

Oregon Sunshine Committee Meeting Minutes
March 20, 2019

Location: Oregon State Archives Building, 800 Summer Street NE, Salem, OR 97301

Sunshine Committee Members
Oregon State Senator Brian Boquist (excused) Selena Deckelmann, Director of Engineering, Mozilla Firefox Eileen Eakins, Law Office of Eileen Eakins, LLC 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 (excused) Oregon State Senator Floyd Prozanski (excused) Adrienne Roark, Vice-President and General Manager, KPTV Fox 12 (excused) Morgan Smith, Polk County Counsel Brent Walth, Journalism Professor, University of Oregon Oregon State Representative Carl Wilson (excused) Bennett Hall, Newspaper Publishers Association
Guests
Josie [Last Name?] Nick Budnick Cameron Miles, Legislative Counsel, Committee Assistant
Agenda
AUDIO STREAM 0:00:00-1:38:29
January Minutes
Chair Kron did not post or circulate draft minutes from the January 29, 2019 meeting and will need approval at the next meeting.
First agenda item: PII Subcommittee Recommendation
Chair Kron proposed to delay voting until the next meeting to give the public and the body an opportunity to review it further. He thanked all those on the subcommittee for the work they did and invited Ms. Decklemann to go over the recommendation.
Ms. Decklemann read through the bullet points of the recommendation. When forwarding the recommendation to the body, Chair Kron did not include the email from Ms. Decklemann . In the email, she had mentioned two subjects she wanted to refer back to the larger committee and he asked her to speak to those subjects.
The first subject was the administrative burden of fulfilling public records requests. A document was sent to Chair Kron with Ms. Eakin's comments in full. The second topic was special problems around bulk data.
Mr. Hall asked if the subcommittee's recommendation was to leave ORS 192.363 as is or that

the standard should protect PII of all individual public employees, not just those covered by ORS 192.363. Chair **Kron** thought there was another provision in the statute that applied broadly to employees. The standard was incorporated in ORS 192.355(3). Chair **Kron** felt legislative counsel could review the awkward wording of the statute. Mr. **Smith** explained the information ORS 192.355(3) applies to. Mr. **Hall** asked and Mr. **Smith** confirmed that current law applied the standard to all public employee personal information.

Mr. **Hall** expressed concern about information becoming more restrictive. Mr. **Fisher** said the recommendation was for the status quo to remain. The subcommittee agreed no additional exemptions would be created and any changes would increase access to PII. Mr. **Hall** gave an example of how the statute was restrictive, i.e. requiring the name of the individual whose information is sought.

Ms. **Decklemann** reiterated the need to discuss bulk data requests. In practice, information may be provided to avoid a separate request for a list of all employees. Mr. **Fisher** pointed out that the subcommittee intentionally put “individual” public employee so it was clear that it would apply to an individual rather than bulk data, which they wanted the whole committee to discuss separately.

Ms. **Decklemann** said an important issue they suggested was making the public interest balancing test apply to all exemptions, which is not currently the case.

Ms. **Herkert** asked if any consideration was given to eliminating all individual exemptions and creating one solely for PII. Ms. **Decklemann** answered that the committee felt it was beyond their scope to get into specifics as it would require PII to be defined and the legislature needed to create that definition. Ms. **Herkert** clarified that she was talking about making one statute for all PII and provided her reasoning. Chair **Kron** felt it would be impossible or extremely difficult with the subcommittee’s recommendation that they don’t expand the scope of the application of the exemptions.

Ms. **Herkert** spoke consolidation of the exemptions into as few statutes as possible. Ms. **Eakins** reiterated the subcommittee’s intent to have the legislature come up with a universal definition to include in 192 and then, as much as possible, direct PII into that one statute. Ms. **Herkert** didn’t feel the recommendation clearly reflected the intent of the subcommittee. Chair **Kron** suggested adding to the recommendation that the exemptions be consolidated to the extent possible.

