

**September 25, 2019**

**Location: Oregon State Capitol, Hearing Room C, 900 Court St. NE, Salem, OR 97301  
Sunshine Committee Members**

Michael Kron, Special Counsel, Oregon Department of Justice / Chair  
Emily Matasar, Government Accountability Attorney, Governor's Office / Vice Chair  
Mary Beth Herkert, Oregon Secretary of State  
Karin Johnson, Independence City Recorder  
Morgan Smith, Polk County Counsel  
Bennett Hall, Newspaper Publishers Association  
Charlie Fisher, OSPIRG State Director  
Eileen Eakins, Law Office of Eileen Eakins, LLC

**Guests**

Nick Budnick, SBJ  
Andy Foltz, Public Records Counsel, Department of Justice  
Cameron Miles, Office of Legislative Counsel

**Agenda**

**AUDIO STREAM 0:00:00-45:41**

Welcome and Introductions

Chair **Kron** mentioned he did not circulate draft minutes from the May 15, 2019, meeting, announced that July's minutes are current, and both were made available on the website.

**Ms. Matasar** pointed out the July minutes jump from agenda item #1 to agenda item #3, excluding agenda item #2 which was the Governor's signing letter on HB 2016/request that standing subcommittee on "something but not everything" take on this issue. July minutes were not approved / revised minutes will be circulated ASAP. May minutes were approved by committee. Second Motion to Ms. Herkert.

**Agenda Item #2 - Subcommittee Report: Legislative Subcommittee met in August**

Mr. Fisher shared discussions surrounding:

- Being more proactive on review of Bills that have open Government Impact Statements prior to 2020 session. Anticipated hearing that list in January, Subcommittee members agreed to split up, to see how they implicate public records.
- Focus on issues that affect Sunshine Committee and not jumping ahead to make recommendations on issues that haven't been discussed yet.
- Improve open Government Impact Statement process for members of the Committee and members of the public to be more informed / understand how proposed Legislation will affect exemptions.
- Discussed ways to report better – e.g., list serve - individuals can sign up to receive information on Bills. Suggested making items more prominent on the Oregon Legislative Information System – currently they are kind of hidden away. **Chair Kron** expressed there may be difficulty in controlling the Legislative Website and recommended use of the DOJ

Sunshine Committee website for announcements. **Mr. Miles** introduced as potential point of contact for website inquires.

- Potential Action Items: whether a recommendation should be made to Legislature not to expand public records exemptions, as a general policy. **Mr. Fisher** believed this may have been a part of a previous group recommendation made. **Chair Kron** emphasized it may be worth emphasizing by itself. (2) Whether a hearing should be set up in November/January to discuss –a challenge may be that no committee has jurisdiction. (3) **Ms. Matasar** mentioned discussions were made proposing a letter to Legislatures (Caucus Offices/Speaker/Senate President or Legislative Group as a whole).
- No formal recommendations currently. Anticipated meeting in the coming months to prepare formal recommendations.

**Chair Kron** expressed that non-voting Legislative members of Sunshine committee are members of the subcommittee, Legislative Counsel Committee, which is setup by Statue (and is not a policy committee).

It was determined the Subcommittee should discuss what kind of recommendations should be made, then Sunshine Committee discussions can begin as to best ways to deliver.

#### **Agenda Item #2 Cont. - Ms. Eakins and Ms. Herkert Subcommittee Report**

**Chair Kron** mentioned delay in memo to Ms. Eakins because Law Clerk left – memo to come that week.

**Ms. Eakins** made attempts for her subcommittee to meet but was unsuccessful. Hoping for one more meeting to wrap up discussions around bulk data. There were some suggestions about other stakeholders to involve in this discussion as well. **Mr. Budnick** (on telephone) mentioned his group may be interested in attending these meetings.

**Chair Kron** mentioned the Governor’s Request for Bulk Data Proposal in December with eye to Legislation in short session. It may be that more than one meeting is needed. Representative Power put him in touch with another interested stakeholder. He hopes that since the Governor recommended this bill, that she would use one of her bills for this. If not, members ex officio of this committee may start first. If no Governor or member action, may need to re-evaluate.

