

Oregon Sunshine Committee Meeting Minutes
January 31, 2018; 1:00 – 2:30 pm

Oregon State Capitol
900 Court Street NE, Hearing Room D, Salem, OR

Sunshine Committee Members

Oregon State Senator Brian Boquist (ex officio) (excused)
Selena Deckelmann, Director of Engineering, Mozilla Firefox
Eileen Eakins, Law Office of Eileen Eakins, LLC
Charlie Fisher, OSPIRG State Director
Mary Beth Herkert, Oregon State Archivist
Karin Johnson, Independence City Recorder
Michael Kron, Special Counsel, Oregon Department of Justice
Emily Matasar, Government Accountability Attorney, Governor’s Office
Oregon State Representative Karin Power (by phone) (ex officio)
Oregon State Senator Floyd Prozanski (ex officio) (excused)
Adrienne Roark, Vice-President and General Manager, KPTV Fox 12
Morgan Smith, Polk County Counsel
Brent Walth, Journalism Professor, University of Oregon
Christian Wihtol, Senior Editor, Register Guard (by phone)
Oregon State Representative Carl Wilson (ex officio)

Guests

Ellen Rosenblum, Oregon Attorney General
Rob Bovett, Legal Counsel, Association of Oregon Counties
Kevin Moore, Legislative Aide to Senator Floyd Prozanski (by phone)
Matt Friesen, Gallatin Public Affairs
Cameron Miles, Legislative Counsel, Committee Assistant
Kate Denison, Oregon Department of Justice

Agenda

VIDEO STREAM 0:00 – 1:35:50

1. Welcome and Introductions

Attorney General Ellen **Rosenblum** welcomed the members. Her goal for the Sunshine Committee is to help make Oregon the best state in the country for public access to government. Acknowledges the need to protect some legitimate interests while insuring that the public understands what government is doing and why. Refers to work on public records cases going back to the beginning of her legal career. Discusses work of the Attorney General’s Public Records Reform Task Force, and remaining issues including the

cost of records requests, existence of 550 exemptions from disclosure. Proposed questions for the Committee to evaluate exemptions: would Oregonians expect to be able to obtain this information, or understand why it is confidential? Is the exemption clear? Is it written too broadly? Does it, or should it, recognize countervailing public interests? Is it consistent with the way similar information is treated? AG Rosenblum thanked the members for their commitment to the work.

Members introduced themselves.

Michael **Kron** explained the agenda. He then spoke about the work expected of the group: reviewing exemptions, identifying inefficiencies and inconsistencies in the laws, recommending changes, and reporting to the legislature.

Representative Carl **Wilson** asked about the work plan for exemption review. Would the committee look at oldest exemptions first? Approach them based on subject area? Deal first with the ones creating the most issues today?

Mr. **Kron** replied that the Committee will want to ask those questions given the different possibilities and the need to create a manageable structure for the task. Mr. **Kron** asked the members to talk about their goals for the group.

Christian **Witohl** expressed that this would be complicated work. The end result might be general principles as fine tuning each exemption may be colossal or even impossible. He likes balancing tests and wonders about making them universal.

Eileen **Eakins** introduced herself.

Morgan **Smith** expressed interest in increasing awareness of law and simplicity of administering it. Is concerned that adding balancing tests will make the law more difficult to administer and contentious.

Emily **Matasar** stated that identifying outdated exemptions that could be easily eliminated would be a good start.

Charlie **Fisher** said he hopes that, in the absence of a compelling reason, the Committee would err on the side of easy public access. He is interested in looking at some of the exemptions the legislature did not require the Committee to examine, particularly trade secrets. It would be great to finish before 2026.

Selena **Deckelmann** expressed that she is looking forward to deepen her understanding of the process. She is encouraging corporate adoption of similar practices. She identified the importance of protecting private information. She explained that she has some experience facilitating the disclosure of public information. She is interested in the categorization problem.

Adrienne **Roark** would like to see the number of exemptions decreased, and seeks to

	<p>protect the free flow of information.</p> <p>Ms. Eakins explained that her clients are small government entities who are looking for bright lines rather than balancing tests. Wants the Committee’s work to simplify the law.</p> <p>Karin Johnson would like to see the number of exemptions reduced and the law made workable for cities.</p> <p>Representative Wilson looks forward to the learning aspect of the work. He brings experience as a broadcaster, business owner and legislator to the Committee. To the extent the Committee can improve public access to government, citizens are the winners.</p> <p>Brent Walth stated that the law is a law of disclosure, not government discretion. He expressed concern that exemptions change that dynamic. Governments can release data when they want to. He cited examples of public bodies using exemptions to justify large fees for access to public information.</p> <p>Representative Karin Power recounted that she has participated in the creation of exemptions. She is looking forward to learning how public agencies are managing requests and what tools are available to help them.</p> <p>Mr. Kron thanked the members.</p>
2.	<p>Committee Procedures</p> <p>Actions: The Committee unanimously elected Michael Kron as chair. The Committee adopted Robert’s Rules of Order as the procedural rules of the Committee, except as inconsistent with the Oregon Public Meetings Law.</p> <p>Mr. Kron stated that the Committee needed to choose a chair and solicited volunteers. Mr. Kron himself was nominated, the nomination was seconded, and he was unanimously elected chair without further discussion.</p> <p>Chair Kron talked about the need for rules and expressed a preference for relatively informal procedures.</p> <p>Ms. Eakins expressed general agreement but stated that formal process for yes and no votes is needed.</p> <p>Ms. Herkert agreed, citing the need for transparency.</p> <p>Chair Kron asked about roll call for votes. Ms. Herkert expressed that group voting is generally okay, but a roll call is needed if there is not consensus.</p> <p>Mr. Walth asked whether members could request a roll call vote. Ms. Herkert stated that</p>

	<p>they could.</p> <p>Mr. Fisher asked whether consensus is required for the Committee’s work. Chair Kron stated that it is not, but expressed optimism that consensus would be possible.</p> <p>Chair Kron asked how he should describe the rules under consideration by the Committee. Ms. Herkert proposed that the Committee adopt Robert’s Rules of Order to begin with.</p> <p>Representative Wilson stated his appreciation for the desire to have informal process but expressed the importance of having rules to accomplish the committee’s work. He suggested consideration of the rules used by the legislative assembly.</p> <p>Chair Kron asked whether Robert’s Rules of Order would be preferable.</p> <p>Rob Bovett, from the audience, discussed Mason’s Rules versus Robert’s. Explained that many public bodies use Robert’s Rules of Order, except as inconsistent with the Oregon Public Meetings Law. He thinks that Mason’s rules work better for larger group.</p> <p>Mr. Walth asked Mr. Bovett which rules he recommends. Mr. Bovett recommends Robert’s.</p> <p>Mr. Walth moved that the committee adopt Robert’s Rules of Order, except as inconsistent with the Oregon Public Meetings Law and received a second.</p> <p>Ms. Herkert asked whether members are familiar with the rules, and requested that Chair Kron send information about the rules to members.</p> <p>By unanimous vote, the Committee adopted Robert’s Rules of Order, except as inconsistent with the Oregon Public Meetings Law.</p>
<p>3.</p>	<p>Discussion of Method for Approaching Work of the Committee</p> <p>Chair Kron raised the need to manage the review of exemptions. He explained work the Attorney General’s Task Force did regarding exemptions and raised the possibility of borrowing the work done to categorize various exemptions. He also discussed other possible approaches to the work, including a utilitarian approach or a chronological approach.</p> <p>Representative Wilson stated that exemptions that have been superseded or made moot are less interesting to him. He expressed that the work could be more appreciated if the Committee attacks the exemptions at issue now for journalists and government.</p> <p>Ms. Deckelmann asked whether there is a log of public records denials. Chair Kron replied that there is not, but that some public bodies such as the Governor’s Office and the City of Portland might have logs that could potentially be representative.</p>

Mr. **Witohl** observed that the public records process is decentralized, making it difficult to evaluate which exemptions are most at issue. He suggested that the Committee might start with the exemptions in ORS Chapter 192.

Ms. **Herkert** expressed that, whatever approach the Committee chooses, capturing interrelated exemptions would be important. Asked whether exemptions could be better defined, or given limited durations.

Ms. **Eakins** noted parallels between the Public Records Law and executive session provisions of the Public Meetings Law. She stated that when her clients have problems it is often about process. She cited the example of repeatedly making public records requests which are not actually seeking records but simply asking questions.

Chair **Kron** speculated whether it might be possible to create links between exemptions in Chapter 192 and exemptions outside of that chapter.

Ms. **Matasar** made the point that it might be beneficial to organize review with stakeholders in mind, so that specific stakeholder groups could come before the Committee once rather than needing to come repeatedly. Chair **Kron** expressed uncertainty about how to do that.

Representative **Wilson** noted that the Committee will be hearing people and publishing agendas that inform interested parties whether they wish to attend.

Chair **Kron** suggested that he could write a report outlining various possible approaches to the work, and recapped his understanding of the possible approaches discussed so far.

