

**Oregon Sunshine Committee Meeting Minutes**  
May 16, 2018

Location: Oregon State Capitol, Room 343

**Welcome and Introductions**

Chair **Kron** suggested that guests and members introduce themselves. He announced that Christian Wihtol has to step down and the AG is working with the Newspaper Publishers Association for a replacement.

Chair **Kron** went through the agenda, and noted that the new public records advocate, Ginger McCall, would be addressing the committee.

Members and guests introduced themselves.

First agenda item: March 16, 2018 Draft Minutes

Chair **Kron** proceeded to first agenda item. He received a suggestion from Mr. **Miles** that the minutes should reflect that he and Mr. **Foltz** were visitors. Chair **Kron** will make that change. No other comments on the minutes. On motion and second the committee unanimously approved the minutes edited to reflect the suggestion by Mr. **Miles**.

Second agenda item: Review Draft Report

Chair **Kron** sent all members a draft of the report and is open to suggestions. He sought authority to draft a description of the May meeting for inclusion in the report.

Ms. **Herkert** brought up that the report link does not work. The Committee recessed to obtain copies of the report. Chair **Kron** called back to order with sufficient copies of the report.

Chair **Kron** explained the report focused on foundations laid for the overall project, consistent with the discussion at the prior meeting.

All members agreed with report. Ms. **Matasar** found a typo. Chair **Kron** will fix. Ms. **Matasar** suggested that the vice chair selection vote should be added to the report. Chair **Kron** agreed. No objection.

Mr. **Budnick** asked if the public could make suggestions or comments on the report. Chair **Kron** responded that the report needed to be approved at the current meeting and, with the statutory deadline, it would be too late to make changes. Mr. Budnick commented on word choice.

Chair **Kron** asked for other comments. Rep. **Power** wondered how best to communicate the work plan and priority items to her colleagues in advance of the 2019 session. Chair **Kron** suggested creating an attachment that sets out a more detailed work plan. Ms.

**Power** agreed that would be helpful. Chair **Kron** asked for objections. No objections were made. It is Chair **Kron's** hope that Ms. **Power** and the other legislators on the committee will be a natural conduit to getting policy moving in the committee or through their caucuses.

Ms. **Harris** commented on the substance of the proposed criteria described in the report. Chair **Kron** reiterated that the report will reflect the criteria adopted at the current meeting, which is a separate agenda item.

No other concerns were raised.

Mr. **Smith** moved to adopt the report subject to the discussed changes. After a second, the Committee unanimously voted in favor.

Third agenda item: Criteria for Exemption Review

Chair **Kron** shared on the website a copy of material provided by Mr. **Budnick** regarding criteria adopted from other states. He read the proposed criteria, discussed some criteria from other states that he was not proposing, and discussed his thought process.

Chair **Kron** and Mr. **Foltz** discussed the summaries of exemptions created by Mr. Foltz and how those summaries could be used in connection with whatever criteria were adopted.

Mr. **Smith** asked whether the proposed question about whether exemptions expire appropriately was needed. Chair **Kron** explained the view that some information could be available sooner. Ms. **Herkert** agreed that most information does not need to be exempt for 25 years and commented that having multiple expiration periods can be confusing. Chair **Kron** suggested that perhaps a conversation about the length of the default expiry period was not necessary for exemption review, and Ms. **Herkert** and Mr. **Smith** agreed. Ms. **Roark** suggested this could be a data classification issue addressable by different classifications and exemption periods.

Mr. **Smith** suggested that the questions need not address statutorily required confidentiality provisions, as review should be focused on exemptions. Chair **Kron** explained that confidentiality provisions are incorporated as exemptions. His suggested the Committee should ask whether requiring confidentiality – as opposed to simply allowing it – makes sense for various exemptions. Ms. **Eakins** believed that is an important distinction. Public agencies will want to know what cannot be disclosed and what the legal risks are if they do disclose.

