Legislative Recommendations: Bulk Data Requests

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Introduction. The Standing Subcommittee (Subcommittee)'s current charge is to consider the unique challenges and opportunities posed by "bulk data" requests, both for personally identifiable information (PII) and for other types of information maintained by public entities, and to recommend ways for the Legislature to address these unique characteristics.

Context. Historically, requests for large numbers of public documents and the information contained within them were processed by hand by the public entity, because they were stored in hard-copy format. The public entity could recover labor and copying costs for its time and effort in responding to the request. This likely had – and in some cases continues to have -- a deterrent effect on requesters who were unable or unwilling to wait for or pay for large volumes of documents.

With the wide availability of electronic records storage, there is a growing public expectation that large amounts of data can and should be accessible quickly, easily, and at minimal cost to either the public entity or the requester. Under current law, however, a request for large numbers of public records is handled in the same manner as any other public records request and is subject to the same limitations (time, resources, exemptions, varying technological capabilities of the public entity).

In its efforts to promote transparency and disclosure, the Legislature should consider updating public records laws to better interface with electronic storage capabilities.

Recommendations:

(1) Define "bulk data," e.g., "requests for individual information pertaining to 10 or more persons." Presumably, anything less than the specified number would be handled like any request for a single or limited number of records.

(2) Incorporate into Oregon's Public Contracting Code criteria for "transparency by design," so that solicitations for electronic storage technology promote prompt, efficient retrieval of requested information. For example, establish criteria for records storage technology solicitations that allow for:

- Easy redaction of exempt records or information.
- Fast identification of specified fields.
- Non-proprietary, publicly available data dictionaries.

- Public-facing storage whereby requested non-exempt information may be obtained directly from a website or other location by the requester with little or no involvement of public body personnel.
- The ability for local agencies to utilize software, systems, or contracts already in place or planned for use by state agencies that accomplish these transparency objectives.
- If technological criteria are mandated rather than just recommended, include in the legislation an "out" for small public entities for whom the requirements are cost-prohibitive, or provide need-based financial assistance.

(3) Include "government transparency" among the criteria for public entity to consider if a public interest balancing test is required in completing the request [see **(*)** on page 3].

(4) Create statutorily authorized methods to "pre-screen" bulk data requesters to minimize the need for agency discretion in responding to a request for bulk data. Examples include:

a. Providing a standardized data transfer agreement template, whereby the requester states the purpose for which the data will be used and agrees not to sell it to a third party or use it for some unauthorized purpose. The law should include a private right of action for anyone affected by an unauthorized disclosure of data to recover damages directly from the requesting party (and not from the public entity making the disclosure) along with a substantial criminal or civil penalty for violation of the agreement, so that the enforcement of the agreement does not become an administrative burden for the public agency.

b. Establishing a statewide method of "pre-certifying" persons or entities who have demonstrated a legitimate business need for bulk data, such as for research or journalistic purposes. If a neutral third party determines in advance that the "public interest will be furthered" by allowing the person or entity to obtain bulk data, this would relieve individual public entities from having to first determine the use to which the data will be put in making a public interest determination.

Prior Recommendation Reiterated. In February 2019 the Subcommittee prepared recommendations relating to requests for personally identifiable information (PII) under Oregon's public records laws. These included the following, which the Subcommittee reiterates here, as these steps will inform the process for responding to bulk data requests which often include PII:

1) Refer all statutes allowing or requiring withholding of PII to ORS chapter 192 so that there is one guiding statute for this type of information.

2) Develop a standard definition of "Personally Identifiable Information," and apply it to all public bodies and agencies in Oregon.

3) Define the circumstances when PII shall be disclosed; shall not be disclosed (absent a court order); and may be withheld (i.e., absent a clear and convincing showing of the public interest in disclosure).

4) Provide criteria for the public entity to consider in deciding whether disclosing a record is "in the public interest." [*]

5) Provide a template request for records that substantially conforms to ORS 192.363 (relating to requests for information about specific persons).

6) Combine the liability protections for public entities currently found in ORS 192.335; ORS 192.368; and ORS 192.380 into a single statute.

7) Allow for a minimum "administrative fee" in addition to recovery of direct costs for small entities using only volunteer labor.

8) Establish a single method for deciding public records disputes in a dispositive way, in place of multiple existing options (county DA; Public Records Advocate; circuit court).