Ms. **Decklemann** explained the subcommittee worked hard to avoid restricting access to information currently available. Ms. **Herkert** replied that their recommendation would be to just eliminate where there was duplication. Mr. **Fisher** worried that creating an overarching statute for all PII would make all PII conditionally exempt. Ms. **Herkert** was not advocating for that, but the statutes are currently worded similar but with different interest groups. She would ask the legislature look at those, consolidate them into ORS 192, and reduce them as much as possible. Ms. **Eakins** agreed the statutes should be consolidated where possible.

Ms. **Matasar** suggested a recommendation for when a request is not seeking PII but PII is included in the record. The recommendation would be that the PII, regardless of whom it

belongs, may be redacted. Chair **Kron** thought this might be a training issue rather than a statutory problem.

Mr. **Hall** mentioned that in previous meetings someone had talked electronic system that would flag PII to make it easier for entities to respond to requests and automatically redact PII. He thought maybe a check list where one can indicate whether or not they want PII. Ms.

Decklemann stated such systems are not currently common. However, a request template could ask whether requesters want PII. Chair **Kron** was unsure whether it would be wise to give people the suggestion that they may be able to obtain PII from the state, as some people with no real or legitimate need for the information may seek to take advantage of that. From his perspective, the current system works well and avoids inappropriately disclosing PII.

In Ms. **Matasar's** experience, state agencies do not feel like they can redact information legally without getting it wrong. Mr. **Hall** asked if there was an exemption in the law that talked about liability. Ms. **Matasar** stated once information is released, entities are not liable, but that was different.

Ms. **Matasar** stated that she didn't feel the recommendation considered consumer privacy concerns. Ms. **Decklemann** reiterated the desire to avoid restricting information currently available. Mr. **Fisher** added the biggest potential concern with consumer PII was bulk data requests and the subcommittee felt that issue required more discussion and needed to be part of another subcommittee.

There was further discussion between Mr. **Walth** and Ms. **Matasar** regarding protections around consumer PII and the subcommittee's charge. Ms. **Eakins** asked Ms. **Matasar** if it would help to have the legislature consider what, if any, additional protections needed to be considered for consumers specifically. Ms. **Matasar** thought so and thought it would fit in number 4 of the recommendation. Mr. **Fisher** pointed out Oregon's generic personal privacy exemption and opined that it should be sufficient to address consumer information concerns. He didn't think they should start recommending additional exemptions for other types of information unless it was to clarify what personal information was for the purpose of making it easier for agencies to discern what should or should not be released.

Ms. **Decklemann** added that ORS 192.377 included personal information the committee was discussing. Mr. **Smith** stated the statute was a little ambiguous in some ways and was in regards to information provided to the public body in confidence, but it didn't clarify the meaning of confidence. He thought having confidence defined would be helpful because the meaning varies depending on who is processing the request. Ms. **Decklemann** felt they could be clearer that they are recommending consolidation but organization of the chapter needs to be clearer. Chair **Kron** stated that 192.377 and in confidence exemption all involved public interest, which would be a specific place for them to recommend more clarity.

Second agenda item: Personal Financial Information Exemptions and Public Testimony

No public testimony.

Chair **Kron** did not provide notice to discuss these exemptions. He previewed that his main

recommendation would likely be consolidation and moving items to chapter 192. He stated they could discuss the exemptions at the next meeting and hopefully reach an agreement on them as well as the person privacy ones. Ms. **Deckmann** asked if their intent was to offer suggested text for consolidation. Chair **Kron** felt they needed to be clear with the legislature about the goals of the committee, but was reluctant to draft statutory language by committee, especially as legislative counsel wouldn't necessarily consider it anyhow. Ms. **Decklemann** clarified and Chair **Kron** agreed that the artifacts of each recommendationsuggestion were the text of the recommendation along with the list of relevant exemptions.

Ms. **Herkert** stated the committee should look at exemptions they would recommend getting rid of.

Chair **Kron** brought up a letter he received from the Society of Professional Journalist that identified 3 recommendations: legislative counsel input; subcommittees; and legislative reports. He invited Mr. **Budnick** to talk about his comments. Mr. **Budnick** spoke to the group.