**Mr. Fisher** asked who would be proposing that bill – since it’s short session /limited number of bills. **Mr. Miles** mentioned House Members have two Bills, Senate Members have one, Committee Bills have 3-5 (unsure of number), per committee.

#### **Agenda Item #2 Cont. - Ms. Herkert, Mr. Hall, and Chair Kron, Subcommittee Report.**

**Ms. Herkert** stated all assignments were turned in and a meeting was scheduled for October 14<sup>th</sup> to discuss, then could present to full committee afterward.

#### **Agenda Item #3 - Child Custody and Support/Family Law Exemptions**

**Chair Kron** sent an email to group to inquire what should be done with these. There was a lack of public testimony surrounding exemptions. Additionally, some issues have been

contentious, mentions story about current lawsuit brought by state against foster care plaintiffs and how records of plaintiffs could be used in litigation. **Chair Kron** mentioned conferring with **Nick Budnick** at SBJ and inquired around DOJ, and there wasn't much interest. External stakeholders were invited but he doesn't feel confident that adequate attempts to inform/collect individuals occurred. There is also difficulty finding individuals because identities are kept private. **Ms. Eakins** recommended the Family Law Bar. This suggestion received positive feedback. **Chair Kron** announces likely coming back to Family Law Exemptions

#### **Agenda Item #3 Cont. – Exemption Discussion**

**Mr. Hall** expressed understanding the need to be private but there are always exemptions. Wants access to Public Interest Balancing Test to manage exemptions. "The Low-Hanging Fruit Subcommittee" broke up the 600+ exemptions into thirds and his interpretation of the exemptions are that information is generally sealed from public view, without exceptions.

**Mr. Fisher** expressed that it is generally in favor of having most, if not all, public records available, in interest of public balancing test. **Chair Kron** expressed Public Interest Balancing Test may be a blunt instrument but perhaps they should identify specific circumstances in which disclosure may be appropriate. **Chair Kron** asked for the Committee's permission to find stakeholders and table this subject for after November to allow time to discuss the Bulk Data Project. It was decided the Committee would meet first week of November and then reserve the Third Thursday for a second meeting, if decided is needed.

**Mr. Fisher** expressed he believes Mon, Tues, Wed are Legislative days. **Chair Kron** asks about constraints on **Ms. Eakins'** Subcommittee with the potential of two November meetings. She expressed the possibility to meet 1-2 times in October, to propose items to the Committee in November. She named subcommittee members: Brent, Morgan, Selena, Kathy, Karen is an alternate? Charlie is interested in standing as an alternate. At least 3 members should be available for the meeting. All Subcommittee Chairs confirmed they are all scheduled to meet before next meeting.

#### **Agenda Item #4 – Future Business**

**Mr. Fisher** would like to discuss resignation of Ginger McCall, and the Committees place in this as well as the independence of public records advocate. **Chair Kron** shared that a conceptual statement was approved at prior meeting of the council, in that advocates should be independent the extent permitted by the Constitution. He also suggests it may not be helpful to get too specific about a recommendation – since that group is working on specifics. **Mr. Fisher** suggested following the lead of the council, but also giving a stamp of approval as a committee.

**Todd Albert** (Deputy Public Records Advocate) shared that PRAC was scheduled to meet Tuesday afternoon to discuss further potential suggested Legislative action e.g., revised Statute enshrining offices independence further in the law and the details of what that would like / who would appoint advocate. If it is determined that Committee action is not appropriate, **Mr. Albert** encouraged Committee members in their capacity as Bipartisan Public Records Experts to provide public testimony in an individual capacity as well. He was unsure about intention to introduce any Legislation by the Proctor in special session, or if they would wait for Short Session in February, or for the 2021 long session.

**Chair Kron** expresses knowledge of PRAC creating a Subcommittee to look specifically at independence of advocate and in counsel. **Mr. Albert** doesn't know stance of this because he is not on committee but does know that the agenda for Tuesday was for the entire Council to discuss future Legislative action specifically about independence. **Chair Kron** to put agenda item on to discuss PRAC.

Adjournment