

Oregon Sunshine Committee Meeting Minutes
January 31, 2018; 1:00 – 2:30 pm

Oregon State Capitol
900 Court Street NE, Hearing Room D, Salem, OR

Sunshine Committee Members

Oregon State Senator Brian Boquist (ex officio) (excused)
Selena Deckelmann, Director of Engineering, Mozilla Firefox
Eileen Eakins, attorney for Port of Astoria
Charlie Fisher, OSPIRG State Director
Mary Beth Herkert, Oregon State Archivist
Karin Johnson, Independence City Recorder
Michael Kron, Special Counsel, Oregon Department of Justice
Emily Matasar, Government Accountability Attorney, Governor's Office
Oregon State Representative Karin Power (by phone) (ex officio)
Oregon State Senator Floyd Prozanski (ex officio) (excused)
Adrienne Roark, Vice-President and General Manager, KPTV Fox 12
Morgan Smith, Polk County Counsel
Brent Walth, Journalism Professor, University of Oregon
Christian Wihtol, Senior Editor, Register Guard (by phone)
Oregon State Representative Carl Wilson (ex officio)

Guests

Ellen Rosenblum, Oregon Attorney General
Rob Bovett, Legal Counsel, Association of Oregon Counties
Kevin Moore, Legislative Aide to Senator Floyd Prozanski (by phone)
Matt Friesen, Gallatin Public Affairs
Cameron Miles, Legislative Counsel, Committee Assistant
Kate Denison, Oregon Department of Justice

Agenda

VIDEO STREAM 0:00 – 1:35:50

1. Welcome and Introductions

Attorney General Ellen **Rosenblum** welcomed the members. Her goal for the Sunshine Committee is to help make Oregon the best state in the country for public access to government. Acknowledges the need to protect some legitimate interests while insuring that the public understands what government is doing and why. Refers to work on public records cases going back to the beginning of her legal career. Discusses work of the Attorney General's Public Records Reform Task Force, and remaining issues including the

cost of records requests, existence of 550 exemptions from disclosure. Proposed questions for the Committee to evaluate exemptions: would Oregonians expect to be able to obtain this information, or understand why it is confidential? Is the exemption clear? Is it written too broadly? Does it, or should it, recognize countervailing public interests? Is it consistent with the way similar information is treated? AG Rosenblum thanked the members for their commitment to the work.

Members introduced themselves.

Michael **Kron** explained the agenda. He then spoke about the work expected of the group: reviewing exemptions, identifying inefficiencies and inconsistencies in the laws, recommending changes, and reporting to the legislature.

Representative Carl **Wilson** asked about the work plan for exemption review. Would the committee look at oldest exemptions first? Approach them based on subject area? Deal first with the ones creating the most issues today?

Mr. **Kron** replied that the Committee will want to ask those questions given the different possibilities and the need to create a manageable structure for the task. Mr. **Kron** asked the members to talk about their goals for the group.

Christian **Witohl** expressed that this would be complicated work. The end result might be general principles as fine tuning each exemption may be colossal or even impossible. He likes balancing tests and wonders about making them universal.

Eileen **Eakins** introduced herself.

Morgan **Smith** expressed interest in increasing awareness of law and simplicity of administering it. Is concerned that adding balancing tests will make the law more difficult to administer and contentious.

Emily **Matasar** stated that identifying outdated exemptions that could be easily eliminated would be a good start.

Charlie **Fisher** said he hopes that, in the absence of a compelling reason, the Committee would err on the side of easy public access. He is interested in looking at some of the exemptions the legislature did not require the Committee to examine, particularly trade secrets. It would be great to finish before 2026.

Selena **Deckelmann** expressed that she is looking forward to deepen her understanding of the process. She is encouraging corporate adoption of similar practices. She identified the importance of protecting private information. She explained that she has some experience facilitating the disclosure of public information. She is interested in the categorization problem.

Adrienne **Roark** would like to see the number of exemptions decreased, and seeks to

	<p>protect the free flow of information.</p> <p>Ms. Eakins explained that her clients are small government entities who are looking for bright lines rather than balancing tests. Wants the Committee's work to simplify the law.</p> <p>Karin Johnson would like to see the number of exemptions reduced and the law made workable for cities.</p> <p>Representative Wilson looks forward to the learning aspect of the work. He brings experience as a broadcaster, business owner and legislator to the Committee. To the extent the Committee can improve public access to government, citizens are the winners.</p> <p>Brent Walth stated that the law is a law of disclosure, not government discretion. He expressed concern that exemptions change that dynamic. Governments can release data when they want to. He cited examples of public bodies using exemptions to justify large fees for access to public information.</p> <p>Representative Karin Power recounted that she has participated in the creation of exemptions. She is looking forward to learning how public agencies are managing requests and what tools are available to help them.</p> <p>Mr. Kron thanked the members.</p>
2.	<p>Committee Procedures</p> <p>Actions: The Committee unanimously elected Michael Kron as chair. The Committee adopted Robert's Rules of Order as the procedural rules of the Committee, except as inconsistent with the Oregon Public Meetings Law.</p> <p>Mr. Kron stated that the Committee needed to choose a chair and solicited volunteers. Mr. Kron himself was nominated, the nomination was seconded, and he was unanimously elected chair without further discussion.</p> <p>Chair Kron talked about the need for rules and expressed a preference for relatively informal procedures.</p> <p>Ms. Eakins expressed general agreement but stated that formal process for yes and no votes is needed.</p> <p>Ms. Herkert agreed, citing the need for transparency.</p> <p>Chair Kron asked about roll call for votes. Ms. Herkert expressed that group voting is generally okay, but a roll call is needed if there is not consensus.</p> <p>Mr. Walth asked whether members could request a roll call vote. Ms. Herkert stated that</p>

