

<b>Meeting Date</b>	10/29/15	<b>Time</b>	9:00-11:45	<b>Location or Call In</b>	Capital Building – Room 343
<b>Meeting Name</b>	Public Records Request Task Force Meeting				
<b>Meeting Owner</b>	Michael Kron		<b>Minutes:</b> Sarah Bordelon		
<b>Attendees</b>	Ellen Rosenblum, Michael Kron, Robert Taylor, John Huffman, Christina Edmunson, Aaron Knott, Les Zaitz, Lee Byer, Mario Parker-Milligan, Gina Zejdlik, Jeb Bladine, Jeff Kruse, Scott Winkels, Rob Bovett, Josh Nasbe, Mark Landauer, Dave Rosenfeld, Carol Curry, Phil Lemman, Jen Hone, Morgan Allan, Doug Perk, Les Rearc, Bill Harbaugh, Amy Williams, Daniel Board, Ellen Miller, Kelsey Wilson, Sarah Bordelon				

**Ellen Rosenblum** opens the meeting public records law meeting “it’s time to take a look at the law”

Thanks to Michael Kron for the vision and the group he’s put together. Thanks attendees for the sacrifice of their time.

**Ellen Rosenblum** tells an anecdote about one of the first cases she got to work. It was for ACLU and the individual was David Jensen. Jensen V. Schiffman 1976. Schiffman was the sheriff of Douglas County and was attempting to keep a closed criminal file after the investigation was concluded. The outcome was that the Oregon courts adopted the FFOIA and Federal rules; therefore, police records would become public at the conclusion of investigations.

What are the exemptions? How do we handle them? FFOIA has 9 exemptions. There have been 400 additional exemptions added since 1973. We need to look at ways to make disclosure exemptions more understandable. How long should it take to respond to these requests?

There is a huge volume of Public Records Requests. The audits division of SOS will recommend how to handle Public Records Requests and create a better balance between all other work and records requests

**Michael Kron** – Michael is from the Office of the Attorney General and he is leading the Task Force.

In 2008 he started working on public records issues. His view is that Oregon’s Public record’s Law is not working as intended. Kroger created a position to oversee Public Records. It went down in flames. There are still significant improvements to be made. For example: A Crook County woman submitted a copy of a newspaper article. The county had entered into settlement and would not disclose terms of agreement or reasoning or amount. Michael believes, people have a right to know how public funds are spent, who’s receiving them and why.

“We must work for the people.” Michael believes in transparency even when the work feels meaningless. In 2007 a requirement was added that if a request was submitted a receipt of submission reply was necessary. How can we do the work so people can see what’s going on? We need honest engagement across divide of media and government. SOS audit will be released soon and the task force will use that to inform their actions specifically, timing vs. cost.

*Introduction of members of the task force in order of how individuals are seated:*

**Robert Taylor** is the Deputy Secretary Of State

Robert began working on the audit and houses archives division. He agrees about transparency and furthermore, the public expects transparency. They expect the government to get to work and do the work and even when

public records are overwhelming, the public still expects us to move forward with governing. Robert believes the Public records law has to be understandable and accessible to the public.

**John Huffman** is State Representative for Dist. 59 :

John's concern is about the body camera bill. What might be needed for the retention of all of the records? What information should be protected vs. what should be available for public record? John wants to learn and be a part of it.

**Ellen Rosenblum** introduces DOJ employees who have come to observe but aren't part of the task force:

**Christina Edmunson and Aaron Knott**

Aaron thanks the legislatures who are here who he convinced to come and help. Another representative is coming who is not here yet. Aaron is here to watch and learn.

*Continued introduction of the Task Force:*

**Les Zaitz** is the Oregon Territory Society of Professional Journalists and the Investigations editor at the Oregonian.

Les participated in similar task force in 1992. He is particularly interested in providing relief for community groups who don't know how to respond to public records requests. He is interested in reforming the process of PRR (Public Records Requests). Finally he asks: How can we be more consistent / persistent? And, Can we get everything in an electronic form so people can look for themselves. He says that this will save time and cut down on costs. Cost should not be an impediment to disclosure.

