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**From:** Brent Walth <bwalth@uoregon.edu>  
**Sent:** Friday, June 22, 2018 10:22 AM  
**To:** Kron Michael C  
**Subject:** Sunshine Committee criteria

Hi Michael:

Thanks for the chance to suggest some changes to the Sunshine Committee's draft criteria. The draft provides a solid basis for our consideration of existing public-records exemptions. I do see some key ideas that aren't yet represented here, and I have a few suggestions for changes in wording. Please feel free to share this with other committee members.

**A.** I'm proposing we add questions that better frame our mission as the Sunshine Committee. For my suggested additions below, I drew from the wording from other states' criteria and from the language that sets out our committee's mission statement in HB 2101 [Specifically, section 6 (3)(c) and (d)].

1. Does the exemption limit, hinder or prevent government accountability?
2. Does the existence of this exemption impede transparency in public process and government?
3. Would repeal or amendment of this exemption enhance transparency?
4. Does the exemption clearly serve a public policy? Does it serve a private interest? On balance, which is served more by this exemption?

No. 4 above could replace this question in the draft criteria: "Is the exemption actually serving the interest it means to serve?" It's hard for us to know what the legislative intent was when many of these exemptions were approved. I believe our question now is whether the exemption serves the public interest or not.

**B.** I'm also suggesting we change the wording in the following draft criterion: "Is the reason for the exemption apparent? Do you think Oregonians would generally agree that this information should not be disclosed to the public?" I'm suggesting we change the wording to this:

"Is a public-policy reason for the exemption apparent?"

"Do you think Oregonians would understand why this information can be withheld from the public?"

Here's my thinking in making this recommendation:

As above, it's hard to know what the reasons are behind many of these exemptions. The state has a policy of disclosure through ORS 192. I think the privilege of an exemption requires a public policy reason that outweighs the larger policy of disclosure and transparency as described in ORS 192.

It's not our place to be determining how Oregonians might feel about an exemption. We aren't here to weigh public opinion but instead balance the privilege of exemption against the broader right to know. I also think the switch from "should not be disclosed" to "can be withheld" underscores the discretion agencies have in releasing exempt public records.

That's it. Thanks again for considering these proposals. I'm happy to answer any questions about these suggestions before as well as at our next meeting.

Best,

Brent

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