OPEN
OREGON
A Freedom of Information Coalition

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Dear members of the Oregon Sunshine Committee,

Thank you for your work in addressing issues of transparency on behalf of all Oregonians.

Since 1997, Open Oregon, a member of the National Freedom of Information Coalition, has stood for access to open meetings and open records. At our Jan. 18 meeting, we received a report of the sunshine committee's recent activities on revising law as it relates to personal exemptions.

We recognize that this is important work. But we would like to urge you to table this particular discussion at this time.

The issue of personal exemptions is an important one needing further consideration. But as long-standing advocates of transparency and transparency education in Oregon, we also recognize that it is one of the most intractable parts of the transparency discussion. We believe that for the public to have confidence in any remedy recommended by the Oregon Sunshine Committee, this committee must first be imbued with the public's trust.

Oregon has more than 550 exemptions to its public records law, many of which are out of date, irrelevant and redundant. Others serve narrow constituencies to the detriment of a majority of Oregonians. It is our recommendation that the Oregon Sunshine Committee begin establishing a reputation and rapport with the Oregon public and the legislature by addressing these types of issues first. In this way, the committee can cultivate the public trust, skills, and connections to successfully recommend alterations to the personal exemptions issue with the full confidence of Oregonians later.

We believe to undertake the personal exemption issue as a first order of business is to walk the Oregon Sunshine Committee into a protracted legislative battle that it does not have the institutional power to mediate. Ultimately, this will undermine public confidence in the committee and the effectiveness of its important work. This outcome seems especially likely if the committee focuses its attention on personal exemptions at the same time that more than 40 new revisions to public records law are being proposed in the 2019 Legislature.

Thank you for considering our recommendation that the committee table the personal exemptions issue until such a time that it has the reputation and authority to lead reform.

Shasta Kearns Moore
President
Open Oregon
A National Freedom of Information Coalition chapter

From:	League of Women Voters of Oregon
To:	Sunshine Committee
Cc:	Josie Koehne; C Norman Turrill
Subject:	LWVOR Letter to Oregon Sunshine Committee 12-17-18
Date:	Monday, December 17, 2018 10:18:25 AM
Attachments:	LWVOR Letter to OR Sunshine Committee 12-17-18.pdf

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Dear committee members,

Please see the attached letter submitted on behalf of the League of Women Voters of Oregon.

Thank you,

Sarah Andrews
League of Women Voters of Oregon
Office Coordinator

Phone: 503-581-5722; *Email:* lwvor@lwvor.org; *Web:* www.lwvor.org

LEAGUE OF WOMEN VOTERS® OF OREGON

December 17, 2018

To: Oregon Sunshine Committee members

Mail to: SunshineCommittee@doj.state.or.us

Dear Oregon Sunshine Committee members,

On behalf of the League of Women Voters of Oregon, I follow issues of transparency and public records and report back to the League's Governance Coordinator and Action team. I have been reading the Sunshine Committee's written testimony and listening to the videos following the progress of the committee which has the worthy mission of making recommendations to the legislature concerning the 550 exemptions to the public records law with the goal of providing greater transparency into government agencies and operations while respecting the safety, legal, medical, and other concerns of individuals and other entities. The deliberations have been thoughtful, democratic and nuanced.

However, I feel that this committee has been making very little progress over the five three-hour meetings since January. It has yet to eliminate a single exemption, or even closely review a single exemption. Since the privacy/personal information topic is by far one of the most complex and thorny issues of all the categories of exemptions, some members have suggested addressing this subject later on. Unfortunately, this suggestion was ignored. Many members of the committee have made helpful suggestions to move the process forward, but they have not been acted upon. It was suggested at the October 3rd meeting that there be a set of test questions to help weigh whether a privacy exemption serves the public interest and the public's right to know (persuasively presented by the journalists), versus the personal safety and identity theft concerns raised by potential victims. I hope the committee will follow up to develop these questions, as well as consider the OPT-IN for Privacy/Privacy-by-Design suggestions that were brought up when safety is of serious concern.

Naturally, there are differing views concerning methodology, process, specificity, and deliverables. But to this observer, the discussions are allowed to meander on without summary, consensus or conclusion, only to be repeated at the next meeting. I suspect there is frustration among the members themselves at the leisurely pace of the meetings and at the lack of headway by the end of the day.