Ms. **Herkert** agreed with question 2, but believes it should be kept in the positive, especially since the intent of the law is for information to be open. Mr. **Smith** disagreed. It's written the way it is because the committee is looking at pre-existing exemptions. Ms. **Herkert** said exemptions are being looked at in the light of are they a necessary exemption or not. She would rather look at why is the information exempt and why

shouldn't it be disclosed, instead of trying to defend why the information is exempt. Chair **Kron** suggested the question could be phrased as, "Would Oregonians expect this information to be publically available?" He suggested that the two questions are logically the same. Mr. **Walth** suggested the Committee should not ask what Oregonians would think. Ms. **Roark** agreed.

Chair **Kron** noted the importance of asking whether members agree with the policy underlying the distinction. Mr. **Walth** suggested two questions to get at that issue: "Would the elimination of a particular exemption enhance transparency?" and "Would a particular elimination of an exemption facilitate rapid fulfillment of public records request?"

Chair **Kron** felt the answers to those two questions would always be yes, and was concerned that asking those questions would prevent the Committee from making recommendations regarding whether the law is appropriately protecting information that deserves protection. Mr. **Walth** and Chair **Kron** agreed that a question like "In light of the Committee's charge to increase transparency, is the committee satisfied that the information protected by this exemption should continue to be protected?" would be satisfactory for both of them.

Ms. **Eakins** agreed with Chair **Kron** that framing the question in the negative or the positive does not change the fundamental question: is the public policy purpose for this exemption evident? She suggested that reference to Oregonians could serve to encourage members to consider different perspectives.

In light of the time, Chair **Kron** suggested moving onto the seven members of the public who signed up to testify. Ms. **Herkert** moved that the discussion be tabled. After a second, the Committee unanimously voted in favor.

Before moving forward to public testimony, Chair **Kron** introduced Ms. **McCall**, the Public Records Advocate for the State of Oregon. Ms. **McCall** discussed her new role and her plans.

#### Fourth Agenda Item: Public Testimony

Before inviting forward those who signed up to testify, Chair **Kron** explained that the Committee was addressing exemptions for personal contact information, but not exemptions based on the personal safety of individuals. He also noted that some of the exemptions included other provisions besides personal contact information, but that the goal was to address personal contact information rather than that other information. He then briefly described the 11 exemptions on the list, and invited public testimony.

Mr. **Straka** of the Freedom Foundation in Salem discussed exemptions for information of homecare workers and public employees. He suggested that these particular exemptions were created specifically to create organizations like his from contacting the individuals in question. He encouraged the Committee to revisit these exemptions. He noted that they

include a public interest test that is different than the default public interest balancing test and suggested that is problematic.

Ms. **Eakins** asked Mr. **Straka** about contact information of privately employed individuals. Mr. **Straka** said his organization's interest is specific to employees who are in a public employee union. Ms. **Eakins** noted private employees' information wouldn't be publically available and the only reason this is at issue is because these are public employees or publically funded employees.

Mr. **Budnick**, of the Society of Professional Journalists, explained his view that access to personal information can serve the public interest. He offered examples of instances in which journalists' access to personal information helped expose that individuals offering to do business with public entities were not reliable, and said that the committee should preserve access in the public interest. Mr. **Budnick** also encouraged the committee to consider asking whether exemptions go further than they need to, and whether public interest tests should be added to exemptions that do not have them.

Chair **Kron** asked Mr. **Budnick** to elaborate on how personal contact information, in particular, was helpful in the two cases he described. Mr. **Budnick** explained that in one case his access to an individual's history of home and email addresses enabled him to learn the history of a person offering to buy Wapato Jail.

Ms. **Eakins** asked for more details about public records requests in the case. Mr. **Budnick** stated records were withheld and he was forced to cross reference publically available information. Ms. **Eakins** pointed out that the personal contact information being looked at primarily had to do with public employees and this individual was presumably a member of the public. She asked why the public body denied the request. Mr. **Budnick** said the reason was "pending real estate deal."

Mr. **Friesen** of the Oregon Newspaper Publishers Association stated that contact information provides essential ways for the Association to find people affected by government actions or inactions on issues like land use, toxic waste dumps, and services to the disenfranchised. It allows news organizations to assess whether candidates live in their districts. Access for citizens allows them to find others similarly affected, organize and exercise their democratic rights. Basic contact information is also used to make sure the association has the right person they are reporting on.