	<p>they could.</p> <p>Mr. Fisher asked whether consensus is required for the Committee’s work. Chair Kron stated that it is not, but expressed optimism that consensus would be possible.</p> <p>Chair Kron asked how he should describe the rules under consideration by the Committee. Ms. Herkert proposed that the Committee adopt Robert’s Rules of Order to begin with.</p> <p>Representative Wilson stated his appreciation for the desire to have informal process but expressed the importance of having rules to accomplish the committee’s work. He suggested consideration of the rules used by the legislative assembly.</p> <p>Chair Kron asked whether Robert’s Rules of Order would be preferable.</p> <p>Rob Bovett, from the audience, discussed Mason’s Rules versus Robert’s. Explained that many public bodies use Robert’s Rules of Order, except as inconsistent with the Oregon Public Meetings Law. He thinks that Mason’s rules work better for larger group.</p> <p>Mr. Walth asked Mr. Bovett which rules he recommends. Mr. Bovett recommends Robert’s.</p> <p>Mr. Walth moved that the committee adopt Robert’s Rules of Order, except as inconsistent with the Oregon Public Meetings Law and received a second.</p> <p>Ms. Herkert asked whether members are familiar with the rules, and requested that Chair Kron send information about the rules to members.</p> <p>By unanimous vote, the Committee adopted Robert’s Rules of Order, except as inconsistent with the Oregon Public Meetings Law.</p>
3.	<p>Discussion of Method for Approaching Work of the Committee</p> <p>Chair Kron raised the need to manage the review of exemptions. He explained work the Attorney General’s Task Force did regarding exemptions and raised the possibility of borrowing the work done to categorize various exemptions. He also discussed other possible approaches to the work, including a utilitarian approach or a chronological approach.</p> <p>Representative Wilson stated that exemptions that have been superseded or made moot are less interesting to him. He expressed that the work could be more appreciated if the Committee attacks the exemptions at issue now for journalists and government.</p> <p>Ms. Deckelmann asked whether there is a log of public records denials. Chair Kron replied that there is not, but that some public bodies such as the Governor’s Office and the City of Portland might have logs that could potentially be representative.</p>

Mr. **Witohl** observed that the public records process is decentralized, making it difficult to evaluate which exemptions are most at issue. He suggested that the Committee might start with the exemptions in ORS Chapter 192.

Ms. **Herkert** expressed that, whatever approach the Committee chooses, capturing interrelated exemptions would be important. Asked whether exemptions could be better defined, or given limited durations.

Ms. **Eakins** noted parallels between the Public Records Law and executive session provisions of the Public Meetings Law. She stated that when her clients have problems it is often about process. She cited the example of repeatedly making public records requests which are not actually seeking records but simply asking questions.

Chair **Kron** speculated whether it might be possible to create links between exemptions in Chapter 192 and exemptions outside of that chapter.

Ms. **Matasar** made the point that it might be beneficial to organize review with stakeholders in mind, so that specific stakeholder groups could come before the Committee once rather than needing to come repeatedly. Chair **Kron** expressed uncertainty about how to do that.

Representative **Wilson** noted that the Committee will be hearing people and publishing agendas that inform interested parties whether they wish to attend.

Chair **Kron** suggested that he could write a report outlining various possible approaches to the work, and recapped his understanding of the possible approaches discussed so far.

Mr. **Witohl** suggested that the Committee might allow members to identify exemptions for the Committee to review. Chair **Kron** noted that approach could allow the Committee to focus on current priorities, given the expertise of the group. Representative **Wilson** expressed that the working press and smaller governments have particular things on their mind.

Attorney General **Rosenblum** suggested that morale could benefit from clearing up easy ones at the beginning of the group's work. Representative **Wilson** stated that clipping off low-hanging fruit while the Committee proceeds would be good. Chair **Kron** expressed the view that it would probably be easier to accomplish that by combining related exemptions than by eliminating exemptions entirely.

Mr. **Fisher** spoke in favor of the idea of letting Committee members decide which exemptions merit review, and combining that approach with a more categorical approach.

Chair **Kron** stated some possible advantages of that approach and said that he felt he had a good idea of what should go to a report to the Committee to outline ways of approaching the exemption review.

4.	Future Meetings Chair Kron raised the issue of scheduling future meetings. In the ensuing discussion, general consensus emerged around scheduling meetings for the third Wednesday of every other month at 1:00 pm, with a telephonic attendance option for each meeting. Representative Wilson asked whether Committee Staff might explain the microphone system. Cameron Miles explained that blue lights near the staff desk indicate that the system is recording and transmitting. Mr. Miles then explained that the exemptions formerly in ORS 192.501 and 192.502 have been renumbered. Mr. Fisher noted that he would not be available for the March meeting and raised the possibility of sending someone in his stead. After some discussion among members about proxy voting, he clarified that his representative would merely be observing.
5.	Future Tasks of the Committee Mr. Bovett suggested that the Committee should consider electing a vice chair. Chair Kron expressed support for that idea and stated that he would add it to the agenda for the next meeting. He asked members to consider whether they would be willing to serve as vice chair.
	Adjourn After motion and second, the Committee unanimously voted to adjourn.