Mr. **Witohl** suggested that the Committee might allow members to identify exemptions for the Committee to review. Chair **Kron** noted that approach could allow the Committee to focus on current priorities, given the expertise of the group. Representative **Wilson** expressed that the working press and smaller governments have particular things on their mind.

Attorney General **Rosenblum** suggested that morale could benefit from clearing up easy ones at the beginning of the group's work. Representative **Wilson** stated that clipping off low-hanging fruit while the Committee proceeds would be good. Chair **Kron** expressed the view that it would probably be easier to accomplish that by combining related exemptions than by eliminating exemptions entirely.

Mr. **Fisher** spoke in favor of the idea of letting Committee members decide which exemptions merit review, and combining that approach with a more categorical approach.

Chair **Kron** stated some possible advantages of that approach and said that he felt he had a good idea of what should go to a report to the Committee to outline ways of approaching the exemption review.

<p>4.</p>	<p>Future Meetings</p> <p>Chair Kron raised the issue of scheduling future meetings. In the ensuing discussion, general consensus emerged around scheduling meetings for the third Wednesday of every other month at 1:00 pm, with a telephonic attendance option for each meeting.</p> <p>Representative Wilson asked whether Committee Staff might explain the microphone system. Cameron Miles explained that blue lights near the staff desk indicate that the system is recording and transmitting.</p> <p>Mr. Miles then explained that the exemptions formerly in ORS 192.501 and 192.502 have been renumbered.</p> <p>Mr. Fisher noted that he would not be available for the March meeting and raised the possibility of sending someone in his stead. After some discussion among members about proxy voting, he clarified that his representative would merely be observing.</p>
<p>5.</p>	<p>Future Tasks of the Committee</p> <p>Mr. Bovett suggested that the Committee should consider electing a vice chair. Chair Kron expressed support for that idea and stated that he would add it to the agenda for the next meeting. He asked members to consider whether they would be willing to serve as vice chair.</p>
	<p>Adjourn</p> <p>After motion and second, the Committee unanimously voted to adjourn.</p>

Oregon Sunshine Committee Meeting Minutes
 March 21st, 2018

Location:

Sunshine Committee Members	
<p>Oregon State Senator Brian Boquist (excused) Selena Deckelmann, Director of Engineering, Mozilla Firefox (by phone) Eileen Eakins, Law Office of Eileen Eakins, LLC Charlie Fisher, OSPIRG State Director Mary Beth Herkert, Oregon State Archivist Karin Johnson, Independence City Recorder Michael Kron, Special Counsel, Oregon Department of Justice Emily Matasar, Government Accountability Attorney, Governor’s Office Oregon State Representative Karin Power Oregon State Senator Floyd Prozanski (excused) Adrienne Roark, Vice-President and General Manager, KPTV Fox 12 (by phone) Morgan Smith, Polk County Counsel Brent Walth, Journalism Professor, University of Oregon Christian Wihtol, Senior Editor, Register Guard (excused) Oregon State Representative Carl Wilson (by phone)</p>	
Guests	
<p>Matt Friesen– Oregon Newspaper Publishing Association Nick Budnick – Society of Professional Journalists</p>	
Agenda	
VIDEO STREAM 0:00 – 1:30:48	
1.	<p>Welcome and Introductions</p> <p>Chair Kron began meeting at 1:00 p.m. He introduced Andy Foltz, newly hired Public Records Counsel at DOJ, who will be providing legal assistance to Sunshine Committee, helping with meeting materials and organizing the committee’s work.</p> <p>Members introduced themselves.</p>
2.	<p>Committee Procedures</p> <p>Chair Kron moved to discussion of who would serve as Vice Chair and what the responsibilities of the position would be. He asked volunteers to serve as Vice Chair.</p> <p>Ms. Matasar volunteered. A motion was made, and seconded, that Ms. Matasar be elected vice chair of the Committee. With no objections or discussion, Ms. Matasar was elected by unanimous vote.</p> <p>Chair Kron described proposed duties of Vice Chair and suggested that Committee would leave it up to himself and Vice Chair Emily Matasar to determine their respective duties, with the understanding that they would come to the Committee in the unlikely event of disagreement. A motion to that effect was made and seconded. With no objections or</p>

	<p>discussion, the Committee unanimously voted to accept this proposal.</p> <p>Mr. Budnick introduced himself and said he would like to comment later if possible. Chair Kron welcomed the comment at that time, noting there would not be a public comment portion of the meeting and that questions and comments had been accepted throughout the prior meeting.</p> <p>Mr. Budnick said he hoped everyone saw the value in this Committee and the work it's doing because it's easy to find the task daunting and lose sight of its importance.</p>
<p>3.</p>	<p>Discussion of Organizing Exemption Review</p> <p>Chair Kron opened the discussion by talking about his report to the Committee, and invited open discussion regarding options for organizing exemption review.</p> <p>Ms. Eakins spoke in favor of the categorized approach. Chair Kron expressed that he liked the approach as well, but pointed out that the Committee would still have to decide which categories to start with.</p> <p>Representative Power asked if Chair Kron had thought of any other possible approaches after sending the memo. Chair Kron replied no. In response to another question from Representative Power, Chair Kron explained that the numbers in parenthesis on his list showing the categories of exemptions indicated how many exemptions were in each category.</p> <p>Ms. Herkert noted the dangers of parsing categories of exemptions too finely, which could cause overlap between categories. She noted some overlap in some of the examples attached to the chair's report. She stated that, if the Committee goes the categorical route, it will need to decide which category is most important to tackle first.</p> <p>Mr. Fisher stated that he favors the categorical approach as well. He recalled that, in the prior meeting, it had been suggested that Committee members could recommend particular exemptions to start with. He also expressed support for the idea of using data about how often exemptions had generated disputes to decide which exemptions to consider first.</p> <p>Representative Wilson asked the chair to explain the document regarding exemptions with appellate cases and AG public records orders. Chair Kron explained that the chart shows how many times a particular exemption was at issue in a case before the Court of Appeals or Supreme Court, and how many times the Attorney General has issued an order regarding the exemption. Representative Wilson then asked whether Chair Kron recommended that the Committee adopt work done by the AG's task force, and Chair Kron replied in the affirmative.</p> <p>Ms. Herkert asked whether the Committee has power to reform a broad exemption or is limited to approving or disapproving exemptions. Chair Kron said Committee has</p>

authority to make any suggestion to legislature that they think is best. Chair **Kron** commented that the group seemed to agree that it should use the data about appellate cases and AG orders to proceed through a categorical review of exemptions.

Mr. **Walth** expressed skepticism that this approach would allow the Committee to provide reform to current unnecessary exemptions.

Mr. **Fisher** explained that is why he suggested combining the data driven approach with committee input regarding which exemptions should be reviewed.

Ms. **Eakins** and Mr. **Fisher** found common understanding on using categorical approach for starting point, and allowing Committee members to motion for particular exemptions to be looked at. Mr. **Walth** reiterated and general consensus was confirmed.

Representative **Wilson** asked if there are any “low hanging fruit” the Committee could reform to show progress. Chair **Kron** said yes, if that means combining redundant exemptions within a category to eliminate unnecessary ones.

Members then discussed the extent to which the Committee should develop guidance for members to assess exemptions, initiated by comments from Ms. **Herkert** and Ms. **Decklemann**. Chair **Kron** expressed doubt that the Committee could tell members what to think about particular exemptions. Ms. **Deckelmann**, Representative **Power**, Ms. **Herkert**, Ms. **Eakins** and Representative **Wilson** discussed that the idea would be to provide a consistent set of criteria for members to consider. Chair **Kron** expressed that he had misunderstood the nature of the suggestion, and proposed that the Committee should consider criteria presented by the Attorney General in opening remarks last meeting: essentially, what would the people of Oregon expect.

Ms. **Eakins** proposed specific questions. What public policy objective is intended to be accomplished? Is this exemption necessary to accomplish that? Is it clearly written? Is it duplicative? Is it appropriately broad or narrow? Representative **Wilson** summarized this suggestion as a “template for consistency.” Chair **Kron** and Ms. **Herkert** agreed. Chair **Kron** looked at the AG’s remarks from the prior last meeting and determined they are almost the same as Ms. **Eakins’**. He stated that these questions would leave room for various perspectives to be explored while providing a framework for approach.

Mr. **Budnick** knew of a similar list created by another state exploring the same issues and offered to send it to the Committee.

Chair **Kron** suggested that the Committee still needed to finalize a decision about structuring its review of exemptions.