The ORS192.511 statute requires that the Sunshine Committee "establish, and adjust as necessary, **a plan or schedule** to review all exemptions from disclosure for public records … that provides for review not later than December 31, 2026." I reviewed the July Draft Report that lays a broad outline for the methodology, categories of exemptions, and sequence in which they will be addressed, but I do not see a schedule or plan with timeframes and milestones. Creating and sharing a plan and schedule with sufficient granularity that indicates all the steps which need to occur to complete the committee's mission, and tracking committee performance to those milestones on a meeting by meeting basis, and reviewing the key suggestions from the previous minutes will allow the committee to monitor its progress and adjust its methodology to the extent required, and provide the public with greater insight into the committee's effectiveness.

Josie Koehne
Transparency and Public Records Portfolio

Norman Turrill
President, LWV of Oregon

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Society of Professional Journalists
Comments concerning privacy in Oregon public records law
Oregon Sunshine Committee

The Oregon Territory Chapter of the Society of Professional Journalists commends the Oregon Sunshine Committee on its discussions to date of one of the more complex and nuanced areas of Oregon Public Records Law: the exemptions that pertain to personally identifiable information. We appreciate the opportunity to offer preliminary comments and four recommendations in preparation for the Jan. 23 meeting.

Our core belief is that access to certain information must be timely if it is to serve the legislatively intended function of Oregon Public Records Law — that the public know what its government is doing — as well as the U.S. Constitution's singular recognition of the media's role as a watchdog and check on government.

We also believe that it is incumbent upon informed, enlightened decision-makers to consider the societal benefits of transparency, public-interest research and public-service journalism alongside individuals' desires to keep their personally identifiable information from being shared.

While past comments have focused on bulk data, in light of the Public Records Advocate's Dec. 18 report we wish to address issues that pertain to personal information contained in individual records, and highlight a potential unintended consequence of poorly crafted action, one that we'd ask the Committee to consider as it deliberates.

As we've all seen nationally and locally, access to public information must be timely in order for journalists to fulfill their role as recognized by the U.S. Constitution, to inform the public in an accurate fashion and present a check both on unbridled power and the kind of misconduct that thrives in secrecy.

Whether it concerns federal or smaller jurisdictions, journalists engage in these pursuits in a real-time manner and typically on deadline, by watchdogging basic claims, talking to real people, locating and talking to witnesses, verifying people's identity, and using property records to look for potentially improper conflicts of interest, concealed business interests and even the possibility of public corruption.

This use of personal information to further public-service journalism occurs constantly in granular fashion, and mostly out of the public eye. It is deeply embedded in journalists' reporting literally on an every-day basis, in ways that rarely appear in published articles and therefore are largely invisible to the public. This is done as reporters explore land use land use decisions, contact citizens who speak at public meetings, report generally on crime, on criminal proceedings, government contracts, important hires, and the members of the boards and commissions that serve the community.

The context of this discussion is vital to consider: Contrary to the theoretical workings and intent of Oregon Public Records Law, the reality is this: under the current structure of conditional exemptions in Oregon, agencies can and frequently do deny and delay access even in instances where they know the withholding is improper and they would surely lose if a redaction or denial is appealed. Both state and local officials have openly, even casually admitted to reporters that they withhold certain information and records as a matter of unofficial policy despite awareness that withholding is unjustified; their expressed intent is that such a practice builds in delay, thus hiding the information from a published article, or that it's the District Attorney disclosing, not the agency that was statutorily obligated to do so. Some district attorneys and presumably the Attorney General's office are well aware of this phenomenon, though they may not be aware of its frequency. Beyond that, some officials have even openly threatened journalists with intentional and unnecessary delay, alluding to their ability under Oregon records law to do so freely without consequence.

Bad-faith denials of this sort can and do lead to delays of four weeks or more on even simple, clearly lawful requests. This practice at times has been used in ways that have frustrated the public's ability to decipher situations that indicate borderline corruption or failure by Oregon managers to monitor basic Oregon laws intended to protect government from being manipulated by public officials for self-enrichment.

SPJ's concern, then is that simply expanding the reach of conditional exemptions, as contemplated by portions of the Public Records Advocate's report, will inevitably increase the frequency of improper, unnecessary and even abusive delays if not accompanied by additional transparency safeguards. An increase in delays and obstacles creates the strong likelihood that the core journalistic functions of verification, backgrounding, watchdog reporting and investigative reporting would be significantly impaired and would be pursued at a reduced level.

SPJ would note that Oregon is known for its lack of public corruption, unlike Georgia, South Carolina and Kentucky. It's also worth noting that federal FOIA's privacy provisions, also detailed in the PRA report, have at times been abused to prevent the public from seeing who, specifically, is seeking to influence important government policy —a crucial safeguard the public has of determining what interests are listened to, and whose voices are not.