**Lee Byer** State Senator for Lane County, he's also on the Rules and Elections committee.

Lee believes openness and transparency has to be a part of local government and legislature. People need to know how to get public records requests and need to be able to obtain them as cheaply as possible. The "Trade Secrets" argument against PRR is a frustrating issue with a lot of case law surrounding it.

**Mario Parker-Milligan** is from the Oregon Student Association.

Marion wants transparency in University tuition issues and college governance issues. He is also concerned about student privacy. Mario hopes to create something very accessible.

**Gina Zejdlik** is from the Office of the Governor and Policy Advisor to Kate Brown.

Gina's hope is that the task force establishes principles rather than a complicated list.

**Ellen Rosenblum** asks Gina to give her thanks the Governor on Ellen's behalf for the Governor's support of the task force.

**Jeb Bladine** is from the Oregon Newspaper publishers Association and owns the News-Register in McMinnville. He has been editor of the Milwaukie Review

Jeb is very interested in public records because of Watergate. He is glad the task force all agrees that there is a problem with the status quo. Reducing exemptions is what he'd like to see. It's a challenge even for those who are involved every day. There is a bigger concern and bigger need today than there was twenty years ago. He says, as a news outlet that tries to navigate these kinds of requests daily, they don't understand all of the law. The law as it is now is too confusing for everyone.

What is public interest? There is no clear definition. Jeb would like to see a mandate for public officials to provide written statement when requests are denied with the law for the denial cited. He would also consider enforcing consequences for individuals who willfully disregard the laws.

**Jeff Kruse** is a State Senator for District 1 in the SW corner of state.

Jeff wants to know, what is discoverable? Something is coming down the pipeline for this issue. Jeff is afraid that “fishing expeditions” will inhibit any new laws we may create. He wants to look at federal regulations. What does the federal government do and how can we align our regulations to that? How can we make a uniform exemption list?

**Scott Winkels** is from the League of Oregon Cities, he is also a public record lobbyist.

Scott offers that the sunshine law works against itself. It takes too much time and it costs too much money. Scott is glad that the government can enter into dialog and restructure requests. Scott wants to protect lots of types of data but says we also want transparency. He is concerned about body cameras and their relationship to Public Records Requests. What recorded information should be accessible? What should be protected? Is cyber hacking a threat we should be worried about?

**Rob Bovett** is from the association of Oregon Cities.

Rob has served as county attorney and had to handle records requests. The issue he wants to address is efficiency and balance. He is optimistic that the task force can be successful. He is also a special prosecutor for Lincoln County, and has handled virtually all local public records appeal petitions for the past four Lincoln County District Attorneys, including himself. So he has seen that side of things as well.

**Josh Nasbe** Handles Judicial PRR day to day. Josh wants to develop a procedure the state can use for how to handle records requests. Goal 1 – Encourage policy makers as they move forward to consider whether rules that make sense in the executive and legislative branches also make sense in the judicial branch. Goal 2 - think of downstream consequences. Keep the law clear and keep costs down on the judicial side.

**Ellen Rosenblum** – Getting all branches of government involved is critical

**Mark Landauer** – Special Districts Association of Oregon:

Mark believes that the government ought to be transparent so that the people can trust the government. Our PRR system needs to be reformed and the government has to have a clear understanding of the law and efficiency. Mark is concerned about small districts run by volunteers. The law needs to be clear, understandable for everyone and implementable. Cost has to be a factor, as well as fishing, and frequent fliers. Should the tax payers be subsidizing superfluous requests? How can we create a system that protects the public from abuse? SDAO does have a model PRR Policy that we share with everyone and provide a discount on insurance if policies are adopted.

**Dave Rosenfeld** from the Oregon State Public Interest Research group # 14

Dave observes that the group has an ethic of openness and transparency. “OSPIRG” has firsthand experience that the PRR process is difficult. Dave wants a better understanding of the law and he understands that running government is hard. He wants to protect information of private citizens and have an open government. Dave makes the point that no one law can solve the problem, culture matters as well. Dave wants to make a good law and try to reform culture and examine the culture of the executive branches and examine our motives.