Vice Chair **Matasar** asked whether the goal was to determine a schedule for evaluating exemptions over the next ten years. Chair **Kron** answered that the goal would be to outline a general order, and specifically identify what the committee intends to look at next. After discussion and consultation with the statutes governing the Committee,

	<p>members agreed that this approach would be consistent with statutory requirements.</p> <p>Chair Kron summarized general consensus regarding the approach to exemptions as a hybrid between a categorical approach, grouping similar exemptions together, and then setting an order for review based on the data, while also allowing members the ability to propose exemptions that the Committee will review before otherwise scheduled (along with other exemptions covering similar information). Members generally agreed that this was the consensus and Chair Kron asked for motion. The motion was made and seconded. None were opposed, there was no further discussion, and the motion passed unanimously.</p> <p>Chair Kron then returned to the discussion about establishing criteria for exemption review.</p> <p>Ms. Herkert suggested that the Committee should have a specific proposal to consider before adopting criteria. Chair Kron laid out four possible options: adopt Ms. Eakins questions, or the Attorney General's, with the possibility of amending them later; take the issue up as the first agenda item for the next meeting, after considering proposals that Chair Kron would develop based on the discussion and other materials provided by Mr. Budnick; add another meeting to the Committee's schedule; or else start the review of exemptions the meeting after next, instead of at the next meeting. Members ultimately agreed that Chair Kron should develop proposed criteria for assessing exemptions and circulate them in advance of the next meeting, where the Committee would discuss and adopt criteria.</p>
4	<p>Approval of Meeting Minutes</p> <p>Mr. Kron described a minor change to the meeting minutes requested by Ms. Eakins pertaining to her title and asked whether anyone else had changes they would like to request.</p> <p>Vice Chair Matasar asked if meeting minutes could be less detailed and lengthy.</p> <p>Ms. Herkert pointed out that without audio for public to reference the meeting minutes level of detail has to substantiate that. Chair Kron reminded that video/audio is available on OLIS. However, Ms. Herkert pointed out that it is unclear how long the video would be maintained and that detailed minutes allow for easy review of the Committee's business.</p> <p>Ms. Power advocated an intermediate level of detail, not verbatim but enough to capture general context. Mr. Foltz echoed that suggestion due to the duration of this task force (at least ten years). Chair Kron reassured Vice Chair Matasar that her duty of capturing the meeting minutes will likely be relieved by DOJ staff.</p> <p>A motion was made to accept the prior meeting minutes, with the change to Ms. Eakins' title. The motion was seconded, and without discussion or opposition, the Committee</p>

	unanimously voted to approve the minutes.
5.	<p>Future Meetings</p> <p>Chair Kron asked whether members had thought about how the Committee should conduct future meetings, and specifically how the committee should obtain stakeholder input and communicate information to stakeholders. He mentioned that an email address and webpage would be created, and raised the possibility of a listserv. Ms. Herkert advised against a listserv, citing the difficulty of administering it. She suggested that a blog might be a better idea.</p> <p>Mr. Smith spoke in favor of using a website to post meeting materials, agenda items, information received from public and details of next meeting. Chair Kron promised to let Committee members know when the website and the email address for public submissions are live.</p> <p>Representative Carl Wilson and Legislative Counsel Cameron Miles discussed the possibility of using Legislator’s site ‘OLIS’ to post. A separate page would need to be setup.</p> <p>Chair Kron asked for members views regarding stakeholder testimony. After some discussion, members agree that oral testimony would be welcome, with time limits imposed if agenda is tight.</p>
6.	<p>Report to Legislative Assembly</p> <p>Chair Kron discussed the need to submit a report to the Legislative Assembly by July of 2018. He explained his planned approach to the report, and promised to send a draft to Committee members for approval at the meeting in May.</p>
	<p>Adjourn</p> <p>After motion and second, the Committee unanimously voted to adjourn.</p>

Oregon Sunshine Committee Meeting Minutes
May 16, 2018

Location: Oregon State Capitol, Room 343

Welcome and Introductions

Chair **Kron** suggested that guests and members introduce themselves. He announced that Christian Wihtol has to step down and the AG is working with the Newspaper Publishers Association for a replacement.

Chair **Kron** went through the agenda, and noted that the new public records advocate, Ginger McCall, would be addressing the committee.

Members and guests introduced themselves.

First agenda item: March 16, 2018 Draft Minutes

Chair **Kron** proceeded to first agenda item. He received a suggestion from Mr. **Miles** that the minutes should reflect that he and Mr. **Foltz** were visitors. Chair **Kron** will make that change. No other comments on the minutes. On motion and second the committee unanimously approved the minutes edited to reflect the suggestion by Mr. **Miles**.

Second agenda item: Review Draft Report

Chair **Kron** sent all members a draft of the report and is open to suggestions. He sought authority to draft a description of the May meeting for inclusion in the report.

Ms. **Herkert** brought up that the report link does not work. The Committee recessed to obtain copies of the report. Chair **Kron** called back to order with sufficient copies of the report.

Chair **Kron** explained the report focused on foundations laid for the overall project, consistent with the discussion at the prior meeting.

All members agreed with report. Ms. **Matasar** found a typo. Chair **Kron** will fix. Ms. **Matasar** suggested that the vice chair selection vote should be added to the report. Chair **Kron** agreed. No objection.

Mr. **Budnick** asked if the public could make suggestions or comments on the report. Chair **Kron** responded that the report needed to be approved at the current meeting and, with the statutory deadline, it would be too late to make changes. Mr. Budnick commented on word choice.

Chair **Kron** asked for other comments. Rep. **Power** wondered how best to communicate the work plan and priority items to her colleagues in advance of the 2019 session. Chair **Kron** suggested creating an attachment that sets out a more detailed work plan. Ms.

Power agreed that would be helpful. Chair **Kron** asked for objections. No objections were made. It is Chair **Kron's** hope that Ms. **Power** and the other legislators on the committee will be a natural conduit to getting policy moving in the committee or through their caucuses.

Ms. **Harris** commented on the substance of the proposed criteria described in the report. Chair **Kron** reiterated that the report will reflect the criteria adopted at the current meeting, which is a separate agenda item.

No other concerns were raised.

Mr. **Smith** moved to adopt the report subject to the discussed changes. After a second, the Committee unanimously voted in favor.

Third agenda item: Criteria for Exemption Review

Chair **Kron** shared on the website a copy of material provided by Mr. **Budnick** regarding criteria adopted from other states. He read the proposed criteria, discussed some criteria from other states that he was not proposing, and discussed his thought process.

Chair **Kron** and Mr. **Foltz** discussed the summaries of exemptions created by Mr. Foltz and how those summaries could be used in connection with whatever criteria were adopted.

Mr. **Smith** asked whether the proposed question about whether exemptions expire appropriately was needed. Chair **Kron** explained the view that some information could be available sooner. Ms. **Herkert** agreed that most information does not need to be exempt for 25 years and commented that having multiple expiration periods can be confusing. Chair **Kron** suggested that perhaps a conversation about the length of the default expiry period was not necessary for exemption review, and Ms. **Herkert** and Mr. **Smith** agreed. Ms. **Roark** suggested this could be a data classification issue addressable by different classifications and exemption periods.

Mr. **Smith** suggested that the questions need not address statutorily required confidentiality provisions, as review should be focused on exemptions. Chair **Kron** explained that confidentiality provisions are incorporated as exemptions. His suggested the Committee should ask whether requiring confidentiality – as opposed to simply allowing it – makes sense for various exemptions. Ms. **Eakins** believed that is an important distinction. Public agencies will want to know what cannot be disclosed and what the legal risks are if they do disclose.

Ms. **Herkert** agreed with question 2, but believes it should be kept in the positive, especially since the intent of the law is for information to be open. Mr. **Smith** disagreed. It's written the way it is because the committee is looking at pre-existing exemptions. Ms. **Herkert** said exemptions are being looked at in the light of are they a necessary exemption or not. She would rather look at why is the information exempt and why

shouldn't it be disclosed, instead of trying to defend why the information is exempt. Chair **Kron** suggested the question could be phrased as, "Would Oregonians expect this information to be publically available?" He suggested that the two questions are logically the same. Mr. **Walth** suggested the Committee should not ask what Oregonians would think. Ms. **Roark** agreed.

Chair **Kron** noted the importance of asking whether members agree with the policy underlying the distinction. Mr. **Walth** suggested two questions to get at that issue: "Would the elimination of a particular exemption enhance transparency?" and "Would a particular elimination of an exemption facilitate rapid fulfillment of public records request?"

Chair **Kron** felt the answers to those two questions would always be yes, and was concerned that asking those questions would prevent the Committee from making recommendations regarding whether the law is appropriately protecting information that deserves protection. Mr. **Walth** and Chair **Kron** agreed that a question like "In light of the Committee's charge to increase transparency, is the committee satisfied that the information protected by this exemption should continue to be protected?" would be satisfactory for both of them.

Ms. **Eakins** agreed with Chair **Kron** that framing the question in the negative or the positive does not change the fundamental question: is the public policy purpose for this exemption evident? She suggested that reference to Oregonians could serve to encourage members to consider different perspectives.

In light of the time, Chair **Kron** suggested moving onto the seven members of the public who signed up to testify. Ms. **Herkert** moved that the discussion be tabled. After a second, the Committee unanimously voted in favor.

Before moving forward to public testimony, Chair **Kron** introduced Ms. **McCall**, the Public Records Advocate for the State of Oregon. Ms. **McCall** discussed her new role and her plans.

