



Oct. 8, 2019

Dear Eileen:

With the purpose of assisting your deliberations, we respectfully offer these thoughts as you consider potential recommendations regarding the bulk release of personally identifiable information, as well as data segregation, a concept we've long supported under the banner of "transparency by design."

We recommend you consider the following principles as far a bulk release of PII:

- **Any approach must be structured in a manner that balances the particularized privacy concerns around bulk release of PII with continued public-interest and public service uses of this information.**

As the Oregon Sunshine Committee has heard in testimony from numerous people since its inception, public-interest access to such data is crucial, and any legislation must provide for that to continue.

- **Any denials of access to bulk data PII must be subject to the same appeal rights currently in the law.**

Also, some agencies have expressed concern that bulk data, once released thanks to a successful public-interest argument, must be shared freely. Some have raised the idea of a data transfer agreement to address that issue; in exchange for obtaining bulk 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.

If the Sunshine Committee chooses to recommend such a concept, SPJ believes the following safeguards should be expressed with clarity:

- **Such agreements should ONLY be for data requests that include personally identifiable information conditionally exempt from disclosure.**

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

- **We believe the committee could suggest the Legislature explore a streamlined path to access by certified public-interest users, similar to a TSA pre-check program.** But this should be optional, not the crux of any recommendation.

- **To minimize the potential for unintended consequences as a result of data transfer agreement legislation, it should include an actual form for inclusion in the legislation, as done elsewhere in Oregon Revised Statutes.** Such a form could be submitted as part of a request for bulk data PII and serve as an agreement in order to streamline the process and eliminate uncertainties that lead to unnecessary delay.

One proposal we have considered:

I am requesting the following information that may be conditionally exempt from public disclosure pursuant to ORS 192.355(2)(a) or 192.355(3): \_\_\_\_\_

\_\_\_\_\_.

Disclosure of this information is primarily in the public interest for the following

reason: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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I will not use this information for commercial or fundraising purposes. This information will only be used for the public interest purpose described herein.

I will not redisclose the information in bulk or transfer the information to a third party in bulk.

I will not use this information for purposes of stalking (as defined in ORS 163.732), menacing (as defined in ORS 163.190) or harassment (as defined in ORS 166.065) or any other crime, or abetting others to do so. I will maintain reasonable safeguards to prevent inadvertent transfer of the exempt data.

• **To further minimize the likelihood of unintended consequences, we believe any legislation must include clear intent language, such as the following:**

“Whereas the Oregon Legislature recognizes that certain restrictions on bulk release of personally identifiable information are appropriate, such as they do not interfere with bona-fide public interest purposes, such as legitimate newsgathering by an entity or individual primarily engaged in journalistic newsgathering for purposes of disseminating news to the general public.

“Whereas the Oregon Legislature finds that a data transfer agreement could work in conjunction with Oregon Public Records Law to allow legitimate public interest access while providing additional protections for personally identifiable information when released in bulk.”

• **Modify 192.363.** This statute should be modified in any legislation. As the Committee has discussed in the past, 192.363 impractically requires the requester to specify names of people whose information is sought, leading to an unnecessarily obstructive two-step process.

As far as data segregation, we believe that the idea of purchasing data applications and storing public information should be done with an eye toward public access to important government information.

In response to public-interest requesters, some agencies say their software won't export data. Others charge big money for data, saying it's complicated to extract. Some agencies say the software vendor won't let them disclose a data dictionary, the roadmap that would allow data to be extracted, arguing it's a trade secret.

One solution would be to encourage agencies to no longer put themselves in such predicaments. Any new government technology should offer the ability for an agency to deliver both data and data documentation without restriction.

While the 2017 Legislature made some progress with HB 3361, the committee could recommend legislation reflecting specific requirements to procurement, working with the Chief Data Officer and others. Some possible approaches:

- **Implementation of any such approach could be phased in over time, with a focus on state government.**

- **Regarding PII, one such recommendation could be as follows:** To prevent inadvertent disclosure and promote data security, Personally Identifiable Information shall be segregated from other information contained in electronic public records. Data elements that contain conditionally exempt Personal Information shall only contain Personal Information. Elements containing non-exempt information shall omit any Personal Information. Both types of elements should be clearly identified as to their contents. In the interest of transparency, a list of data elements kept in a database shall be available upon request.

As always, we thank the subcommittee for its attention to its mission of improving the law while maintaining the principles of open society that are so crucial to our system of government.

-Nick Budnick, Oregon Territory Society of Professional Journalists