**Michael Kron** offers an opportunity for visitors to introduce themselves.

**Carol Curry**, Statesman journal.

**Phil Lemman** Judicial dept. He will replace Josh Nasbe in a few weeks when Josh goes on paternity leave.

**Jan McComb** Dept. of Education – Jan’s interested in principles of the law but wants the long form explanations as well; maybe in the AG manual. Jan’s interested in how the wording of the law keep up with the digital age.

**Morgan Allan** is from the Oregon School Board Association. Morgan wonders, is the PRR too complicated? And, how do small school boards keep from becoming overwhelmed?

**Michael Kron** – A member of the Oregon School Board Association is coming to the task force.

**Doug Quirke** – An environmental lawyer who writes the Pollution Update in the Eugene Weekly newspaper. He needs public records and wants better answers and better access. With the electronic update, how can people easily look at records?

**Les Ruark** notes that there’s a lot of talent and history around the table today and he expects that the task force will be successful and will achieve the original goal of the law.

**Bill Harbaugh** University Oregon Dept. of Economics. Bill understands the frustrations involved in PRR. He wants to know if we can interpret the existing law in a transparent way. He voices doubt that we can succeed in this task force.

**Amy Williams** – Amy is from DAS and worked on Cover Oregon. She gets a lot of PRRs.

**Michael Kron** – Cover Oregon is an excellent example of why we need a better law and maybe it’s an example of how the PRR process worked a little bit.

**Lee Byer** wants to have people share stories about how PRR worked or didn’t work for them.

**Daniel Ward** - Director of Alcohol and Drug Policy Commission. Daniel is interested in transforming the culture of government. In light of the culture post Nixon and Vietnam, it’s disappointing that those events did not transform the culture.

**Ellen Miller** from Broadcasters is concerned about exemptions in PRR and special interests

**Kelsey Wilson** the Oregon Newspaper Publishers at Capitol. She is interested in boots on the ground.

**Ellen Rosenblum** admits that she’s married to a newspaper publisher.

*Suggests a break 5 minutes and the break begins*

*Break over*

**Michael Kron** – Next on agenda – A presentation of Summary of Public records law / issues that come up frequently.

Structure of law exemptions, costs, timing of requests. What is the law, where are the issues?

Exemptions: There are two lists of exemptions and three extra exemptions after that. The first list has 40 exemptions that are subject to a “public interest balancing test”. They can be argued and turned over on a case

by case basis. These are fairly general. There are 42 unconditional exemptions and for these, there is not a public interest balancing tests associated with these exemptions. Even the parts that are simple are not really that simple. There is one exemption that makes exempt from public disclosure anything that elsewhere made privileged or confidential or that disclosure is prohibited or restricted and this dictates that one has to look through the entire set of Oregon Revised Statutes to find exemptions.

Sunshine laws - Comparing top 5 states' number of disclosures:

Oregon ranks number 4 on the list of the most exemptions within the public records disclosure act. When comparing states with most exemptions not within public records disclosure acts, we're number 3. We and Florida are the only states on both top 5 lists.

The exemptions are not only numerous but they are all spread out throughout the 17 Volumes.

The point is: the current exemption system is too spread out and too difficult for lay people to navigate. This is one of many problems but this is the first one we'll focus on.

Timing. Our law is one of several in the country that does not establish timing laws. Requests are valid and we agree that citizens have a right to request but it is labor intensive and cumbersome and monotonous. What impeded ability to get records out in the past? In the PRR issue for Kitzhaber, duplication of records was an issue. Vendors were hired to process and de-duplicate but even paying people to do it, it's expensive and time consuming. "Reasonable time" depends on what is being asked. There should be an initial response after request is made. The timing rules we have are vague and they allow for needed flexibility but they also allow for abuse if government responders want to take their time replying to requests.