Fourth Agenda Item: Public Testimony

Before inviting forward those who signed up to testify, Chair **Kron** explained that the Committee was addressing exemptions for personal contact information, but not exemptions based on the personal safety of individuals. He also noted that some of the exemptions included other provisions besides personal contact information, but that the goal was to address personal contact information rather than that other information. He then briefly described the 11 exemptions on the list, and invited public testimony.

Mr. **Straka** of the Freedom Foundation in Salem discussed exemptions for information of homecare workers and public employees. He suggested that these particular exemptions were created specifically to create organizations like his from contacting the individuals in question. He encouraged the Committee to revisit these exemptions. He noted that they

include a public interest test that is different than the default public interest balancing test and suggested that is problematic.

Ms. **Eakins** asked Mr. **Straka** about contact information of privately employed individuals. Mr. **Straka** said his organization's interest is specific to employees who are in a public employee union. Ms. **Eakins** noted private employees' information wouldn't be publically available and the only reason this is at issue is because these are public employees or publically funded employees.

Mr. **Budnick**, of the Society of Professional Journalists, explained his view that access to personal information can serve the public interest. He offered examples of instances in which journalists' access to personal information helped expose that individuals offering to do business with public entities were not reliable, and said that the committee should preserve access in the public interest. Mr. **Budnick** also encouraged the committee to consider asking whether exemptions go further than they need to, and whether public interest tests should be added to exemptions that do not have them.

Chair **Kron** asked Mr. **Budnick** to elaborate on how personal contact information, in particular, was helpful in the two cases he described. Mr. **Budnick** explained that in one case his access to an individual's history of home and email addresses enabled him to learn the history of a person offering to buy Wapato Jail.

Ms. **Eakins** asked for more details about public records requests in the case. Mr. **Budnick** stated records were withheld and he was forced to cross reference publically available information. Ms. **Eakins** pointed out that the personal contact information being looked at primarily had to do with public employees and this individual was presumably a member of the public. She asked why the public body denied the request. Mr. **Budnick** said the reason was "pending real estate deal."

Mr. **Friesen** of the Oregon Newspaper Publishers Association stated that contact information provides essential ways for the Association to find people affected by government actions or inactions on issues like land use, toxic waste dumps, and services to the disenfranchised. It allows news organizations to assess whether candidates live in their districts. Access for citizens allows them to find others similarly affected, organize and exercise their democratic rights. Basic contact information is also used to make sure the association has the right person they are reporting on.

Morjenna, a homecare worker, noted that disclosing contact information can put people at risk. She gave an example of a DHS caseworker who was stalked, harassed and assaulted by a person seeking information about the location of people served by the caseworker, the survivor and the children. She stated this is not an isolated incident. She asked the committee to be proactive in preventing victimization, and to remember a healthy respect for Oregonians' privacy.

Ms. **Burrows**, also a homecare worker, explained that she takes care of elderly and disabled people in their own homes as well as hers, and that she has three children. She

described the experience of having someone paid by a private entity make contact with her at home while her children were present. She feels that protecting contact information is important to protect homecare workers' privacy. No one should come to her home or her consumers' home, or contact her personal or mobile phone. She asked the committee to look at this as not a transparency issue between governments but as a personal one concerning individual privacy.

Senator **Prozanski** asked for context about the contact she described. Ms. **Burrows** explained that the organization was actively working against her union to try to get people to leave union.

Emily **Harris**, a journalist, expressed support for Mr. **Budnick**'s testimony, and for the exemption review project. She encouraged the Committee to consider a public interest balancing test for every exemption, allowing the Public Records Advocate or the Attorney General to decide if a specific request meets the criteria. She suggested that many personal contact exemptions could have special interests behind them. She acknowledged privacy concerns and said journalists consider personal safety and privacy in their reporting. She also suggested that exempting personal information could justify redacting any record that has personal information on it, adding greatly to the cost. She proposed a distinction between general lists and personal information that happens to be relevant in the record. Journalists typically need contact information to find people affected by a public policy. Their stories can illuminate for others why they should care about the issue.

Ms. **Eakins** asked whether Ms. **Harris** would like public employees' personal information available to journalists who would decide whether to contact them. Ms. **Harris** responded that's a committee question. She clarified that journalists do not usually publish personal contact information. The information is used for a very specific purpose. They have their own internal test of whether that is worthwhile. Ms. **Eakins** asked about contacting public employees. Ms. Harris stated that in a journalist's ideal world information would be available and journalists would be trusted to decide to make contact.

Ms. **Eakins** asked if Ms. Harris would make the same pitch to a private employer. Ms. Harris thought there could be similar laws.

Chair **Kron** thanked those who gave public testimony. He noted that written comments were posted on Sunshine Committee's website and forwarded to members. He noted compelling points on both sides of the testimony.

Fifth Agenda Item: Future Business

Chair **Kron** proposed that the Committee return to discussion of exemptions at the next meeting. He asked about incorporating safety-related contact exemptions into the discussion. And he suggested that one rule, with some exceptions, should apply to contact information so there aren't different rules for public entities to follow, but felt any rule must adequately protect personal safety, particularly of victims.

Mr. **Smith** expressed that the pool of exemptions should be unchanged except that the pen registry-exemption should be lumped in with their criminal investigatory information. Chair **Kron** agreed to remove that exemption. He expressed doubt that the committee could resolve personal contact information separately from personal safety issues given the testimony.

Ms. **Eakins** agreed safety is related to the reasons for keeping contact information confidential. She also highlighted the separation between a public employee's public employment and their private personal life, and her view that access to contact information for reasons that have nothing to do with the job the employee is doing is inappropriate.

Representative **Power** expressed concern about the amount of time it took to go through exemptions and public comment. She suggested that the Committee either needs to focus its questions, discuss fewer exemptions, or create subcommittees.

Representative **Power** suggested that the Committee must clarify to members of the public that the Committee cannot change exemptions but only recommend changes to the legislature, which entails additional public process.

Chair **Kron** agreed with Representative **Power** that subcommittees should be discussed. He repeated his hope that the committee can propose one exemption that covers personal contact information, rather than make separate recommendations concerning each existing exemption.

Ms. **Eakins** moved to table the current agenda item. Committee unanimously voted in favor.

Chair **Kron** moved to the final agenda item, future business. He continued the discussion of subcommittees, proposing that members could inform the chair **Kron** which categories they would be interested in so that subcommittees could be formed to make recommendations to the larger group.

Mr. **Smith** expressed concern about subcommittees and proposed longer or more frequent meetings. Other members agreed meetings should be longer and Chair **Kron** agreed to schedule the July meeting for 3 hours.

Adjournment

After motion and second, the Committee unanimously voted to adjourn.

Oregon Sunshine Committee Meeting Minutes
July 18, 2018

Location: Oregon State Capitol, Room 343

Sunshine Committee Members
<p>Oregon State Senator Brian Boquist (excused) Selena Deckelmann, Director of Engineering, Mozilla Firefox (by phone) Eileen Eakins, Law Office of Eileen Eakins, LLC (by phone) Charlie Fisher, OSPIRG State Director Mary Beth Herkert, Oregon State Archivist Karin Johnson, Independence City Recorder Michael Kron, Special Counsel, Oregon Department of Justice Emily Matasar, Government Accountability Attorney, Governor's Office Oregon State Representative Karin Power (excused; Richa Poudyal attended on behalf) Oregon State Senator Floyd Prozanski (excused) Adrienne Roark, Vice-President and General Manager, KPTV Fox 12 (excused) Morgan Smith, Polk County Counsel Brent Walth, Journalism Professor, University of Oregon Oregon State Representative Carl Wilson (excused) Bennett Hall, Newspaper Publishers Association</p>
Guests
<p>Andy Foltz, by phone Nick Budnick Ginger McCall Graham Derringer Zakir Khan Will Tatum</p>
Agenda
VIDEO STREAM 0:00 –
<p>Welcome and Introductions</p> <p>Chair Kron suggested that guests and members introduce themselves. He introduced Bennett Hall, Special Projects Editor at the Corvallis Gazette Times, who is replacing Christian Wihtol as the representative of newspaper publishers.</p>
<p>First agenda item: May 16, 2018 Draft Minutes</p> <p>Chair Kron proceeded to first agenda item. Ms. Deckelmann pointed out that the header was missing. There were some typos and a misattributed quote. Chair Kron will correct. No other comments on the minutes. On motion and second the committee unanimously approved the minutes edited to correct typos, misattributed quote, and add the header.</p>
<p>Second agenda item: Continuation of Discussion Regarding Criteria for Exemption Review</p> <p>Mr. Walth circulated proposed additions to the criteria and discussed the additions. He wanted to ensure the committee was framing their questions correctly and proposed slightly different</p>

wording.

Chair **Kron** had no objection to reframing the question. He discussed concerns he had about the four questions at the beginning of Mr. **Walth's** email and reiterated his concern that the answer to those questions would always be yes.

