

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 with the goal of promoting and preserving public-interest access to information maintained by public entities.

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 **bulk public data** is subject to the same limitations (time, resources, exemptions, varying technological capabilities of the public entity) as any other public records request and typically bulk public data is not stored with transparency in mind.

Separately, there is a specific privacy concern around the bulk release of conditionally exempt PII.

In its efforts to promote transparency and disclosure, the Legislature should consider updating public records laws to better interface with electronic storage capabilities and take concrete actions to address the release of PII in bulk.

Recommendations:

- (1) Define “bulk data” in ORS chapter 192, such as the definition provided in HB 3361 (2017).
- (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 segregation and redaction of conditionally or fully exempt PII.
 - § To the extent applicable, building on the concepts already provided in HB 3361.

§ Non-proprietary, publicly available data dictionaries and algorithms applied to data storage and modifications.

§ 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, preferably with input from representative smaller public entities.

§ Develop a state-provided, prequalified list of vendors who agree to comply with these requirements, from which local governments may select.

§ 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) Create statutorily authorized methods for releasing bulk PII that is conditionally exempt from disclosure. 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 optionally “pre-certifying” persons or entities who have demonstrated a legitimate business or public interest need for PII 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.