Chair **Kron** asked Mr. **Miles** if he had any insight in terms of what the legislature is expecting in terms of the recommendation the committee is tasked with providing. Mr. **Miles** discussed the options the committee could take when providing their recommendations and what the legislature would potentially do with the information.

Chair **Kron** also asked for an update regarding the current legislature's activities and also about keeping the committee apprised of legislative activity. Mr. **Miles** felt with the frequency of the committee's meetings, keeping the committee apprised would be difficult to accomplish and explained why. Chair **Kron** stated that his reports were helpful for keeping the members apprised as well as the public. Mr. **Miles** agreed.

Mr. **Budnick** asked that Mr. **Miles** let members know of bills that may affect their work. Mr. **Hall** asked if there was a way to potentially vote on some sort of statement they could send back to the legislature on pending bills. Ms. **Decklemann** suggested creating a subcommittee whose role would be to look at current legislative business for the larger committee to convene on so a response memo can be drafted to the legislature.

To transition, Chair **Kron** moved on to the next agenda item.

Third Agenda Item: Subcommittees

Chair **Kron** talked about creating two additional subcommittees. A subcommittee for administrative burden and information design, and a standing committee to discuss current exemptions and provide recommendations. Mr. **Smith** and Mr. **Walth** agreed to create additional subcommittees. No members objected/

Ms. **Herkert** asked for and Chair **Kron** provided clarification on what the suggested subcommittees would do. Ms. **Decklemann** asked and Chair **Kron** agreed that he was intending for the bulk data to be part of the administrative subcommittee. Chair **Kron** stated another option was to do exemption review for the foreseeable future, but other topics keep arising.

Ms. **Herkert** felt it was too early to address the administrative topic and explained why. Mr. **Fisher** agreed with focusing on the current exemptions and creating a legislative subcommittee. Chair **Kron** stated if the goal was to provide input to the legislature, they would need a subcommittee, but if it was to be informed about what the legislature was doing, they could do without one. Ms. **Decklemann** explained why it would be good to have a subcommittee and Ms. **Herkert** agreed.

Chair **Kron** asked if anyone objected to having the previous subcommittee be the standing subcommittee. Mr. **Fisher** would rather be on the legislative subcommittee. Ms. **Johnson** agreed to take Mr. **Fisher's** place for the standing committee.

Mr. **Hall** asked if they were considering as a subcommittee to deal with question of low hanging fruit. Ms. **Mataser** felt like someone needed to first identify the exemptions that qualified as low hanging fruit. Mr. **Hall** agreed. Ms. **Herkert** would be willing to identify the exemptions with some help. Ms. **Eakins** felt it could be a short term subcommittee to identify them. Ms. **Herkert**, Mr. **Hall**, and Chair **Kron** volunteered for this subcommittee. Ms. **Herkert** would chair the subcommittee.

Mr. **Fisher**, Mr. **Walth**, and Ms. **Mataser** volunteered for legislative subcommittee. Mr. **Fisher** would chair the subcommittee. There was further discussion regarding the bills being considered that have a current impact on the committee and how to deal with them.

Ms. **Eakins** clarified that the standing committee's role was to essentially do the same thing with other categories of exemptions that they did with PII: analyze them, address any public policy issues, and make recommendations. It was agreed that the standing committee would be used only when needed.

After motion and second, the Committee unanimously voted to form subcommittees on certain issues at the request of the Chair of the full committee and that the subcommittee should have a chair who will have the authority to call meetings in order to complete their work and create an agenda.

After motion and second, the Committee unanimously voted to create a standing subcommittee made up of the same members for the PII subcommittee to review identified important exemptions.

After motion and second, the Committee unanimously voted to create a subcommittee on legislative activity comprised of Mr. **Walth**, Ms. **Mataser**, and Mr. **Fisher** as the chair.

After motion and second, the Committee unanimously voted to create a subcommittee to be named later to identify unnecessary or redundant exemptions and where to consolidate them comprised of Mr. **Hall**, Chair **Kron**, and Ms. **Herkert** as the chair.

Fourth Agenda Item: Future Business

The next meeting will take place in Independence.

Adjournment

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

DRAFT