Chair **Kron** suggested four new criteria questions. Mr. **Walth** pointed out that the new questions take into consideration government accountability when the previous questions didn't.

Ms. **Matasar**, Ms. **Deckelmann**, and Mr. **Hall** agreed with the importance of government accountability and supported Chair **Kron's** proposed questions. Mr. **Hall** stated that as the committee got more in depth with the exemption and found the framework wasn't working as needed, the criteria could be revisited. Mr. **Smith** agreed.

Chair **Kron** read them to the committee:

1. Why should this information be kept from the public? What public policy interests are served?
2. What interests suffer if this information is not available to the public? To what extent does it hinder government accountability?
3. Is the exemption appropriately written in light of the above? Does it adequately balance the relevant interests?
4. If there are multiple exemptions, do there need to be? Are the various exemptions written in a way that captures the relevant differences?

Ms. **Deckelmann** suggested the committee create a template summarizing the exemption with the criteria in mind. Chair **Kron** agreed. Mr. **Foltz** could incorporate that information into the materials he was preparing.

On motion and second the committee unanimously approved the criteria proposed by Chair **Kron**

Third agenda item: Exemptions Discussed During Public Testimony

Chair **Kron** circulated a proposal to the committee members with Ms. **Eakins** proposed additions. The proposal was intended to create an exemption for personal contact information that provided the same treatment to everyone, but that could be overruled if there was legitimate public interest and particular purpose for the request. Ms. **Eakins** felt public employees should be treated the same as private employees. He encouraged discussion of the proposal.

Ms. **Herkert** suggested that before making a blanket proposal, the committee should take into consideration whether each personal privacy exemptions contained the same information or if they were significantly different and gave her reasoning behind her suggestion. Chair **Kron** opined it would be disaster if the committee wanted to agree on specific language. He envisioned that the members would agree on policy recommendations. Ms. **Herkert** agreed and clarified her suggestion.

Chair **Kron** asked whether the committee favored separate recommendations for phone numbers, addresses and email addresses.

Mr. **Smith** asked for clarification of whether the committee was talking about personal contact information or information of a personal nature. Chair **Kron** stated that the goal was for the committee to look at the exemptions only in terms of personal contact information so a policy recommendation could be made. Mr. **Smith** thought the committee could agree on one personal contact information exemption and explained why. Chair **Kron** agreed, but expressed concern of policy implications.

Mr. **Smith** felt discretion should be left with the individual agency or public entity in possession of the records, assuming they were not completely abandoning the concept of the balancing test already in the public records law. This would allow for flexibility.

Ms. **Herkert** talked about the default expiry period of exemptions that her agency comes across and the problems they run into. An individual's address from 75 years ago shouldn't matter because they are most likely not at that address any longer. Ms. **Herkert** opined that very little information in historical records should be exempt from disclosure.

Ms. **Matasar** agreed and asked Ms. **Herkert** her recommendation on how to discuss expiry periods from a historical perspective. Ms. **Herkert** said the committee should look to see if it has a valid time frame and decide if the intent for the time frame is still a valid concern.

Chair **Kron** wondered if the public records advisory might be a better place to discuss the expiry of exemptions. Ms. **McCall** said there was already a general 25 year limit on use of exemptions with the exception of four specific kinds of records and suggested preserving that law as it was. Ms. **Herkert** agreed. The committee briefly discussed expiry periods for exemptions.

Noting that communications methods change over time, Ms. **Deckelmann** thought it might be helpful to recommend enumerating the different kinds of personal contact information in statute. Instead of creating a separate rule with each, new types of contact information should just be added to the list.

Chair **Kron** stated that if the committee recommended enumerating different types of contact information it would give them the opportunity to think about whether they all should be treated the same. Discussion occurred on different types of contact information and how some information was already available online, such as property records. Ms. **McCall** argued that exemptions nevertheless create practical security, as a single records request is simpler than searching property records in many counties.

Ms. **Eakins** expressed concern about requests made with the intent to harass; if information is freely available the problem would only worsen. She agreed with delineating types of contact information, but would err on the side of exempting anything that is not directly related to the public employee's employment unless there is a compelling public policy reason to disclose it.

Chair **Kron** opened the discussion to the journalist and public interest members to get their opinion in terms of the tension between legitimate need for the information versus the desire to protect it as a default rule when there is not a legitimate need.

Mr. **Hall** agreed that public records law could be abused by individuals for purposes of harassment or to send out spam or to try to scam innocent citizens, but countered that it is important for journalist to occasionally reach out to public employees. He gave examples from his own experience of how he was denied information despite there being a public interest for the information. In his opinion, having access to public employee contact information can in many instances serve a legitimate public interest.

Chair **Kron** stated that it sounded like there is a simultaneous recognition of the reasonableness to protect personal contact information from illegitimate use, but a concern that legitimate uses are getting swept up with the illegitimate. Mr. **Hall** agreed.

Mr. **Smith** pointed out as a general rule, public bodies do not look at the reason behind the request to justify release. Members discussed the public interest test that applies to some exemptions as an example of circumstances in which that can be considered. Chair **Kron** returned to the difficulty of a recommendation that accounts for legitimate use but prevents illegitimate uses. Members agreed that was desirable.

Because there are different classes of contact information and specific classes of individuals, Mr. **Fisher's** inclination would be to go through the individual exemptions, use the four criteria questions, and determine whether each one meets those criteria as opposed to trying to give the legislature a broad recommendation. Chair **Kron** expressed doubt about treating different classes of individual differently, suggesting that the privacy concerns identified in this area were common ones.

Mr. **Fisher** responded that the privacy exemption is already a blanket way of addressing personal information. The committee's recommendation should be that as a default, the information should be public, while assessing whether particular exemptions the legislature deems important actually rise to the level of importance that they should and are in the public interest.

Mr. **Miles** approached the table and questioned who was going to make the list for the legislature to eliminate the numerous existing exemptions. Chair **Kron** directed Mr. **Miles** to the list he brought on the table. Mr. **Miles** didn't think the committee could say blanket eliminate all of them without talking about each one. Chair **Kron** described that part of the committee's charge was to ensure consistency and efficient administration of the law. From his perspective both of those interests are served by having one rule instead of several. Mr. **Hall** asked if it would be possible to identify a set of reasons for withholding personal contact information on a case by case basis, articulate those, and say otherwise contact information should be disclosed. Chair **Kron** commented that in theory that would work. It would just be a more specific version of the public interest test.

Ms. **Johnson** stated that as a public employee, it should be the other way. Her private contact information should be hers and a balancing test given to her onto why it should be public. Chair

Kron thought it was logically the same to do either **Mr. Hall's** suggestion or **Ms. Johnson's** suggestion. **Mr. Smith** opined that the requestor has the burden to make a showing of necessity of public interest.

Chair **Kron** expressed agreement with **Mr. Hall's** suggestion. **Mr. Hall** clarified that he made his suggestion because there is value in consolidating many of the exemptions as possible. **Ms. Herkert** agreed.

The committee recessed for a break.

Chair **Kron** called back to order after break and summarized the discussion prior to break. He asked for **Mr. Hall's** opinion. **Mr. Hall** suggested that contact information should be publically available unless there is a compelling reason not to, with a set of general circumstances under which the information could be withheld, and explained his reasoning.

Chair **Kron** pointed out there are a lot of other personal information that are going to have similar public policy issues and it could be a mistake that the committee wasn't discussing them altogether. **Mr. Hall** stated it would be nice to consolidate the information and simplify them to the extent it is possible.

Chair **Kron** stated that there is always going to be default of availability and the existing default of availability applies to most people who are not government employees but who use government services. The committee can keep that default or propose the default be applied more broadly. It is his belief that at the time the current rules were enacted, the dangers we face today with various data theft weren't an issue then. **Ms. Herkert** agreed. It all has to do with ease of access. The laws have not kept up with technology. The broader question is if the information is easily accessible, does it still need to be exempt?

Ms. Deckelmann commented on the risks. At Mozilla, their focus is preventing mass disclosure. It is very difficult to protect an individual person because if an adversary really wants the individual's information, they're probably going to be able to get it, but in the case of everyone's information, there are things Mozilla can do to try to prevent everyone from being subject to a data breach. Chair **Kron** asked whether that was primarily driven by the pragmatic difficulty of protecting individuals or based on a policy determination. **Ms. Deckelman** answered that it was a very pragmatic issue for them. It is a more practical problem to think of it in terms of what in general can they do to protect personal information. Chair **Kron** asked if that would have implications for the default rule the committee might propose. **Ms. Deckelmann** stated in general if there is a compelling reason, it is worth protecting most individuals.

Ms. Eakins agreed with **Ms. Deckelmann's** comments. The law should create a reasonable degree of protection for personal contact information with the understanding that there may be times when the information does need to be disclosed. She wondered what the public policy argument was for a public entity that presumably values its employees for it to make all information easily accessible to anybody who wants it.

Chair **Kron** asked the committee whether members felt the law should protect public employees

but not people who are government's customers.