In this context, it's worth restating the basic rationale behind why Oregon voters approved this records law: "The Public Records Law is primarily a disclosure law, not a confidentiality law," as summarized in the Oregon Attorney General's Public Records and Meetings Manual.

There are legitimate concerns about personal privacy as it relates to the crimes of identity theft, doxxing and swatting. These concerns, however, should be considered along with the lack of evidence of widespread or even common practice of people using the public records law for these criminal purposes in Oregon. The obvious reality is that people acting with criminal intent are unlikely to file public records requests that would create a clear paper trail of their actions. It is not SPJ's purview to comment on whether Oregon's laws are well-framed to punish and deter the crimes of doxxing, identity theft and swatting, but we know the topic has been explored on the national level.

Transparency is an apolitical principle that benefits everyone.

Not just private industry but public employee unions are among the biggest users, and legitimately so, of the personal identifying information captured in the statewide voter file.

Such information is vital to the get-out-the-vote efforts of political groups of all persuasions because without personally identifying information, it is difficult for political groups to communicate accurately and effectively with voters.

Restricting lawful public access to public information that serves the public's interest is unlikely to stop bad actors from committing bad acts. It does, however, risk depriving Oregonians of information for which they have already paid and from which they could benefit.

We believe that there are potential ways the Legislature can address privacy concerns without impairing crucial access to public records and public information. And considering recent backward steps that have been taken with the effect of

barring access to important public information even to public-interest users, we believe such access actually should be expedited, not just preserved.

SPJ Oregon is dedicated to improving the workings of Oregon Public Records Law. We continue to actively consider ways to address areas of potential improvement in the law, including the area before you now. Given the timing of your next meeting, what follows is a mix of possible recommendations and principles that we respectfully submit in the hope of assisting the Sunshine Committee's deliberations.

1. The ability of public-interest and public-service users to timely access personal information should be preserved or, if anything, increased.

As stated previously, access to certain personally identifiable information is essential to news-gathering in the public interest. Dates of birth and home addresses, among other categories of information, are employed to accurately identify a person who is in the news. These identifiers are also needed to unearth potential conflicts of interest, identify cases of corruption and analyze equity and other social issues, including among public employees.

For reasons discussed earlier in this letter, placing additional categories of personally identifiable information under a public interest test using the existing framing of conditional exemptions could well have an unintended consequence in creating an increase in unjustified delays, sometimes meaning the information cannot be accessed in the time frame it is needed. This will significantly increase the likelihood that misconduct and even criminal behavior will go undetected, unpunished and unreported upon — having been protected by a lack of timely access.

Last year, for instance, timely access to personal information led to the key interview that led to the publishing of an article that directly led to two prominent men being indicted for an allegedly savage and shocking rape, with the charges filed shortly before the statute of limitations expired.

In the past, scrutiny of a city of Portland parking manager by a series of newspaper articles was assisted through timely access to personal information. The series directly sparked an investigation by the FBI as well as the manager's subsequent federal indictment and conviction for bribery and corruption.

The examples are many. And to prevent unnecessary delays that could lead to stories like these going untold, with perpetrators going unaccountable and

unexposed, any change to Oregon law should include a path toward not just ensuring,but expediting public-service and public-interest access to personal information.

2. Strengthen the Address Confidentiality Program of the Oregon Department of Justice.

Oregonians subject to a confirmed threat have a clear right to privacy, and SPJ strongly believes protections in this area should be strengthened. As the Sunshine Committee has discussed, state officials have wisely set up a program to, in DOJ's words, help "survivors of domestic violence, sexual assault, stalking or human trafficking shield their physical address." The committee, however, discussed the question of whether the program is widely known and fully integrated across Oregon state and local government practices. Notwithstanding any other recommendations made by the OSC, SPJ believes it should encourage the Legislature to explore and address the reach, strength and implementation of this crucial program to make sure it is well-known and fully protective.

3) Consolidate exemptions related to personally identifiable information.

SPJ believes that consolidating the numerous and overlapping exemptions under consideration by the OSC fits squarely with the committee's mission to "study and identify any inefficiencies and inconsistencies in the application of public records laws that impede transparency in public process and government," as well as to "make recommendations on changes in existing law … to enhance transparency and facilitate rapid fulfillment of public records requests made to public bodies." SPJ believes the Sunshine Committee's statutory mission calls for it to preserve or increase existing levels of transparency.

