

Oregon Sunshine Committee Meeting Minutes
May 15, 2019

Location: Independence Civic Center, 555 South Main Street, Independence, OR 97351

Sunshine Committee Members
Oregon State Senator Brian Boquist (not present) Selena Deckelmann, Director of Engineering, Mozilla Firefox (not present) Eileen Eakins, Law Office of Eileen Eakins, LLC Charlie Fisher, OSPIRG State Director Mary Beth Herkert, Oregon State Archivist (by phone) 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 (not present) Oregon State Senator Floyd Prozanski (not present) Adrienne Roark, Vice-President and General Manager, KPTV Fox 12 (by phone) Morgan Smith, Polk County Counsel Brent Walth, Journalism Professor, University of Oregon (by phone) Oregon State Representative Carl Wilson (not present) Bennett Hall, Newspaper Publishers Association
Guests
Josie Turner (by phone) Boaz Dillon, Freedom Foundation (by phone) Andy Foltz, DOJ Cameron Miles, Legislative Counsel Ginger McCall, Public Records Advocate Steve Suo (by phone)
Agenda
AUDIO STREAM 0:00:00-1:23:39
Welcome and Introductions
First agenda item: Approval of Draft Minutes: January and March After motion and second, the Committee unanimously voted to approve the minutes for January and March.
Second Agenda Item: Subcommittee Reports Mr. Fisher announced the change of his subcommittee's name to the Legislation Review Subcommittee and explained the reasons for the change. The subcommittee felt comfortable recommending guidance to the legislature based on the assumption that the Sunshine Committee would adopt the PII recommendations in their existing form. This limited the bills they could discuss. They also limited the discussion to moving bills implicating PII. He described HB 2016 and HB 2331 and offered the subcommittee's recommendations. Chair Kron brought up the subcommittee's recommendation that the legislature consider Sunshine Committee's work before adopting new exemptions. He thought it would be helpful to discuss whether they wanted the legislative review subcommittee to advise the full committee of

other issues with legislation in the future. Particularly in light of the subcommittee's intent to adopt guiding principles and to provide a recommendation to the legislature that creating punitive penalties for disclosure of public records would be problematic. He asked Mr. **Fisher** if those were the kinds of matters the Sunshine Committee could expect his subcommittee to look for. Mr. **Fisher** felt the ideal scenario would be for the subcommittee to review bills before the legislation session began so recommendations could be provided before momentum gathered. In a perfect scenario, they would be consulted as the bills affecting public records were being drafted. The subcommittee also briefly discussed ways to make the review process better such as standardizing the way government impact statements are written so it can be easily interpreted where the bill was in the process. Chair **Kron** thought the idea of having the Sunshine Committee consulted prior to the adoption of new exemptions could be a recommendation to the legislature.

Mr. **Fisher** suggested creating a subcommittee in the interim to develop a recommendation to the legislature regarding bulk data requests for use in future legislative discussion on how they should be handled. Chair **Kron** stated they could revisit the topic later in the meeting and opened the floor to discussion regarding the current recommendation.

Ms. **Matasar** pointed out the second bill (HB 2331) was wrong in the recommendation and it was actually HB 2051, which already passed and therefore was moot.

Mr. **Fisher** believed there was also an amendment posted on HB 2016 removing the sections they recommended removing and felt it would be helpful to formally adopt the recommendation and provide the recommendation to the legislature. Chair **Kron** suggested tabling the recommendation until the other subcommittees presented their recommendations.

Ms. **Herkert** provided an update on her subcommittee. They decided to split the exemptions from the electronic exemption catalog so each member had 204 exemptions to review and report back on to the subcommittee for final discussion with the full committee.

Ms. **Eakin's** standing subcommittee did not meet. She did suggest the larger committee discuss whether her subcommittee should be tasked with the bulk data question.

Third agenda item: Standing (PII) Subcommittee's Recommendation

Chair **Kron** separated the recommendation into two parts and made the discussed changes from the last meeting. Some of the recommendations were very specific to particular exemptions while a handful were more general in nature. He suggested either adopting the general recommendations or continue work on them as a working document to present to the legislative subcommittee as a broader, general recommendation document. He tried to make it clear in the recommendation that the exemptions be consolidated where possible and moved, to the extent they can, to Chapter 192. He also listed the exemptions to clearly provide the scope of the recommendation to the legislature.

Ms. **Matasar** felt in light of their conversation regarding the recommendation against punitive measures, it would helpful to discuss other general legislative recommendations.

Mr. **Fisher** felt Ms. **Matasar** made a good point, but thought the existing general recommendations were good as written. Chair **Kron** suggested adopting the recommendation specific to PII, adopting the general principals as currently articulated, and to treat the general recommendations as an ongoing project.

After motion and second, the Committee unanimously voted to approve the PII specific recommendations.

After motion and second, the Committee unanimously voted to approve the general recommendations with the understanding that it was a living document to be amended periodically.

It was agreed that Chair **Kron** would work on the recommendation related to the committee being more involved in the legislative process or as a stopping place for those who attempt to get new exemptions enacted by the legislature for future approval by the committee.

The committee went back to address Mr. **Fisher's** subcommittee's recommendation.

Mr. **Fisher** re-summarized the recommendations. On the discussion of the legislature not adding more exemptions until the committee has completed their charge, Mr. **Smith** stated there should be an exception if there was an emergent need for an exemption. Chair **Kron** suggested and it was agreed that they would add to the end of the paragraph addressing this, "unless absolutely necessary."

Mr. **Fisher** described what HB 2016 pertained to. Particularly, his subcommittee did not like the proposed punitive action; it expanded the definition of personal information; and it contradicted the idea of adding a public interest balancing test to all PII release. Their recommendation was to remove those pieces. There was discussion regarding the amendments to the bill that seemed to remove the issues. Mr. **Fisher** suggested endorsing the amendment or adopting it with their recommendations.

Ms. **Matasar** explained that she would abstain from the vote.

Chair **Kron** asked if they were striking the part of the recommendation about HB 2051. After some discussion, it was agreed that part would be stricken.

After motion and second, the Committee unanimously voted to strike 2b from the overview and the discussion, to add "unless absolutely necessary" to the end of the paragraph in the discussion of section 1, and to adopt the recommendation.

Third Agenda Item: Recommendation Regarding Tax and Other Personal Financial Exemptions

Chair **Kron** drafted a brief recommendation with respect to the tax and other personal financial exemptions reviewed. He described the types of exemptions in the group and gave a summary of his recommendation.

Mr. **Fisher** had questions regarding disclosure of tax returns. There was discussion about

information automatically exempt, information available to requestors, federal laws vs. state laws, and whether or not an interest balancing should be applied. Mr. **Fisher** felt there should be very few circumstances where a record was unattainable even when in the public interest. Chair **Kron** was concerned that by adding that there should be some level of public interest access for all public records, particularly in relation to tax returns, it would become necessary to litigate the public interest every single time, for little apparent benefit. Mr. **Fisher** thought that was a valid point.

After motion and second, the Committee unanimously voted to adopt the recommendation.

It was agreed that the standing subcommittee would meet to discuss the bulk data requests. Chair **Kron** suggested some stakeholders that would be interested in attending the meeting.

Steve Suo expressed his agreement with the subcommittee addressing bulk data requests.

After motion and second, the Committee unanimously voted the standing subcommittee to discuss bulk data requests.

Fourth Agenda Item: Future Business

Discussion of miscellaneous exemptions.

Chair **Kron's** shared his plan of forwarding the two adopted recommendations to the Subcommittee of the Legislative Counsel Committee with a brief memorandum.

Adjournment

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