Ms. **McCall** approached the table and urged the committee to consider that just because information is submitted to the government by an individual does not make that information the government's information. It is still the personal information of the individual. The government should not be the tool by which someone who wants to gain an individual's private information for nefarious purposes manages to gain the information and undermine a person's control of their personal information. She doesn't think that's the business the government should be in. She thought the balancing test included in the law and included in the proposal does a good job of addressing a lot of the concerns she heard people voice and gave her reasoning. She suggested it might be helpful to look at that public interest balancing test and consider what kind of factors should be included in that and to spell that out in the law. Chair **Kron** stated that could be counterproductive because an individual applying for government services has less protection than a public employee who has an exemption for their personal address. Ms. **McCall** stated the consideration should be the same regardless of an individual's status as a public employee or a member of the public applying for government services.

Mr **Walth** didn't think the committee should treat public employees the same as private sector employees. He agreed with Mr. **Hall** that the presumption should be full disclosure unless there are compelling reasons not to do so. He asked the attorneys in the room how the general privacy exemption and its public interest test apply to contact information. Chair **Kron** answered that if the only basis for protecting your address would be the privacy exemption, then it is likely to be disclosed unless the person who is looking for it is a stalker. The committee is currently reviewing a handful of exemptions that protect personal contact information but only for select classes of people, such as medical licensees and public employees. Both of those statutorily require clear and convincing evidence that the disclosure be in the public interest.

Mr. **Fisher** expressed indecisiveness. He suggested the committee should only address the current exemptions and determine whether they are justified, rather than try to make a general rule for contact information. Ms. **Eakins** asked if the committee had to decide the public policy questions among themselves or do they tell the legislature what they think it should do it. Mr. **Fisher** opined that if the committee wanted to come up with something productive to send to the legislature, they should try to confine their conversation within this broad framework to the task of this committee.

Chair **Kron** stated that would entail going through all 11 exemptions, either recommending they stay the same, recommending specific changes, or recommending they be eliminated. He felt that would be more work because they will need to agree on a principle and also agree on the application of the principle as opposed to just agreeing on the principle. Mr. **Fisher** suggested the principles may be different for each scenario. The committee should think about the different reasons information was given to the government. Ms. **Deckelmann** agreed that was possible.

Ms. **Herkert** stated that part of the issue was that they started with the most difficult exemption. The committee needs to look at each exemption, determine similarities and differences, and have a better understanding on how they were crafted. Chair **Kron** stated that the memo Mr. **Foltz** prepared strived to provide that framework. He accepted that the committee may be inconsistent

in the recommendations with respect to various exemptions. Therefore the recommendation would either need to be principled or not principle. Mr. **Fisher** asked if the principle was the four questions the committee had at the beginning. Chair **Kron** stated yes.

Ms. **Matasar** agreed with Chair **Kron's** approach. She didn't necessarily want to go through each exemption. She gave an example from 192.345(25) and stated that Chair **Kron** drafted a statement that addressed specifically the 11 exemptions. She agreed more with suggesting a policy rather than specific language changes for each exemption. The committee has the opportunity to potentially change the law and make it something that it should be.

Ms. **Eakins** felt the committee should start with the current laws and work on how to improve them or provide recommendation on what to keep or how to change them. Chair **Kron** felt there are different ways of fulfilling that role. The proposal drafted was written so it would apply to these specific exemptions and it would result in a specific direction of change without making 11 different recommendations.

Chair **Kron** asked Mr. **Fisher** what the work product would look like if the committee did what he was suggesting. Mr. **Fisher** stated the work product would be to determine if an exemption fits the four criteria that the committee set out. If not, why? If so, why? Should the exemption be combined with another or should they get rid of it? Ms. **Herkert** suggested they could recommend to the legislature that the exemptions for contact information should be combined and the legislature should specify who they apply to. Mr. **Fisher** suggested that there would be different considerations for each exemption.

Chair **Kron** reiterated that he didn't see a good reason to treat some people's contact information differently than others, but it sounded like there were some members who felt otherwise. If that was the case, the recommendation like the one he proposed wasn't going to work.

Mr. **Budnick** moved to the table and encouraged the committee in the interest of advancing through their tasks in a timely manner to join the current discussion with other personal privacy issues and allow more time for research to be done into the issues.

Mr. **Khan** moved to the table and recommended embracing the different opinions of the committee and to use the minority report model so the legislature can have both opinions and decide the best model to implement. He also encouraged the committee to provide the media proper access to materials at a low cost. There are some governments who are abusing the public records law by preventing the media from obtaining records at a reasonable cost. He urged the committee to also think about the impact these laws will have on marginalized communities. He gave examples of how marginalized communities of color can be harassed based on the current laws. Finally, he agreed with Ms. **Matasar's** point of working toward the future and there are models they can use. He recommended that the Committee consider Florida's model.

Ms. **Matasar** expressed confusion on the committee's role. Her understanding was the committee would be prepared to talk about the exemptions based on the information Mr. **Foltz** prepared and then make a recommendation. It now seemed like the committee wanted to go through each exemption next time.

Chair **Kron** suggested members refresh their recollection of what the exemptions are in order to facilitate a discussion. He noted the committee seemed to be split regarding how many rules there should be for different types of personal contact information.

Mr. **Smith** stated that he thought the committee could all agree that there wasn't a need for all 11 exemptions for this type of information. He suggested figuring out what buckets to put the information in. The committee needed to look at the 11 existing rules, understand how the information comes to the government, how it should be disseminated, figure out their own interest test, and come prepared to discuss it at the next meeting. Mr. **Fisher** expressed concern that the committee would only be adding to the list of exemptions. Mr. **Walth** agreed with both Mr. **Fisher** and with Mr. **Smith** about approaching it with different buckets and felt they needed to be clear when sending the exemptions to the legislature that need to be removed, otherwise he didn't think they would be giving the legislature enough guidance.

Chair **Kron** thought fundamentally, the committee would need to decide at some point what the recommendation will be. If it was going to involve 11 specific recommendations, then it was very different than what he wrote and meant a more granular exemption by exemption conversation.

Ms. **Herkert** commented that she liked the approach of determining what is the information being used for and why. She felt the statement broadened the exemption. If she had to go through a test with every single public records request, it will become expensive and the cost will get passed off.

Ms. **Matasar** stated that more clarity in the law, even if it exempts more information, would allow public records requests to be fulfilled quicker without necessarily hindering transparency in most cases.

Chair **Kron** said he did not understand how the committee could recommend in good faith that the legislature keep any of the exemptions without expanding the exemptions to also cover others. He felt that if there was a legitimate reason to protect the information, that reason would not be specific to the public employees, licensees, and other people favored under the current law. Mr. **Walth**, Ms. **Herkert**, and Ms. **Deckelmann** agreed. Mr. **Walth** clarified that he was concerned that the exemption was going to get broader.

On motion and second the committee unanimously tabled the discussion on the 11 exemptions personal contact information until next meeting.

Fourth Agenda Item: Future Business

Chair **Kron** asked if the committee should take Mr. **Budnick's** suggestion to broaden the discussion. Should there be more public comment for things like dates of birth? If so, did the committee want him, as the chair, of prepare a proposal on his own and decide whether to broaden their agenda.

Mr. **Hall** would like to hear more about why people would want to protect dates of birth. Chair **Kron** stated that the question is not whether we have it, it's do we include that in the conversation because it's basically the same thing. Mr. **Hall** stated he thought it would fall under the general heading of types of personal information that perhaps should or should not be disclosed. Chair **Kron** suggested expanding it to everything that is included in any one of the 11 exemptions.

Ms. **McCall** commented on Ms. **Herkert's** comment about the usefulness to have some research and data points to look at instead of going based on emotion. As part of her office as the public records advocate, she offered, with the assistance from others in the committee, to do this research and drafting and submit a report to the committee that can potentially be discussed at the November meeting. All agreed.

Chair **Kron** suggested using the September meeting to solicit public comments on the additional topics they will now be addressing, which would theoretically give Ms. **McCall** until October to submit her report. Ms. **McCall** said it would be helpful to hear from the committee what they thought the useful research avenues or questions would be. She discussed potentially looking at what other states or the federal government is doing for similar information and gave an example of how the federal FOIA differed from Oregon law.

Chair **Kron** clarified for the committee that they were free to directly contact Ms. **McCall** since she was not a part of the Sunshine Committee. Ms. **McCall** also encouraged members of the public to contact her and assured that all decisions would be based on data points and research regardless of her personal opinion.

Ms. **Matasar** added a suggestion of taking up the question of individualized requests for data vs. data base requests specifically. She discussed a recent AG decision denying the use of dates of birth in order to seek personal home address information. The governor's office had already asked Ms. **McCall** to prepare a presentation and report on specific data sets of information and suggested it be lumped in with the rest of the exemptions if the committee would agree to take that on. Ms. **McCall** stated that if anyone wanted to volunteer to assist with that research, she would be happy for the assistance.