**Morjenna**, a homecare worker, noted that disclosing contact information can put people at risk. She gave an example of a DHS caseworker who was stalked, harassed and assaulted by a person seeking information about the location of people served by the caseworker, the survivor and the children. She stated this is not an isolated incident. She asked the committee to be proactive in preventing victimization, and to remember a healthy respect for Oregonians' privacy.

Ms. **Burrows**, also a homecare worker, explained that she takes care of elderly and disabled people in their own homes as well as hers, and that she has three children. She

described the experience of having someone paid by a private entity make contact with her at home while her children were present. She feels that protecting contact information is important to protect homecare workers' privacy. No one should come to her home or her consumers' home, or contact her personal or mobile phone. She asked the committee to look at this as not a transparency issue between governments but as a personal one concerning individual privacy.

Senator **Prozanski** asked for context about the contact she described. Ms. **Burrows** explained that the organization was actively working against her union to try to get people to leave union.

Emily **Harris**, a journalist, expressed support for Mr. **Budnick**'s testimony, and for the exemption review project. She encouraged the Committee to consider a public interest balancing test for every exemption, allowing the Public Records Advocate or the Attorney General to decide if a specific request meets the criteria. She suggested that many personal contact exemptions could have special interests behind them. She acknowledged privacy concerns and said journalists consider personal safety and privacy in their reporting. She also suggested that exempting personal information could justify redacting any record that has personal information on it, adding greatly to the cost. She proposed a distinction between general lists and personal information that happens to be relevant in the record. Journalists typically need contact information to find people affected by a public policy. Their stories can illuminate for others why they should care about the issue.

Ms. **Eakins** asked whether Ms. **Harris** would like public employees' personal information available to journalists who would decide whether to contact them. Ms. **Harris** responded that's a committee question. She clarified that journalists do not usually publish personal contact information. The information is used for a very specific purpose. They have their own internal test of whether that is worthwhile. Ms. **Eakins** asked about contacting public employees. Ms. **Harris** stated that in a journalist's ideal world information would be available and journalists would be trusted to decide to make contact.

Ms. **Eakins** asked if Ms. **Harris** would make the same pitch to a private employer. Ms. **Harris** thought there could be similar laws.

Chair **Kron** thanked those who gave public testimony. He noted that written comments were posted on Sunshine Committee's website and forwarded to members. He noted compelling points on both sides of the testimony.

#### Fifth Agenda Item: Future Business

Chair **Kron** proposed that the Committee return to discussion of exemptions at the next meeting. He asked about incorporating safety-related contact exemptions into the discussion. And he suggested that one rule, with some exceptions, should apply to contact information so there aren't different rules for public entities to follow, but felt any rule must adequately protect personal safety, particularly of victims.

Mr. **Smith** expressed that the pool of exemptions should be unchanged except that the pen registry-exemption should be lumped in with their criminal investigatory information. Chair **Kron** agreed to remove that exemption. He expressed doubt that the committee could resolve personal contact information separately from personal safety issues given the testimony.

Ms. **Eakins** agreed safety is related to the reasons for keeping contact information confidential. She also highlighted the separation between a public employee's public employment and their private personal life, and her view that access to contact information for reasons that have nothing to do with the job the employee is doing is inappropriate.

Representative **Power** expressed concern about the amount of time it took to go through exemptions and public comment. She suggested that the Committee either needs to focus its questions, discuss fewer exemptions, or create subcommittees.

Representative **Power** suggested that the Committee must clarify to members of the public that the Committee cannot change exemptions but only recommend changes to the legislature, which entails additional public process.

Chair **Kron** agreed with Representative **Power** that subcommittees should be discussed. He repeated his hope that the committee can propose one exemption that covers personal contact information, rather than make separate recommendations concerning each existing exemption.

Ms. **Eakins** moved to table the current agenda item. Committee unanimously voted in favor.

Chair **Kron** moved to the final agenda item, future business. He continued the discussion of subcommittees, proposing that members could inform the chair **Kron** which categories they would be interested in so that subcommittees could be formed to make recommendations to the larger group.

Mr. **Smith** expressed concern about subcommittees and proposed longer or more frequent meetings. Other members agreed meetings should be longer and Chair **Kron** agreed to schedule the July meeting for 3 hours.

#### Adjournment

After motion and second, the Committee unanimously voted to adjourn.