That said, the Committee has the chance to also clarify the status of specific categories of information in ways that provide clear direction to government officials and thereby reduce potential disagreements, litigation and redaction cost:

- For the sake of clarity, Oregon statute should affirm that any administratively generated tracking numbers (e.g. employee ID) are not exempt based on personal privacy;
- If birth dates are considered conditionally exempt in some circumstances, portions could be considered non-exempt (such as disclosing month/year, or year alone).
- The physical address where a licensed person or entity conducts or owns a licensed business should be explicitly designated as non-exempt without exception,

unless that address is protected by the Department of Justice Address Confidentiality Program.

•Work emails and work phone numbers should be explicitly designated non-exempt for public employees other than those in the Department of Justice Address Confidentiality Program.

4) If used, data transfer agreements must protect transparency in addition to promoting privacy.

The Public Records Advocate's report on privacy exemptions doesn't differentiate between general risks, the risks of bulk personal data release, and the risks of disclosing public information contained in individual records through the public records process

However, SPJ believes that the most significant expression of the threats cited in the PRA report is posed by the release of personally identifiable information in the form of bulk data.

If the Sunshine Committee chooses to adopt restrictions on such data, SPJ would call their attention to what's been used in Oregon and elsewhere to balance privacy protections with public-interest needs, called a data transfer agreement. SPJ, however, believes that any such model should not be employed in a manner that promotes secrecy and lack of transparency and accountability. Rather, this model should be deployed in a manner that increases accountability, transparency and supports essential public-interest research and journalism.

As discussed, the model works like this: In exchange for obtaining records with personally identifiable information, the user agrees not to publish data in bulk, transfer it to a third party, or use it to solicit individuals for commercial purposes. Parties eligible to enter into such agreements may be limited to certain classes of individuals, such as academic researchers or members of the news media. If the committee chooses to advocate the promotion of bulk data transfer agreements, SPJ believes that such a recommendation should explicitly reflect the following principles:

•Such agreements are ONLY for data requests that include personally identifiable information conditionally exempt from disclosure.

•An eligible requester who signs an agreement and fits certain criteria bypasses the public interest test for disclosure of conditionally exempt information.

•Because the requester is responsible for securing the data, the public body should not impose technical specifications on how the requester stores the data.

•Eligible requesters should include, at a minimum: a) organizations that exist only for gathering news and disseminating it to the public; and b) individuals with a history of conducting such work for an organization or who has the endorsement of such an organization.

•Denials of eligibility should have an appeal mechanism, such as to the Attorney General.

5) Save money, promote transparency through mandatory segregation of sensitive information.

Another implication of expanding protections for personally identifiable information is cost, by creating new demands for redaction that add to already prohibitive legal review costs that deters access to important records.

To address that concern, SPJ urges the OSC consider recommending the Legislature explore a concept called Transparency by Design that is generating discussion in government, academic and transparency circles, in order to reduce the burden and cost of disclosing records.

Specifically: Oregon should require, in statute, that any record generated by a body will deliberately isolate sensitive personally identifiable information — a requirement that could be phased in over time to allow forms to be revised. It would work like this:

•All emails should clearly indicate when they contain sensitive PII, and ONLY emails marked as such should contain sensitive PII. This ensures a search for responsive records will isolate the subset of emails that requires review for redaction, and it limits the possibility a public body overlooks sensitive material for redaction.

•All database fields that contain sensitive PII should be marked accordingly, and ONLY fields marked as such should contain sensitive PII.

•Requesters should not be charged if a public body reviews unmarked fields or documents for sensitive PII.

•A public body should maintain and provide, on request, a list of sensitive and non-sensitive fields in a database. This allows the requester to select items that require no review, or to decide those that do are so essential as to be worth the additional cost.

•Sensitive PII under these provisions would be defined as any information covered by personal privacy exemptions in Oregon law.

If the committee desires to pursue this idea further, we would be happy to provide additional background material. But we also feel this concept bears raising to the Legislature.

Changing how government stores sensitive information in this manner would, SPJ believes, strengthen protections for privacy while reducing the cost of disclosure, consistent with the clear intent of Oregon Public Records Law and the creation of the Oregon Sunshine Committee. It also could establish Oregon as an innovator for others to follow.

Thank you again for your contributions to crafting sound public policy for Oregonians.

Prepared by members of the SPJ Oregon board with input from members of SPJ's Freedom of Information Committee.

January 23, 2019

Members of the Oregon Sunshine Committee,

As its first substantive act, the Oregon Sunshine Committee could vote Jan. 23 on a most difficult area of records law, one rife with hidden potential hazards. But when one's first climb encounters challenges, perhaps it's time to consider a beginner's peak.

