

Report of the Oregon Sunshine Committee

July 1, 2018

Introduction

The Oregon Sunshine Committee is pleased to submit this inaugural report to the public records subcommittee of the Legislative Counsel Committee, as required by ORS 192.511(3)(e). The law creating the Sunshine Committee charges it with a review of the hundreds of exemptions from public disclosure requirements that are found throughout the Oregon Revised Statutes. The law also broadly directs the Sunshine Committee to “[s]tudy and identify any inefficiencies and inconsistencies in the application of public records laws that impede transparency in public process and government” and to “[m]ake recommendations on changes in existing law, policy and practice to enhance transparency and facilitate rapid fulfillment of public records requests made to public bodies.” ORS 192.511(3)(c) and (d).

The Sunshine Committee has held three meetings, and has just begun the substantive work required of it. This report will focus on the composition of the committee and the groundwork done to facilitate the immense project of reviewing hundreds of exemptions from public disclosure requirements.

Materials documenting the Sunshine Committee’s past work, and upcoming meetings, are available to all at <https://www.doj.state.or.us/oregon-department-of-justice/public-records/public-records-reform/>.

Composition of the Oregon Sunshine Committee

ORS 192.511(1) specifies the composition of the Oregon Sunshine Committee. Four legislators serve as ex-officio members. By law, they are the members of the subcommittee of the Legislative Counsel Committee, described in ORS 192.499, to which this report is addressed.

Those legislators are:

- Senator Brian Boquist of Dallas;
- Senator Floyd Prozanski of Eugene;
- Representative Karin Power of Milwaukie;

- Representative Carl Wilson of Grants Pass.

In addition, the Attorney General, Governor and Secretary of State are represented:

- Mary Beth Herkert, State Archivist, Office of Secretary of State Dennis Richardson;
- Michael Kron, Special Counsel, Office of Attorney General Ellen Rosenblum;
- Emily Matasar, Government Accountability Attorney, Office of Governor Kate Brown.

The remaining eight members were appointed by Attorney General Rosenblum to represent specific interests identified in statute:

- A person with information technology expertise: Selena Deckelmann, Director of Engineering, Mozilla Firefox;
- Three representatives of local government to represent the interests of counties, cities, school districts and special districts:
 - Eileen Eakins, Law Office of Eileen Eakins, LLC;
 - Karin Johnson, Independence City Recorder;
 - Morgan Smith, Polk County Counsel;
- A representative of broadcasters: Adrienne Roark, Vice-President and General Manager, KPTV Fox 12;
- A representative of professional journalists: Brent Walth, Journalism Professor, University of Oregon;
- A representative of newspaper publishers: currently vacant after the resignation from the Sunshine Committee of Christian Wihtol, Senior Editor, Register Guard;
- A representative from a nonprofit open government or public interest group: Charlie Fisher, OSPIRG State Director.

Mr. Kron was elected to serve as Chair of the Sunshine Committee, and Ms. Matasar was elected Vice Chair. Staff support includes Cameron Miles of the Office of Legislative Counsel, and Oregon Department of Justice Public Records Counsel Andy Foltz.

Meetings to Date

The Sunshine Committee has held three meetings so far, in January, March and May of 2018.

At the January meeting, Attorney General Rosenblum welcomed the members and made introductory remarks. Members introduced themselves and discussed the statutory role of the Sunshine Committee, focusing on the need to establish a coherent methodology for reviewing more than 500 statutory exemptions. The Sunshine Committee also took care of some basic

administration, selecting Mr. Kron to chair the group and adopting parliamentary rules to govern its proceedings.

At its March meeting, the Sunshine Committee elected Ms. Matasar as vice chair. It then considered a report from Chair Kron outlining various possible approaches for structuring the review of exemptions. After discussion, the Sunshine Committee decided on a categorical approach to this task. That approach, and the reasoning behind the Sunshine Committee's decision, is discussed in detail later in this report. In summary, discussing exemptions by category should make it easier to identify inconsistent or redundant exemptions. It should also make it easier and more convenient for members to prepare for meetings and for outside stakeholder to present their views to the Sunshine Committee. At its March meeting, the Sunshine Committee also decided that it would prioritize review based on available information about which exemptions have generated the most appellate court decisions and Attorney General Public Records Orders. In addition, the Sunshine Committee discussed the need for general criteria to evaluate exemptions, and agreed that it would take testimony – orally, to the extent possible – from stakeholders interested in the exemptions being considered.

The May meeting featured further discussion of the proposal to adopt criteria for review of exemptions. Although there seemed to be general consensus about the type of questions the Sunshine Committee should be asking, members did not feel that the proposed criteria could be adopted, and time did not permit the Sunshine Committee to edit the proposal as a group. Mr. Walth indicated that he would send comments to Chair Kron between meetings, and others were invited to do the same. Time was short because the May meeting also included the Sunshine Committee's first formal public comment period. Six witnesses offered oral testimony regarding a number of different exemptions for certain individuals' personal contact information. The Sunshine Committee had also received nine written comments concerning those exemptions. In addition, the Sunshine Committee approved a draft of this report and authorized Chair Kron to make a handful of changes and submit it on behalf of the Sunshine Committee.

