

**March 16, 2022**  
**Location: WebEx**  
**Sunshine Committee Members**

Eileen Eakins, Northwest Local Government Legal Advisors LLC / Co-chair  
Charlie Fisher, OSPIRG State Director / Co-chair  
Michael Kron, Department of Justice  
Morgan Smith, Polk County Counsel  
Karin Johnson, Independence City Recorder  
Stephanie Clark, State Archivist  
Selena Deckelmann, Director of Engineering, Mozilla Firefox

**Guests**

Andy Foltz, Public Records Counsel, Department of Justice  
Cameron Miles, Office of Legislative Counsel  
Michael Ritchey, Assistant Attorney General, Department of Justice  
Kate Cooper Richardson, Director of Oregon Child Support Program, Department of Justice  
Carmen Brady-Wright, Attorney-In-Charge, Department of Justice  
Shannon Dennison, Attorney-In-Charge, Department of Justice  
Amity Girt, Civil Attorney  
Sofie Parra  
Melissa Leoni  
Exm

**Agenda**

**AUDIO STREAM 0:00:00-02:50:48**

**First Agenda Item – Call to Order**

1. January minutes approved

**Second Agenda Item – Old Business**

1. Status of July 2020 draft report to PR Subcommittee: **Chair Fisher** to polish report and finalize on behalf of the legislative review subcommittee through Mr. Miles.
2. Update on membership of Committee: Currently there are 2, maybe 3, positions available on committee. Mr. Kron/AG’s office to fill membership seats. Mr. Walth is considering stepping down. Committee will try to contact Bennett using an updated email address to inquire his membership status.
3. Update on membership of subcommittees: A more detailed update to be discussed at next meeting following membership status of current members and after vacancies are filled.

**Third Agenda Item – New business**

Following the Legislative short session, **Mr. Kron** forwarded Chair Eakins’ email regarding legislative subcommittee onto AG’s Legislative Leadership Director. Discussion surrounding most efficient process to make recommendations to Legislature. **Mr. Smith** suggests delegating authority to subcommittee to make recommendations directly to Legislature, instead of needing to convene with full committee. **Chair Fisher** wonders if committee can get access to bills once they are filed, for reviewing purposes. **Mr. Miles** states he must review 1600 bills for open government impact statements then forwards to committee as soon as he can, earliest can be done.

**Both chairs** suggest having a subcommittee of 4 individuals – two government individuals and two journalist individuals. **Ms. Deckelmann** suggests making calendar appts ahead of time, so group does not have to rush to review and meet together.

**Fourth Agenda Item – Special Projects Subcommittee Update**

**Mr. Smith:**

1. Trade secret exemptions are complicated, with a lot of conditional and non-conditional exemptions (only applicable if releasing trade secret considered to be appropriation)
  2. Concerns with private entities that submit information to the public, and name it a trade secret, might be overclassifying things as trade secret.
  3. A public entity holding something that's been designated by a third party as a trade secret, can't operate based on that initial assumption and then withhold it. As a public entity, you have to make your own determination whether that is valid or not.
- Recommendations: find a way to change the uniform act on trade secrets, so misappropriation of a trade secret, would not be considered an "other law" that would prevent disclosure. Therefore, there would only be one exemption that would apply for trade secrets, ORS 192.345.
  - Trade secret laws require individuals to request information from public entities that hold trade secrets. Folks wanting a public entity to hold a trade secret, and want it withheld from public, need to provide an attestation on the front end outlining why this is a trade secret. This happens already but on the back end, but up front could limit over classification problem.
  - For an appeal of a denial of records based on a trade secret, make the third party that's claiming a trade secret, be responsible for defending. Since they can appeal to DOJ or DA's office that would remove the public entity as middleman in the difficult position.
  - Also are processes under law for personal information. If there is a request for that, public entity has to notify individual, then wait 7 days before releasing. A similar process could be done for trade secrets. Making the entity claiming the exemption, work to assert that privacy exemption themselves, rather than putting the responsibility on the government, seems to align more with the law itself. Which states that it is the holder of the trade secret that has the obligation to keep information secret.

**Mr. Kron** moves to adopt subcommittee recommendations. Approved and adopted by group.

**Fifth Agenda Item – Family Law Exemptions**

The committee has a breakdown of exemptions as they relate to child custody and support. Only one exemption come out of ORS 192 (PR law) the rest are scattered throughout statutes.

**Ms. Kate Cooper Richardson**, Director of Oregon Child Support Program (administered by the OR DOJ). **Mr. Michael Ritchey**, AAG in this division, will co-present.

**Ms. Cooper Richardson:** the Oregon Child Support Program is a federal program ("Child IV-D") of Social Security Act (also SNAP, TANIF, Self-sufficiency, Child Welfare).