Figure 1 Photo by Vern, Flickr Creative Commons tinyurl.com/ycfz8yzp

The Oregon Territory Society of Professional Journalists continues to believe the job of reviewing exemptions pertaining to personally identifiable information rightly belongs with the OSC. But to ensure appropriate safeguards for public oversight and accountability, we would respectfully request the committee consider tabling the topic for subcommittee refining.

We believe the Committee should have more time to adequately discuss implications of the PRA's newest report. We feel the new 'decision point' process is promising, but should be used to focus discussion, rather than as a substitute for a carefully crafted recommendation.

The OSC's report to the Legislature noted "its charge to make recommendations for improving government transparency." A new report by SPJ explains how the idea under consideration, if not accompanied by safeguards, could block oversight and accountability.

<u>Since the OSC approach is subject to refining, SPJ believes the Committee could now:</u>

- Establish subcommittees and/or add telephone meetings to ensure progress
- Solicit public suggestions for "low-hanging fruit" among exemptions
- Consider whether bulk personal data should be treated differently than other information
- Explore common-sense improvements to OPRL navigation in addition to systemic overhaul
- Consider whether to recommend the Legislature fund a full-time staffer
- Request real-time reporting on new legislation as the OSC statute envisioned

We greatly appreciate your important contributions to crafting sound public policy.

—Oregon Territory Society of Professional Journalists

MS. RUBANOFF: Okay. And -- and did you ever actually ask [redacted] if it was okay to -- to let the contractors pick up the tab?

ACCESS DENIED

Government agencies regularly and sometimes knowingly violate Oregonians' public records law in ways that block accountability and withhold information from the public.

If adopted without strong safeguards for public transparency, potential changes under discussion by the Oregon Sunshine Committee could weaken oversight and accountability.

"Knowledge will forever govern ignorance. And a people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy, or perhaps both."
-James Madison, father of the U.S. Bill of Rights (1822)

SOCIETY OF PROFESSIONAL JOURNALISTS

progressive and constant, demoralizing, and at the same time [redacted] you know, she was either directly involved in all this stuff or witnessed it and never said or did anything. At least that I'm aware of.

Contents:

The personal privacy exemption in Oregon's records law is frequently misused, and agencies often withhold Personally Identifiable Information (PII) or other information without basis.

In 1973, the Oregon Legislature enacted the Oregon Public Records Law, aimed at making the workings of government open for all Oregonians to see.

The law had a simple but powerful premise: Records in the hands of the government belonged primarily to the public, and it was the burden of the government to prove those records ought not be disclosed. There were, at the time, 55 exceptions to that rule, called exemptions.

Oregonians continue to support the law's intent. In 2017, a survey of Oregonians around the state by the nonpartisan polling firm DHM found that:

- 86 percent of those surveyed agreed that public access to government-collected data does result in greater government accountability.
- An even higher portion, 93 percent, called for transparency around business incentives.
- Remarkably, 85 percent of respondents believed that every citizen's access to public information should be "complete," while 14 percent didn't agree.

Since the law's enactment, however, the number of exemptions carved out of Oregonians' disclosure law has grown to more than 550.

Many of these exemptions are not ironclad. Called "conditional" exemptions, they allow information to be withheld only if strict conditions are met. They often require agencies to explicitly weigh whether "the public interest" calls for disclosure in that particular instance.

This category of law is increasingly abused, based on information gathered by Oregon SPJ:

- Some agencies have denied access to information even in instances when officials admit to SPJ members they have not weighed the public interest as required, or know full well that secrecy is not called for and that their redaction will be overturned upon appeal.
- Agencies do so, some officials privately admit, for reasons of internal politics or to delay disclosure and keep information out of articles.
- Such behavior is expressly prohibited by Oregonians' disclosure law. Sometimes it is overturned on appeal. But even when that happens, the law contains no penalties.

SPJ applauds the 2017 Oregon Legislature and Gov. Kate Brown for creating the Oregon Public Records Advocate's office, which is increasing training and tackling legitimate discussions.

The failure of agencies to follow the law nevertheless has major implications for oversight and accountability:

- Improper delays often cause the requester to give up, amounting to a denial.
- If the requester has the know-how and tenacity to appeal a denial, that can lead to delays of up to five weeks, sometimes meaning the information is no longer useful when it is received. Again, delay often amounts to a denial.
- Even if an improper records denial by a local government is appealed, some county District Attorneys, who are supposed to be impartial referees, at times side with the local agency in ways that do not appear to follow the law's requirements.