The Cost. The agencies are entitled to ask for actual cost in responding to PRR. The costs reflect the time to find the record, time to review and edit/ omit, however, the requestor of the records has the right to ask for fee waiver, reduction. Fees can be waived in the public interest. Legitimate public interest has to be shown to be eligible for a waiver but the public body still has discretion to waive or not. Cost can also be used as a means to deny access.

"Public Records requests cost too much" the ability to charge is the only deterrent to overly broad PRRs and abuse by public. Representative Parrish suggested a law that requires public bodies to waive fees if they cannot respond in 7 days. This could lead abuse by public when they ask for records that are too broad only to run out the 7 days.

Let's examine Public Interest balancing test in the future.

2007 effort resulted in public bodies have public accessible procedure for making PRRs. This smooths the process. We should consider this model as we move forward.

Questions?

**Jeb Bladine** – Can we discuss the Department of Justice's stance on mandatory v. authorized exemptions? How do we advise state government on the fact that a huge array of exemptions are not mandatory, they're authorized? How do you take on the liabilities? Do you advise people that they can release information that is exempt?

**Michael Kron** – We *can* release records that are exempt. The Public Records Manual states it very clearly that most of these disclosure exemptions are things that you can choose to invoke or not invoke. The issue of liability

is slightly separate under Oregon law from the issue of discretion. Oregon does not have a statute providing public bodies or officials from liability associated with that disclosure. A public body does not have to assert the trade secrets exemption. The trade secrets exemption is an exemption in a public interest balancing statute, they do not have immunity from being sued. The intersection between those two issues is another area I think the Task Force should look at and provide education to government employees as well as the public about. The legislature enacts these exemptions for reasons. The personal privacy exemption is an example of a discretionary exemption.

There are significantly greater risks now than 1973 for personal privacy concerns

**Ellen Rosenblum** - What about protective orders? This seems to run counter to transparency but when we're dealing with trade secrets or protected private information it could be subject to discretion.

**Michael Kron** – Protective orders are a very interesting issue, DOJ generally only asks for them when we believe there's a statutory basis for confidentiality. If there isn't a basis for confidentiality, our practice is to point that out to the court. Court orders are to be followed even though the Public Records law does not address them directly. It's an open question whether the catch all exemption was intended to reach court orders. We do not advise agencies to violate orders of the court.

**Ellen Rosenblum** - That doesn't answer my question, is it something we could suggest as a part of a negotiated decision on disclosure

**Michael Kron** – So you're thinking of providing information to some people but on the condition that they not re-release it. There's no process for it.

**Ellen Rosenblum** – So there's nothing against it.

**Michael Kron** - There's generally not a judge... it's more of a pragmatic problem. There was a protective order in the Sylvia Hayes case.

**Les Zaitz** - Yes there is a standing protected order after the judge review emails. In general, a suspected protected issue gets released to vulnerable party and they have a set amount of time to object before info gets released.

**Ellen Rosenblum** – Let's incorporate this into our discussion.

**Mark Landauer** - During the attempt by Kroger to complete the update of public record statutes it was suggested that the AG put all exemptions in the same place so they can be easily found.

**Michael Kron** – That's a good idea and there's an app for that. That's a good first step. With a powerful electronic search tool, this can be done. And it can be sorted by subject matter. The objection is concern about getting them all, we don't want to miss any. I think we can make it work.

**Scott Winkels** – There's a lot of enthusiasm for that. There's a list in the manual so maybe it doesn't have to be done.

**Michael Kron** – It's a good idea to do a catalogue. The list in the manual is not complete.

**Gina Zejdlik** - Louisiana requires that exemptions cross reference in the master list. (Corporate) desires for confidentiality block this effort.

**Michael Kron** – I think it could be a statute and still make it effective.

**Josh Nasbe** – One legislative body cannot bind another. It will become complicated.

**Jeb Bladine** – Instead of a list of statutes, give a summary and an individual can look it up.

**Michael Kron** - Senate bill 41 proposed in 2011 already did that.

I skipped something: The mission of this task force...

Interruption by **Jeff Kruse** – Are these exemptions subject to discovery?