Division works to establish paternity and child support orders and ensuring compliance of those orders through the administrative and judicial law processes. DOJ has powerful tools to find individuals and find assets. They work with federal tax information and are audited by IRS often. The exemptions the committee are seeing are regarding the codification of federal regulations on the child support program regarding data that is stored, and what they can/cannot do with it. They work with a lot of limitations, including data security , work on double secure platforms. This division has access to an astonishing amount of information, and some can't even be shared with the courts (there is a code language).

The information Division of Child Support receives can only be made available to other state agencies, doing federally mandated work. Rules are required for protection of information leaving and entering DOJ. This division processes a million and a half dollars/day through systems. There are financial regulations as well.

A lot of the exemptions listed are protections that information will not be shared outside of the necessary scope. Any child support information is confidential and can only be shared as necessary for administration of the child support program.

**Mr. Ritchey discusses exemptions:** information can be shared with elected officials that have some basic overview of the program. As long as it doesn't interfere with the ability to complete child support work, information can be shared with other state agencies that are funded with IV-D work (typically foster care and child welfare). There are systems that are working constantly to maintain security/provide software updates. Federal statute, regulations and federal law make it exempt from disclosure. Federal law also says that states need to adopt laws that make it equally confidential, ORS 25.260. In his belief, the most important exclusion is 192.355(a), federal law that prohibits from disclosure.

**Mr. Kron** asks, what kinds of information is publicly available? **Ms. Cooper Richardson:** federal reports in federal office of child support (they report quarterly and annually on this), federal performance measures, outstanding collections are published publicly. Two for 1 matching program, there are specific measures in which that money can be spent. The reports about people and their personal information stay within DOJ. **Mr. Ritchey** clarifies reports that are published, are run outside of their main database system, so that you can analyze aggregate data. If DOJ discloses personal information, they have to self-report (within certain time frames) to IRS and OCIC? (*hard to hear*)

**Chair Fisher**, what kind of information is in a child support record? **Ms. Cooper Richardson:** Federal statues require that states share with child support agencies the following types of information:

- Vital statistic, state/local tax, real property, occupational and professional licensing holders, public assistance, corrections records, DMV records, SSN's, DOB's, ACH numbers, federal tax refund amounts, the locations of parties, medical conditions and insurance, criminal records, substance abuse, employment history.

**Chair Eakins** asks if an individual in question can request from DOJ a copy of their own record the agency has collected. **Mr. Ritchey** responds yes. There is a sophisticated process in which that is handled; including all personally identifying information is scrubbed about the other party. Most parties in these cases are self-represented, but some do have attorneys.

**Ms. Cooper Richardson** describes there are very intricate formulas that go into weighing the financial capabilities of parties. **Chair Fisher:** questions to what extent is this information disclosed? **Ms. Cooper Richardson** explains that aggregate data does not have confidentiality concerns. However, the information may not be retained and/or access may be lost. Exemptions are not the roadblocks in this case.

**Mr. Ritchey:** clarifies distinction between confidential information retained and aggregate data that can be released. On the face of the statute, there are not exemptions to go into the system and anonymize data and release it. Federal funds need to be used for administration of the program only. **Mr. Kron:** wonders if our statute could be re-written to better incorporate law about anonymized data.

**Mr. Smith:** ORS 192.355(8) automatically exempts from disclosure items considered confidential by federal law. Questions if there is a duplication of efforts between federal confidentiality laws and statutory protections. **Mr. Ritchey:** explains that the agency is required to protect information under other agency laws. **Ms. Cooper Richardson** does believe the duplication is important because don't want public to think it' omitted.

**Ms. Amity Girt, Esq in civil law firm** explains how while working with the City Prosecutor's office, and representing a child victim, if there was a PR request for police requests, she could not release that. However, if the victim was an adult, that information could be released. When she gets a new referral and is collecting documents to help investigate a claim, she would file PRR's and get back almost nothing. Since the holder of most docs is DHS, she could primarily only receive a copy of the report from Cares NW (the county's child abuse assessment center). She has learned the only way to support a claim is to file a lawsuit, so you file document request and get a protective order.

**Ms. Carmen Brady-Wright**, AIC (attorney in charge) in the Child Advocacy Section (ChaS) of DOJ introduces herself. CHaS attorneys represent DHS. States there are manners to obtain records e.g., in the matter of a juvenile dependency case, where a child is represented by an attorney. Perhaps this child has a potential tort claim with a foster care agency, because of something they experienced in foster care. That attorney will seek permission from the juvenile court to share the records with an opposing attorney, to determine is there a claim there, to better understand the case. A lot of what the Child Support AAGs explained regarding applicable laws and exemptions, apply to child welfare as well.