If not accompanied by clear and explicit safeguards, the change under consideration could further enable improper redactions and withholdings, and hurt oversight.

The report of the Public Records Advocate, while it does not espouse a specific recommendation, asks the Sunshine Committee to consider how Personally Identifiable Information (PII) has been misused in the past, such as with identity theft and doxxing.

It appears to suggest that one way the committee could balance competing interests is to explicitly move PII behind a conditional exemption while, in effect, allowing agencies to waive conditional exemptions in certain circumstances. In such a scenario, the agency would "release information to only a particular requester for a particular purpose."

SPJ recognizes the good intentions behind the Public Records Advocate's exploration of ways to address privacy concerns while also attempting to maintain transparency.

Such approaches are already used for bulk data, such as by Oregon's DMV and the Oregon Health Authority's database of health care claims. In theory, such bulk data arrangements can act like a TSA airport pre-check, potentially addressing the concern of improper delays that SPJ members often face.

One could potentially understand that, in the abstract, it might appear reasonable that any public record that is released subject to a particular requester's public interest argument, as already is allowed by Oregon's records law, could remain restricted to those specific circumstances.

But regardless of how it could theoretically work with bulk data, when it comes to individual documents in the real world, agencies often already fail to apply the law's public interest test appropriately. As this report will detail, agencies have frequently used their discretion to deny access to information in ways that clearly run contrary to Oregonians' disclosure law.

Any proposal that preserves or increases agencies' already broad discretion to restrict disclosure, while also giving them a far more explicit ability to withhold PII, could have significantly detrimental effects to uses by the public as well as for the public-service journalism that our members seek to practice and support.

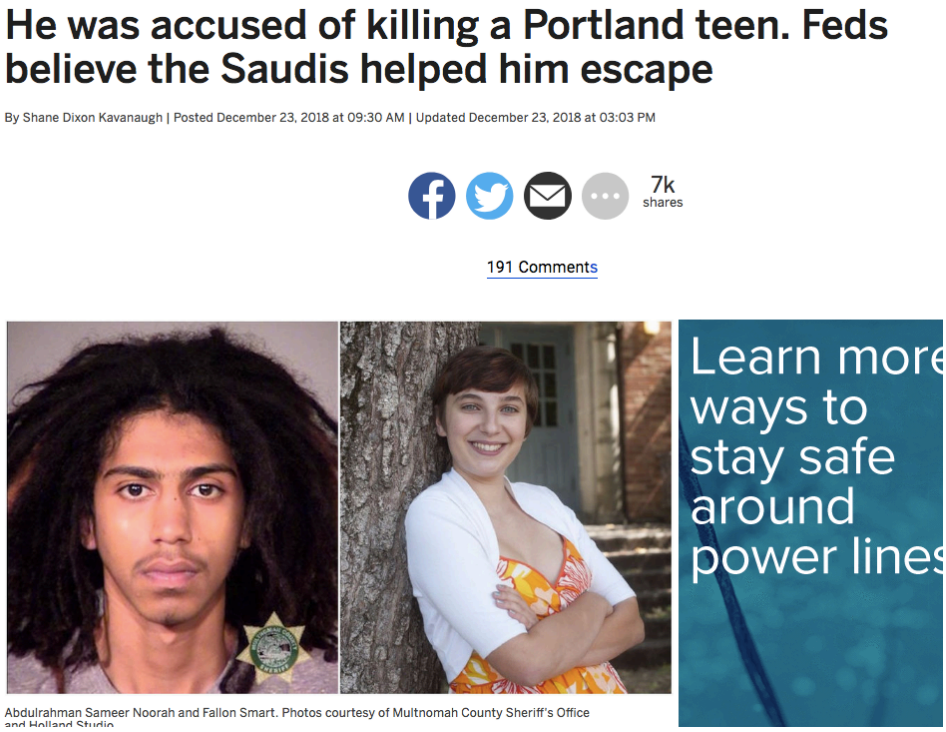
The remainder of this report shows how access to PII and other information that is conditionally exempt serves the public by exposing injustice as well as public corruption and malfeasance.

It reflects how the personal privacy exemption currently requires an agency meet a high bar and stringent three-part test in order to withhold information: that the information is a) of a personal nature, b) that its disclosure would be "highly offensive" to a reasonable person, and c) that the public interest does not clearly and convincingly call for releasing the record.

Despite these clear criteria, Oregon' personal privacy exemption and other aspects of the law are often not followed.

This is why SPJ members are deeply concerned that without clear and explicit safeguards to address existing problems in abuse of agency discretion, the proposal that has been floated in the PRA report could significantly hurt transparency.