**Michael Kron** – No, none operate as a discovery bar in chapter 192. Any of the ones outside 192 may or may not.

**John Huffman** – Offering the rural perspective – One of the challenges is the need for transparency within certain parameters. The Wheeler County Sheriff says the new law about PRR means we will have to stop using body cameras because they cannot meet the PRRs. If we use body cameras on cops, we don't have the money or manpower to then retain the records and make them available to the public. We'd have to hire another person. The small agencies are run by volunteers and I don't know how to address this.

**Michael Kron** – How do we want to structure our work? Let's plan to get into smaller groups and report back to the whole group.

Issues Mark Landauer and Scott Winkels brought up were organizational issues, we should have groups break out and work on this. I'll work on substantive issues. A third group is the review of the audit.

Senator Kruse can look at other state examples. Are we willing to do this kind of thing (groups)?

**Ellen Rosenblum** – Asks to clarify: How often should this group meet?

**Scott Winkels**– Proposes another group – how to educate the public about the findings of the task force.

**Ellen Rosenblum** – We don't need to do that now, let's wait until we're closer to the conclusion of our efforts.

**Les Zaitz** – What are the groups?

**Michael Kron** - #1 Substance of PR Exemptions – #2 Organizational issues around PRR and this will transform into public education #3 review audit findings and how can we move forward with the new information.

**Les Zaitz**- One of the main problems is lack of clarity which leads to poor understanding by the public. To solve this, let's rewrite preamble to the statutes so it's clearer to everyone what this is for. Let's outline and possibly establish the enduring public policy of the state

**Lee Byer** – Agreed.

**Michael Kron** – Yes, and any subgroup could look at this, this is a substantive issue, maybe.

**Ellen Rosenblum** – Do we agree with groups? Please say yes or no

**Les Zaitz** – Yes if we don't have to meet.

**John Huffman** - The problem is those not on the task force will be left out. Will it create more work

**Lee Byer** - We want the preamble done first so we're all on the same page

**Jeb Bladine** – Is this a public body?

**Michael Kron** – No, I don't think so. But we'll act like it is.

**Jeb Bladine** – It's a good idea. We need education for public officials and the public

**Michael Kron** – Should we do homework assignments instead of groups?

**Jeb Bladine** – Yes. It would be more time efficient.

**Ellen Rosenblum** – Let's talk about homework. Are we meeting frequently enough? Let's keep the momentum going! Let's put a hold on groups and have more meetings.

**Michael Kron** – The current plan is to meet every two months.

**Lee Byer** - What's the timeline; Legislation 2017?

**Ellen Rosenblum** – Yes.

**Lee Byer** – In that case, we need to meet once a month to get anything done.

**John Huffman** – Our office has dedicated “task force days” for these occurrences. I agree. Once a month is good and 6 months from now we might increase the frequency of the meetings.

**Lee Byer** - We need a structure

**Michael Kron** – OK, let's make the groups a work plan and your idea about policy preamble is important and shouldn't take all of one meeting. Substance is the longest conversation so let's talk about policy statement and ideas for organizing exemptions first. Are there any objections to meeting once a month?

(No one replies which implies consent)

**Scott Winkels** – The absent members agree also.

**Lee Byer** - We need a better agenda so we can prepare better for the next meeting.

**Ellen Rosenblum** – Absolutely. We planned to have open discussion this meeting and to be more focused next week. Suggestions for the next meeting?

**Michael Kron** – Are we at a good stopping point? Are there more questions? I'll create an agenda that focuses on organization of exemptions and policy statement.

**Lee Byer** - I need an exact date so I can make it happen.

**Ellen Rosenblum** – Immediately after this we'll decide. Please bring any interested staff or volunteers to the next task force meeting.

**John Huffman** – Picking a new meeting time: 16, 17 and 18 of November are options.

**Michael Kron** – Thank you. We want to make it as easy for you to participate as possible.

**Lee Byer** – Suggests Wednesday or Thursday afternoons. He votes for the 18<sup>th</sup>.

**Jeff Kruse** – Judiciary Committee is meeting then.

**Michael Kron** – Meeting adjourned.