Mr. **Fisher** stated there seemed to be confusion about the purpose of the committee and he suggested at least having a conversation to make sure everyone was on the same page about what they actually wanted to achieve. He thought the question of whether the committee was going to make blanket recommendations, which may then expand what was exempted, or if they were going to just look at the exemptions is an important question to answer and may also raise other implications. Chair **Kron** didn't conceive of them as different things. He believed the committee's job was to come up with a recommendation and in different circumstances, different people may feel that different recommendations are appropriate. He gave an example. There may not be a universal answer to what the committee will do and they won't know until they've looked at all the exemptions.

Mr. **Hall** stated that generally he liked the way Chair **Kron** framed the draft recommendation to the legislature, but shared Mr. **Fisher** and Mr. **Walth's** concern regarding broader exemptions.

However, he believed the committee should get the larger question of personal privacy versus the public's right to know out of the way. He asked if the committee could look at other model public records law, which could cut through a majority of the discussion, and have those added to Ms. **McCall**'s report. Although Ms. **McCall** was very interested in researching other models, she thought it would have to be a separate inquiry in a future task.

For the next meeting, Chair **Kron** will figure out what the other privacy related information is covered in the current exemptions and what other exemptions they implicate. The September meeting will be entirely public testimony and in November, the committee will reconvene to discuss what was heard from the public, what they learned from Ms. **McCall** in the meantime and whatever other information they get.

Adjournment

After motion and second, the Committee unanimously voted to adjourn.

DRAFT

Oregon Sunshine Committee Meeting Minutes
October 3, 2018

Location: Oregon State Capitol, Room 343

Sunshine Committee Members
Oregon State Senator Brian Boquist (excused) Selena Deckelmann, Director of Engineering, Mozilla Firefox (by phone) Eileen Eakins, Law Office of Eileen Eakins, LLC Charlie Fisher, OSPIRG State Director (excused) Mary Beth Herkert, Oregon State Archivist Karin Johnson, Independence City Recorder (by phone) Michael Kron, Special Counsel, Oregon Department of Justice Emily Matasar, Government Accountability Attorney, Governor's Office Oregon State Representative Karin Power (by phone) Oregon State Senator Floyd Prozanski (excused) Adrienne Roark, Vice-President and General Manager, KPTV Fox 12 (by phone) Morgan Smith, Polk County Counsel Brent Walth, Journalism Professor, University of Oregon (by phone) Oregon State Representative Carl Wilson (by phone) Bennett Hall, Newspaper Publishers Association
Guests
Ginger McCall Todd Albert Andy Foltz Cameron Miles Kimberly McCollough Carey Wilson (?) Nick Budnick Aaron Withe
Agenda
VIDEO STREAM 04:40 – 1:28
First agenda item: July 18, 2018 Draft Minutes Chair Kron started with the first agenda item. No comments. On motion and second the committee unanimously approved the minutes pending any typographical errors.
Welcome and Introductions Chair Kron materials he brought with him for the committee. He stated he received several written testimony the previous afternoon and that morning and would share those with the committee on the website. He moved forward with guest and member introductions.
Second agenda item: Public Testimony Aaron Withe of the Freedom Foundation explained how in home care providers are public employees and reiterated previous testimony of his organization's suggestion that they are the

cause for the current exemptions. He talked about the work of his organization. He discussed various ways to obtain personal information including through public records. He stated that unions and government see organizations like his as a threat. He suggested that expanding exemptions would directly contradict the Sunshine Committee's mission of creating a more transparent government.

Tony Schick of the Oregon Public Broadcasting testified that personal contact information was essential to the pursuit of journalism in the public interest. He gave examples of how access to address, date of birth, employee issued identification numbers, and driver's license numbers were beneficial to his reporting. He explained that having access to this information proved useful to his analyses and, in some cases, forced corrective action.

Chair **Kron** asked if personal contact information obtained for his publications had or would be disseminated. Mr. **Schick** could not say there would never be a case where disseminating the information would be in the public interest, but he didn't believe they have ever published personal contact information.

Ms. **McCall** asked what Mr. **Schick** thought about an opt-out option to not provide personal contact information when filling out a complaint form for individuals with valid retaliation concerns. Although he saw the value in an opt-out option, Mr. **Schick** felt there was also a question of whether people should be held accountable for their complaints and there should be a way to independently vet through the complaints, which is much more difficult if they're anonymous.

Chair Kron limited all other questions to committee members only.

Mr. **Smith** commented that he struggled with the concept that if information is available to journalists, it is available to the public. He asked Mr. **Schick** if he saw a distinction between the two. Mr. **Schick** thought that was a tricky distinction to draw. Mr. **Smith** explained that if this was journalists' position, the committee would have to wrestle with whether there is a different standard for access to information by journalists versus access to any member of the public because the public records law was established to create access to everyone despite profession or what the information is being used for. Mr. **Schick** believed there was an implicate distinction and explained that the laws were written in a time where the only people with the ability to disseminate the information were those with a publishing platform versus now where everyone has a publishing platform.

Mr. **Hall** asked Mr. **Schick** if he could provide examples where personal contact information obtained by a journalist, either by himself or another journalist, was published as part of the story. Mr. **Schick** could not think of an.

Steve Suo, team leader of the Oregonian's Watchdog and Data Team, speaking on behalf of himself, discussed examples of how journalists use personal identifiable information in their work and how his members use data to inform and build stories they feel are in the public interest. He provided suggestions on what shouldn't be exempt, such as employee ID numbers and added that they do not publish personal information. He concluded that he thought privacy

was important and there are possible ways to protect it while ensuring that journalists are able to continue their important work in the public interest.

Chair **Kron** stated that it sounded like Mr. **Suo** had specific ideas about what the committee's recommendation might look like that adequately protects privacy while also protecting public interest access to the information for journalism.

Mr. **Suo** responded that many aspects of the law have worked for him on many occasions so in terms of fixes to the law, he wasn't prepared to propose anything concretely. However, he has been exchanging ideas with some of his colleagues. He believed there were positive ways forward and certain exemptions that could be more limited.

Chair **Kron** stated that if Mr. **Suo** came up with suggestions between then and the next meeting, they are accepting written testimony. Suggestions should be submitted by the beginning of November.

Nick Budnick of the Portland Tribune, representing the Oregon Territory Chapter of the Society of Professional Journalist, thanked the committee. He stated that journalists used personal information regularly to verify basic facts about individuals. He believed that preserving the public interest balancing test was crucial because it applied to everyone, not just journalists. He strongly disagreed with having an opt-out option because of very good public interest reasons to know who the person is behind the complaint. He gave an example of how the city of Portland gave this option to job applicants and by doing so, limited the public's ability to know who applied for bureau director jobs. This made it impossible to know if job selections were made based on merit or cronyism. Like Mr. **Schick** pointed out, when someone is contacted for comment, whatever the perceived intrusion is minimal. Mr. **Budnick** gave an example of a phone call with an individual who didn't want to talk to him and later thanked him for respecting her refusal. It is his belief that providing an opt-out option would be very dangerous to the public's knowledge.

Chair **Kron** discussed his struggle to understand why current exemptions treat different people differently. He asked Mr. **Budnick's** opinion on whether or not he felt there were legitimate reasons for treating people differently, depending whose information was being sought. Mr. **Budnick** said he would need to discuss that with his organization.

Joy Roman, a homecare worker, introduced herself as a survivor of domestic violence. She described the steps she took to protect her children from her abuser. Subsequently, the Oregonian published information about her daughter, including where she went to school and pictures, without her permission. She stated that this put her daughter at risk of being killed by her abuser. When she complained she received only an apology and an 8x10 picture. After that incident, she pulled her children from public school and homeschooled them. She described individuals being harassed by organizations like the Freedom Foundation who gain access to their personal information and stated it was getting out of control. She wanted the committee to keep in mind that this isn't only about businesses or individuals who think they have the right to personal information, but also about all Oregonians who really need the protection.

Chair **Kron** wanted to make sure that the public was aware that the committee would be taking a lot of testimony and recommendations to the legislator would be made based on the testimony and the committee's views. The legislator would then act on the recommendations. From his own perspective, the personal safety justifications heard are extremely compelling to him and it is important for the committee to consider them and make sure they are adequately protected.

Mr. **Suo** spoke again to respond to Chair **Kron's** question of whether or not there were legitimate reasons for treating people differently, depending on whose information was being sought. He thought to an ordinary person it would be odd that individual professions are treated differently, but there are exceptions, particularly in terms of public safety officers. He also wanted to bring to the committee's attention the existence of the Department of Justice's confidentiality program and explained how it could be used as model. Chair **Kron** confirmed the existence of the program and felt that part of the answer may be to make the provisions in it stronger. Mr. **Suo** stated that he wasn't sure how widely that option was advertised to state employees. Chair **Kron** clarified that the program isn't just for state employees but to anyone whose personal information is in the hands of the government. He thought looking at that in connection with the current exemptions was a good idea and thanked Mr. **Suo** for raising it.