Case study in abuse of privacy exemption: *Reporting on how powerful countries appear to help their citizens accused of serious crimes in Oregon escape justice.*



He was accused of killing a Portland teen. Feds believe the Saudis helped him escape

By Shane Dixon Kavanaugh | Posted December 23, 2018 at 09:30 AM | Updated December 23, 2018 at 03:03 PM

7k shares

191 Comments

Abdulrahman Sameer Noorah and Fallon Smart. Photos courtesy of Multnomah County Sheriff's Office and Holland Studio

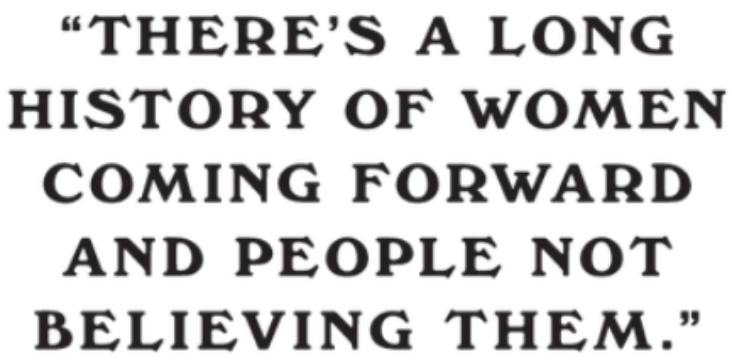
Situation: A journalist investigates a trend in which Saudi nationals accused of rape, manslaughter and other felony crimes in Oregon are spirited back to their country, possibly with the help of their government, and escape justice.

How public records were handled: A records request regarding an alleged rape at a public university was recently sent to a local district attorney that had been reviewing a case for potential prosecution when the suspect left the country.

Outcome: The district attorney's office responded to the request with a lengthy letter that effusively praised its own efforts to "partner" with the university to address sexual assault, but did not address the legal review required by Oregon's records law other than to generally cite privacy. The letter said the DA releases no records pertaining to sexual assault because "they are covered under the personal privacy exception to the public records statute."
The Oregonian reporter responded noting the office's policy of non-disclosure was explicitly contradicted by the language of the statute, by the Oregon Attorney General's public records manual, and by court rulings. In the end, the records were ordered released.

Analysis: Not all members of the public or reporters have the expertise or support to counter a denial like that. It's disturbing that the DA initially denied records in a manner that also shielded its own actions from scrutiny. Notably, the DA is the same agency charged with interpreting records law and settling records disputes with local agencies.

Case study in how real-time access serves public: *Records allow allegations of a long-secret rape by two powerful men to go public in time for a police investigation and indictments.*



Situation: A reporter investigates a woman's allegation that years ago she was raped by two now-powerful men, including one running for the Multnomah County board of commissioners.

The role of PII in public records: PII contained in documents like parking tickets and voter registration documents is crucial to tracking down key witnesses in cases such as this one. Because they were not redacted or delayed, the reporter could make contact with witnesses in a timely way.

Outcome: The article was published in early 2018 and the police opened an investigation. The candidate dropped out of the county race. Charges were filed shortly before the deadline to do so passed, known as the statute of limitations. The defendants have pleaded not guilty.

Analysis: The defendants will now have a chance to prove their case in a court of law. Since this article was reported, the Legislature has acted to restrict public access to PII in voter records. Earlier or further restrictions to PII could have made it impossible to timely report this story.

When privacy really means secrecy: How an agency used its discretion to hide how jail staff for seven days ignored a sick inmate's cries for help, until she died.

Madaline Pitkin, 26, died April 24, 2014, at the Washington County Jail.

Situation: A reporter investigates the death of a woman in a Washington County jail, whose pleas for medical help were ignored for seven days as she died from heroin withdrawal.

The role of public records: The Washington County DA cited privacy to withhold records that would have raised questions about the quality of care received by Madaline Pitkin, 26, before her death in 2014. Blacked out portions included her requests for aid, including:

> *"Heroin withdrawal. I told medical intake that I was detoxing & they said I was not yet sick enough to start meds. Now I am in full blown withdrawals and really need medical care. Please help!"*
>
> *"vomiting and diarrhea (sic) constantly. Can't keep meds, food, liquids down. Can't sleep. Everything hurts. My stomach is so sour and filled with bright green bile that I keep puking up. Muscles cramp and twitch. So weak. Cannot stand long. Can't walk far without almost fainting. Feel near death."*
>
> *"This is a 3rd or 4th call for help. I haven't been able to keep food, liquids, meds down in 6 days ... I feel like I am very close to death. Can't hear, seeing lights, hearing voices. Please help me."*

Outcome: The reporter, Rebecca Woolington, obtained the records through other means, and several articles ran in The Oregonian/Oregonlive. Many reporters and members of the public wouldn't have had the time, and the story could easily have gone untold.