**Ms. Shannon Dennison** introduces herself as another AIC in ChaS and affirmed Ms. Brady-Wright's example, stating she worked as a defense attorney in juvenile dependency cases. There is an abundance of laws (state/federally) that protect child records. Drug/alcohol treatment records will be analyzed differently than someone's parenting service. DHS receives PRR's nonstop, generally under criminal and domestic relations cases. Encourages folks to take a look at the juvenile court's policy statements contained in 419.090. Juvenile dependency cases discuss child safety and healing families. Reunification is always the goal. **Mr. Kron** questions how we can ensure these programs are working efficiently, given the societal interest in certain types of confidential information. Especially when there are a

population of people, such as the victims Ms. Girt represents, who can't get access to information that pertains directly to them. **Ms. Dennison** explains that she disagrees with this view and that there are avenues victims can obtain access to this information. Perhaps there is a fundamental misunderstanding of manners to access information. **Ms. Girt** responds the documents that are produced following requests, usually are not too substantive to prepare for legal representation. As a civil attorney, she's had cases where she has tried to obtain records and the dependency matter might be closed. 419B.003(5) pertains to reports/records that are compiled when DHS receives a report of abuse. The laws around this have their own exceptions, one of which being, the discretion of disclosure.

**Chair Fisher:** can a requester ask for aggregate data? **Ms. Dennison:** DHS publishes a data report yearly that contains items like demographic info and foster care, based by county. She shares her screen to demonstrate the reports on child welfare data book. **Mr. Kron:** asks what kinds of metrics are most commonly used to measure the statistics recorded. **Ms. Dennison:** number of children in foster care, number of children placed in relative care v. non-relative foster care, timelines of jurisdiction, timeliness of permanency hearing. Recommends looking at the juvenile court improvement page on OJD's website. You can look at a single county or compare multiple counties information.

**Ms. Deckelmann:** explains the purpose of the committee is to increase the public's access to information the state holds. Questions the "how" process requirement and wonders how can the committee simplify or improve exemption review? **Mr. Kron:** wonders if he should discuss with Legislative Director about status of legislation in this area. Historically victim requests have come through as public records requests, and perhaps that's not the answer anymore. **Ms. Dennison:** she and Ms. Brady-Wright assist AAGs in processing PRR's. There are many steps before department can produce and a lot of times if all steps aren't handled, they can't produce the records.

**Mr. Kron:** victim access to records is likely to come in next legislative session. Are child contexts handled differently as opposed to other types? **Ms. Brady-Wright:** it could depend on type of records in question. One of the exemptions does allow the attorney for a child in a juvenile delinquency case to have those records. Another provision is permissive that allows DHS to have the authority to disclose those records, but they'd have to find that disclosure is necessary. Subsection 3 is viewed broadly, and a lot of disclosures are made.

**Mr. Smith:** encourages greater statutory authority for victim access to records then we wouldn't have to resort to public records law at all. Recommends a separate process to obtain victim access that could be streamlined.

**Chair Fisher** to what extent can the public assess what is disclosed at the discretion of an agency? From exemption list, mentions ORS 418.642 (confidentially about person who maintains foster homes) and if data was desired about foster care homes surrounding pollution plants, how could that information be obtained? **Ms. Dennison:** foster care home addresses cannot be disclosed for safety reasons. **Ms. Brady-Wright:** perhaps there is a way to disclose the data in a secure way, so not disclosing addresses per say, but disclosing there are x number

of homes in the city of Salem around pollution plants. **Ms. Dennison** wonders if there are different ways that requestors can frame, their requests so data can be provided.

**Chair Eakins** asks Ms. Girt if this conversation has been helpful to her or if she still believes there are concerns with accessing records in her job. **Ms. Girt:** responds that information can be requested, but substantive responses may always not be provided, and that can be frustrating. Wonders if it's a problem with the exemptions or DHS PRR review side of things. **Chair Eakins** agrees with Mr. Smith's point there could be a different process for victim access to their records. **Ms. Deckelmann** states she would like a deeper discussion on this topic. **Mr. Kron** believes he should touch base with legislative leadership about her understanding on status of legislation on this topic. He sent her an email and will report updates to Mr. Smith for subcommittee meeting.

**Chair Fisher:** recommends the subcommittee could continue to review this topic. He personally recommends law be enacted regarding aggregate anonymized be available. **Chair Eakins** agrees and adds that it's implied the agency has discretion to decide that.

**Mr. Ritchey:** 25.260 is based on a federal law (45CFR303.21) this includes a paragraph that the statute does not. He believes it's still binding, but you'd have to look at the federal law in order to understand how to apply to state statute. Perhaps this could be reason to put it into statute. Confidential information is defined as that is either about specific people or could be used to identify specific people. So, once you've aggregated this type of data, those two things are no longer possible, which would make it non-confidential.

**Mr. Smith** agrees it's worth the subcommittee gathering to discuss if further steps should be taken and will return to full committee with answer.

**Chair Fisher:** Review list of exemptions from Mr. Kron for next agenda items. Mr. Kron said health and mental health is the next item on the exemption list. Next meeting is June 15<sup>th</sup> since both chairs will be on vacation for meeting date in May.

Adjournment