an area where and another area where I think people are going to want to come talk to us. I think the recorders are one of the ones that will want to come and talk to us. I'm guessing we can figure out who are the people behind the amendment 4130 that resulted in the fees in particular coming out of there. Those are going to be people that want to come and talk to us about that so I think.

ML-They're mostly in the room.

SW-You could guess. They're right here.

MK- 1, 2 and 3. Yeah so...

Rob- But we were kind of, well you guys probably, were kind of surprised about 4130A didn't come out of a means of pass. I mean it wound up being close to a consensus bill.

MK-The deadlines I thought were actually eloquent, elegantly well..

RB- We would have had some members that struggled with it but frankly it would have set a baseline.

ML-By and large I think everyone was willing to digest it.

RB- That's a very good way to put it.

MK-So we may have very little to discuss about timing and that's possible. But fees.

ML-Had it passed we would have removed a lot of work for this committee.

RB-At least on that policy.

ML-That's right.

RB-I still want to clean up those statutes too. I may play with them too now that you've got me intrigued.

MK- I will leave the timing a fee discussion for everyone. Anyone have any thoughts about the advocate proposal that came out this February,

KH-Can we take a step back, I would like and think it would be beneficial to understand, so I did a little homework in the interim and went to the agencies I know best which is Portland and the metro area and I'm good friends with the archivist. I had her and her attorney's sit down with me and say give me all your complaints, what is the problem here. One of the things that came out is for a long time they've been using a system called TRIM which is an acronym for tower records information management and I know that metro has been using it since 1977 when I joined them and it's been updated several times that some state agencies have also gone over to using it. It's an archive system in which stuff is put in automatically upon local government obtaining it and through that electronic archive that through that process it publicly available in a transparent way publicly. And so they do some of the sorting on the front end. I think it would be helpful to understand what other state agencies are using TRIM and how that might work because I think we do ourselves a big favor in this process of figuring out if we're going to talk about fees and timing we need to talk about the stuff that isn't really a public record that isn't really a confidential record out of that bucket and into a bucket where it can be transparent and the public can get to it immediately without having to ask.

MK-I think this is something that Mary-Beth Herkert the state archivist in our office may know something an awful lot about.

RT-It is and the state archivist does have a contract with a provider to go to state agencies that want to rule with us and use that same system that you're talking about and we've had varying degrees of success with the state agencies and some are more willing to adopt it and some aren't. Some localities are more willing about their limit and some aren't but I think it would be useful for the group. I think so I think and one of the things that the audit talked about was every agency and every level of government should have some technological system in place to make this more transparent. Trim up on one of them, that's what the state archivist recommend that we do so we would like to everybody to do just to be consistent and transparent but if you're not using that go use something else, at least.

MK-And we use something else and I think some people are unhappy with it so. I think not all of these solutions are created equally.

RT-But I think there are some technological solutions too in addition to the law.

MK- I would love it if Mary-Beth would come and talk to us a little bit about TRIM is anyone else, is anyone not interested, would not be interested in having that happen?

LZ-Well it raises, the thought just occurs to me that maybe you tie take all dues to the fees structure in some fashion, in other words do we build some incentive for public agencies to move in this direction. And not just be lazy about it, and it's just a raw concept but you would in some way limit fees if the agencies have the ability or could do electronic records but choose not to that means the public has to incur extra costs that would normally be readily available. Just a raw concept but maybe there is a linkage there or somewhere.

MK- Yeah we don't have time to get into substantive delving of this now I think the question I have is whether others agree that, that would be useful context for discussion and timing and fee issues and it seems to me that it would help to understand what people could be doing and what they are. I can certainly talk about OR process, that'll be illuminating for everybody too. Betty?

BR- Just a couple of quick process questions, the governor issued an executive order with a follow up to the secretary of state's audit and I think the primary recommendation was to have DAS take a look at the majority of recommendations but it didn't address the records advocate issue and I know I would like see this committee discuss records advocate as well. Another question, when we started there were some other great possibilities that were mentioned like tags, regular review, legislative action, explicit criteria for exemptions. Now that I'm seeing the enormity of the task do you anticipate that we'll go back to those concepts.

MK-I can't remember now what tags even were but I do think.

BR- Except that exceptions outside of the public records act, we are required to retain a specific language.

MK-So I think if we have a catalog that a lot of those things probably become unnecessary and I think especially if we have it in a system where the catch all exemption is sort of phased out over time. So that we can be confident we haven't missed anything. Then you could literally have a



statute that says notwithstanding any other law listed here, it's not effective for this purpose. You don't agree with that but,

JS-I don't think it works legally but I do think we should have a broader. I could be a little contrary here but it wouldn't be the first time but the cataloging thing raises some concerns in my mind too so I get where we are on the clock but I just think it's worth sort of talking about that what it could entail in the future. Real quick one last plug just to build of something you said, originally you said there were 55 exemptions in 19-seventy something, originally OBL didn't apply to the court system so when they flipped that switch later you brought in a whole host of exemptions that otherwise wouldn't have applied and I know you and I have talked about the sort of awkwardness that this executive branch model to the court system is another thing I would like to talk about at some point in the future but thank you.

MK-Ok so I think I'm going to leave the advocate on there as something for the sub-committee advocate either just because we don't have time to create one and I think it will be an interesting discussion. I will put up some materials on our website that are related both to the fee and timing and to the advocate issues. Shortly I'll send an email to the group letting you know when that's up, that'll be I think useful background information. Emily or, actually Emily is kind of transitioning off of our support but we will be in touch with the sub group members also to set up sub group meetings for April and then with the larger group to get a larger group meeting on the calendar probably for the end of April. So those are sort of the next steps. Jeb?

JB-Sorry just one more thing on public record because you talked a number of times about defining the public interest. It seems like it would be nice if you were to or the justice department would have taken a shot at defining that you have AG opinions, you have quote decisions, you have, you know there's a definition somewhere in there and it would at least be nice to have that started because of all of these that we considered the large numbers of the majority of them had no public interest because they were outside of 192. So I never really thought that was intentional in all cases it's just that it passed a law outside of 192. I don't know where there's a legislative history and we want there to be definitely no public interest in any circumstance that this could be.

MK-Well wait, are you asking if we can look up the legislative history of all 540 them?

JB-Well no no no, you got AG opinions on..

MK-What is the..

JB-Yeah, public interest deciding appeals, the court...

MK-So

JB-Cases

MK-Put together some work and, yeah

JB-On what the public interest is which is why it says it's hard. That's why it says it's in the particular interest it depends on the circumstances.

MK-It does.

JB-So many times but anyway the whole process...

MK-I think

JB-Is really outside whether something can be exempt or not whether it should have a public interest or not, separate... fairly

MK-I think we can probably get together some court and maybe AG office pronouncements on..

JB-That would just help us just look at that at some future time.

MK-Yeah, sure. Ok we are over time. Thank you guys all for being here and letting us run late, I had hoped that I wouldn't have to talk so much but I did want to present to the court. We are adjourned, thank you all very much and goodbye Les.