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Analysis: Would a "reasonable" person agree with the Washington County DA that release of the above pleas would constitute a "highly offensive" invasion of the dead woman's personal privacy? Or would they side with the vast majority of Oregonians who support transparency? Woolington told SPJ: "The way the privacy exemption was used in this case was incredibly problematic and egregious. It was not used to shield anyone from the release of personal information that would be considered highly offensive. Rather, it appeared to be an attempt to conceal the failures of those charged with Madaline's care while she was in custody.

Case study in agency discretion: Oregon officials twice decreed that two reporters' access to documents on a state solar project would not serve the public interest. The reporters' articles then got a state energy official as well as an outside consultant convicted of bribery, recovered $13 million for Oregon state coffers and could eventually recoup more than double that.

Situation: After receiving a tip that a flagship state solar project celebrated by top Oregon leaders was sketchy, two reporters requested thousands of documents over a two-year period.

The role of public records: Documents and interviews revealed evidence that Oregon jobs touted as created by the project were actually federal inmates doing prison labor. A reporter spotted a bogus invoice that showed fraud had been used to obtain state tax credit funding. An investigation led to a lawsuit by the state. Other documents suggested bribery and overbilling.

Outcome: The state energy official eventually admitted to reporters he was "dirty," shortly before his indictment. Public records led to the conviction of two men, a scathing audit and new limitations on the program, and litigation that could eventually recoup a total of $28-$30 million for Oregonians from the solar contractor, an insurance company and the convicted men.

Analysis: This story shows how agencies can use their discretion to deny the validity of public-service journalism of which they are the focus.

Along the way, one reporter asked the state for a fee waiver for a batch of records. He was denied in a letter that showed no sign of considering whether the reporters' work would serve the public interest. The other reporter later asked for records that would help show if the project performed as promised. The request was denied under the state's "trade secrets" exemption, meaning the state did not believe the public interest in the documents outweighed the need to protect the solar contractor's desire for secrecy.

Other examples

How real-time access to PII serves the public

•Investigative reporters Tony Shick of OPB and Rob Davis of The Oregonian testified separately in October that public-interest access to PII contained in Oregon documents, helped them shed light on unlawful polluters who endangered human health.

> In 2016, I worked with an OPB colleague to investigate the Oregon Department of Environmental Quality's response to air quality complaints. Personal information in complaint data we received from DEQ enabled us to contact people who had voiced concerns about bad air in their neighborhood and claimed the state had done little to follow up on the situation. The personal information was also necessary for an analysis we conducted showing facilities with a history of complaints that never resulted in investigative or enforcement action on the part of the agency. Certain neighbors filed multiple complaints, sometimes from separate email addresses. Sometimes separate family members would each file complaints on the same day from the same address. Because of this, personal information such as name, address, phone number or email proved necessary in determining how many unconnected clean air complaints a business had received.

•Home address information regarding a city of Portland parking manager raised red flags fueling 2008 articles that led to a federal investigation and his 2015 corruption conviction.

Other examples of agency abuse of discretion

In January 2019, Marion County redacted portions of a top manager's prior work history from records citing "identity theft concerns," even though that information was freely available on the manager's LinkedIn profile. The reporter showed the manager had been forced to resign from a previous job because he was not honest about workplace affair.

Last year, a reporter asked the city of Portland for the performance review of a Portland Parks & Recreation director after he was let go and paid $100,000 in severance. The Portland city attorney's office claimed they could make numerous redactions per the conditional exemption for personal privacy. To her credit, City Commissioner Amanda Fritz allowed the DA's office to issue an advisory opinion that said the city would very likely lose in circuit court.

Last year Portland Public Schools paid a reporter and an activist more than $200,000 after suing them to block records that the district had previously considered public, showing which employees are getting paid to stay at home. As the reporter found, one was paid while spending 33 work days behind bars due to various alleged crimes.

In late 2017, following a scandal in which a top state employee health benefits manager was found to have repeatedly bent or broken state rules pertaining to spending, use of state cars, awarding contracts and being wined and dined by contractors, the Oregon Health Authority redacted from documents names showing who among a manager's coworkers knew what about his alleged malfeasance and misspending — only to remove the redactions on appeal.