Exemption Review: Methodology and Schedule

As mentioned above, the Sunshine Committee has adopted a categorical approach to exemption review. Under this method, exemptions are grouped into categories – and subcategories – which will then be reviewed as groups. To assist in the categorizing effort, the Sunshine Committee has adopted work done by the Attorney General’s Public Records Law Reform Task Force to group similar exemptions. The Sunshine Committee members remain free to re-categorize exemptions. But for now, the categorization of exemptions is as follows:

Administration of Government Exemptions

- Computer Programs
- Civil Prosecuting Attorney Material
- Competitive Procurement
- Confidential Submissions
- Reports to Public Bodies
- Test Materials
- Civil and Regulatory Investigations
- Legislative Process
- Dispute Regulation and Litigation
- Accident Reports
- Business Transactions
- Voter Pamphlet Material
- Natural Resource/Species Protection
- Archeological Information
- Information Sharing
- Correctional Institutions
- Requirements of Other Laws
- Human Resources

Public Safety and Law Enforcement Exemptions

- Security
- Undercover Law Enforcement
- Intercepted Communications
- Criminal Investigatory Information

Personal Privacy and Safety Exemptions

- Background Check Records
- Contact Information
- Offender Information
- Decedent/Survivor Information
- Disability Information

Education Records
Family Law
Financial Information
Health
Interpreter Information
Juvenile
Mental Health
Miscellaneous

Economic Affairs Exemptions
Agriculture Industry
Tax Records
Contractors with Public Bodies
Energy Industry
Export Industry
Finance Industry
General Business
Health Industry
Insurance Industry
Licensed Professions
Resource Extraction
Subsidies
Telecommunications
Waste Management
Miscellaneous

To make its way through this material, the Sunshine Committee will be guided by a combination of (1) available data concerning the extent to which various exemptions have generated disputes between requesters and public bodies and (2) the expertise of Sunshine Committee members. Specifically, the Sunshine Committee delegated to Chair Kron the task of determining which categories and subcategories include the greatest number of exemptions that have been the subject of appellate review and Attorney General orders. This information is culled from the electronic catalog of public records exemptions created by the Attorney General pursuant to ORS 192.340.

Under the current plan the Sunshine Committee will take the exemption categories in this order:

- Personal Privacy and Safety Exemptions
- Administration of Government Exemptions

- Economic Affairs Exemptions
- Public Safety and Law Enforcement Exemptions

An Appendix attached to this report goes into further detail regarding the order of review. However, Sunshine Committee members may propose specific exemptions to take out of order. And Chair Kron retains discretion to set meeting agendas. If member suggestions are accepted, then other related exemptions will also be moved out of order, helping to insure that similar exemptions in a particular category will still be considered together.

Criteria for Review

In considering the numerous exemptions, Sunshine Committee members agree that uniform criteria will be helpful to insure consistent review and provide a framework for discussion. This is consistent with what similar groups have done in other states. Discussions concerning specific final criteria are ongoing as of the date of this report, though there appears to be general agreement that the criteria should touch on whether exemptions are necessary, clear, consistent and appropriately limited in scope.

Other Work

In addition to its exemption review work, the Sunshine Committee has discussed its charge to make recommendations for improving government transparency. Given the scope of the exemption review project, and the fact that the 2017 legislature separately created the Public Records Advisory Council with duties similar to the Sunshine Committee's broader responsibilities, it seems likely that the Sunshine Committee will need to focus on its large project – at least until members are comfortable that the exemption review is adequately under way. Nevertheless, members are very interested in broader Public Records Law issues. Consequently, the Sunshine Committee intends to stay apprised of the work of the Public Records Advisory Council, and will coordinate with that body as appropriate. In addition, Sunshine Committee members can ask the chair to add items other than exemption review to

meeting agendas. But, for the time being, the subcommittee should expect this Committee's work and reports to focus primarily on exemption review.

Conclusion

The Oregon Sunshine Committee has embarked on a large project to improve a very important tool for assuring public access to information about the activities of state and local government. Members look forward to making recommendations to the subcommittee for improving government transparency in Oregon, while also making the Oregon Public Records Law easier to administer. The Sunshine Committee believes that its efforts in its first three meetings have created a solid foundation for the significant work to come.

Appendix: Order of Planned Review of Exemption Subcategories

- I. Personal Information Exemptions
 1. Contact Information
 2. Financial Information
 3. Miscellaneous
 4. Family Law
 5. Health
 6. Mental Health
 7. Background Check Records
 8. Disability Information
 9. Juvenile Records
 10. Offender Information
 11. Education Records
 12. Decedent/Survivor Information
 13. Interpreter Information

- II. Economic Affairs Exemptions
 14. Licensed Professions
 15. Insurance Industry
 16. Finance Industry
 17. General Business
 18. Miscellaneous
 19. Tax Records
 20. Subsidies
 21. Health Industry
 22. Agriculture Industry
 23. Energy Industry
 24. Resource Extraction Industry
 25. Contractors with Public Bodies
 26. Telecommunications Industry
 27. Waste Management Industry
 28. Export Industry

- III. Administration of Government Exemptions
 29. Civil and Regulatory Investigations
 30. Dispute Regulation and Litigation
 31. Reports to Public Bodies
 32. Business Transactions
 33. Competitive Procurement
 34. Legislative Process
 35. Information Sharing
 36. Computer Programs

- 37. Requirements of Other Laws
- 38. Accident Reports
- 39. Natural Resource/Species Protection
- 40. Archeological Information Protection
- 41. Civil Prosecuting Attorney Material
- 42. Confidential Submissions
- 43. Test Materials
- 44. Voter Pamphlet Material
- 45. Correctional Institutions
- 46. Human Resources

IV. Public Safety and Law Enforcement Exemptions

- 47. Security
- 48. Criminal Investigatory Information
- 49. Undercover Law Enforcement
- 50. Intercepted Communications