Third Agenda Item: Future Business

The Committee discussed **Ginger McCall's** report on privacy concerns. Ms. **McCall** gave a brief summary of what she has done, but stated she still needed access to Westlaw before she could finish the report. Chair **Kron** asked for assistance from the committee to get Ms. **McCall** access. Until Ms. **McCall** receives access, Chair **Kron** suggested that **Andy Foltz** prepare a notebook of cases using his access. Ms. **McCall** thought that would be helpful.

Chair **Kron** expressed hope that the Committee would arrive at a reasonable recommendation on the privacy issues. He strongly encouraged members to send him their thoughts on what their ideal recommendation would look like, which he would then disseminate to the group for discussion at the next meeting. He explained that the public records meeting law doesn't allow them to do their deliberations in writing, it has to be done publically. He gave a deadline of Friday, November 9, 2018 for the submissions. He pointed out that the committee was not required to come to consensus. If it reached the point where the committee couldn't agree, he would encourage the committee to embrace **Zakir Khan's** suggestion to submit a minority report with the recommendation.

Chair **Kron** thought it could be beneficial for the legislative members of the committee to perhaps provide guidance regarding what sort of recommendation they would like to see from the Sunshine Committee's recommendations. He expressed that the legislator members' views of the Committee's role are ones that matter most.

Adjournment

After motion and second, the Committee unanimously voted to adjourn.

Oregon Sunshine Committee Meeting Minutes
January 23, 2019

Location: Mozilla Firefox offices, 1120 NW Couch St #320, PDX

Sunshine Committee Members
Oregon State Senator Brian Boquist (excused) Selena Deckelmann, Director of Engineering, Mozilla Firefox Eileen Eakins, Law Office of Eileen Eakins, LLC Charlie Fisher, OSPIRG State Director Mary Beth Herkert, Oregon State Archivist (by phone) Karin Johnson, Independence City Recorder (by phone) Michael Kron, Special Counsel, Oregon Department of Justice (excused) Emily Matasar, Government Accountability Attorney, Governor's Office Oregon State Representative Karin Power (excused) Oregon State Senator Floyd Prozanski (excused) Adrienne Roark, Vice-President and General Manager, KPTV Fox 12 (excused) Morgan Smith, Polk County Counsel (by phone) Brent Walth, Journalism Professor, University of Oregon Oregon State Representative Carl Wilson (excused) Bennett Hall, Newspaper Publishers Association (excused)
Guests
Ginger McCall (by phone) Andy Foltz (by phone) Brett Budnick Todd Albert
Agenda
VIDEO STREAM 00:00:00-1:57:40
Welcome and Introductions
Vice Chair Matasar chaired in for Chair Kron who was unable to attend the meeting.
First agenda item: Approval of 10.3.18 draft minutes
There were some typos and Ms. Johnson was present in person, not by phone. Ms. Matasar will correct. No other comments on the minutes. On motion and second the committee unanimously approved the minutes edited to correct typos and make Karen Johnson present in person.
Second agenda item: Discussion on Personal Privacy Exceptions
Todd Albert, Deputy Public Records Advocate, presented an overview of the investigative report on privacy information related to government bodies' holding personal identifiable information (PII) Ginger McCall's team was asked to prepare in support of the Sunshine Committee's work. He concluded by stating the disclosure of PII proposes significant risks that should be closely considered by the committee as it proceeds. In light of the risks, other jurisdictions have taken a cautious approach to release of PII, particularly personal contact information. Many jurisdictions limit the disclosure of personal addresses, personal email addresses, personal phone numbers and other related PII. While some states draw distinctions between the privacy of government

employees and privacy of members of the public, the federal government does not. One possible path to balancing the privacy interests with the public interest and disclosure was to closely align with Georgia's approach, which states in part, "records and information disseminated pursuant to this paragraph may be used only by its authorized recipient and only for the authorized purpose."

Mr. **Fisher** asked if Ms. **McCall's** team ran into how states' or FOIA handled situations where an agency wasn't applying the public interest test appropriately. Mr. **Albert** stated they had not explored that area for their report. Ms. **McCall** added that there were robust review opportunities under federal FOIA if one is wrongfully denied information with the chance of recovering attorney fees if they prevail. Federal FOIA also has a lot of case law that Oregon doesn't to help direct agencies on how to handle FOIA requests. Mr. **Albert** added that states also varied. Some had no right to appeal where others did like Connecticut.

No further discussion was had on the report.

Third Agenda Item: Discussion on Recommendations on Personal Privacy Exemptions.

Ms. **Matasar** wanted to acknowledge receipt of comments from both committee members and the public that they consider tabling this recommendation for the future. She gave options on what the committee could discuss and opened the floor for discussion.

Ms. **Herkert** made the recommendation to table the discussion and gave her reason why. She did not feel they were to the point where they could make a recommendation moving forward. She would rather look at other exemptions to get a decent process and credibility in place before moving forward.

Ms. **Deckelmann** agreed and suggested a subcommittee to investigate the data and exemptions and parallelize the effort with more frequency. Mr. **Walth** agreed with Ms. **Herkert** and with Ms. **Deckelmann** on the creation of a subcommittee and explained his reasoning. Mr. **Fisher** also agreed to a subcommittee. Ms. **Eakins** didn't have a strong opinion one way or the other. She didn't necessarily think tabling the discussion would make it any easier the next time it is brought up and it may be that a subcommittee could strike a compromise, assuming the whole committee would accept it.

Ms. **Matasar** said sounded like the members were more open to the idea of a subcommittee than before when it was suggested. Ms. **Eakins** stated that if it helped advance their agenda, she would be in favor of it.

Ms. **Deckelmann** asked Ms. **Herkert** what exemptions she would recommend as being an alternate to the personal privacy exemptions. Ms. **Herkert** suggested looking at exemptions that are no longer needed or that are in direct conflict with the federal FOIA. Her biggest concern with personal privacy PII is that it is the most difficult of all other exemptions and the committee didn't have a good handle on how they wanted to deal with it. Mr. **Smith** thought a subcommittee that met more frequently would allow for more robust discussion, while the Sunshine Committee could move onto lower hanging fruit to get some momentum.

Ms. **Matasar** asked if they should consider a motion or vote on creating a subcommittee. Ms.

Deckelmann thought they should spend some time talking about the charter for the subcommittee. Mr. **Fisher** thought they should think about what the sidebars and mandate for the subcommittee would be and then entertain a motion on creating the subcommittee and its members.

Ms. **Matasar** opened the floor to the committee to discuss the subcommittee tasks. She stated they have the criteria, but it sounded like they needed more. Ms. **Eakins** agreed and opined that the ultimate role of the subcommittee would be to come up with a recommendation for the whole committee to vote on. As for the subcommittee's task, her thought was for them to first define PII and then discuss the benefits of disclosure for each item. The recommendation would be based on that discussion. She believed an approach could be taken that helps enable the press to do their jobs without necessarily giving away more information than necessary.

Ms. **Matasar** commented her understanding is the subcommittee would tackle the PII question while the main committee moved onto easier, less contentious group of exemptions. Ms. **Deckelmann** viewed it as parallelizing the efforts. She thought it would be interesting to also research the impact of the decision points the subcommittee may come up with and weigh out the different issues that occur with both electronic and paper records. She also wanted to talk with Mozilla's chief data officer to see if there was a better way to label and classify data and how that would play a part in the decision points.

Mr. **Fisher** had similar ideas. He didn't completely understand the implications of tightening up personal information in terms of how that would impact a journalist for example. Based on public testimony, even if they came up with a perfect interest balancing test, they would still have agencies who weren't applying it correctly. He felt they would need to include in the scope of the subcommittee a way to ensure compliance in a consistent manner. Mr. **Smith** disagreed that should be part of the scope and stated ensuring compliance would be more of an enforcement issue and effectuation of the law, rather than if the exemptions are appropriately needed, rebost, etc. He felt the subcommittee would need a clearer recommendation on what the laws would look like and from there take the next step of how to enforce compliance if the balancing test is not being interpreted correctly at a local level. Mr. **Fisher** didn't think they could have a conversation regarding of theory of a perfect balancing test unless they were also thinking of how to put it in practice.

Ms. **Eakins** asked if Mr. **Fisher** saw a difference in discussion of how PII would be handled from an enforcement perspective than just having a general discussion about enforcement of exemptions with PII being included in the discussion. Mr. **Fisher** stated he felt it was more relevant since the balancing test is especially important in this particular instance. However, maybe it needed to be thought about in a broader context.

Although Ms. **Eakins** saw Mr. **Fisher's** point why it might necessitate some separate enforcement conversation, she was inclined to agree with Mr. **Smith's** approach to have a general discussion about enforcement once they figure out what should be exempt and what shouldn't in all areas. She explained why. She would like to see enforcement as part of a larger conversation that looks at all possibilities. Mr. **Fisher** stated his concern was that his recommendation in terms of how they would want the public records laws to look like would be

different if the thought was agencies were going to try to circumvent the law as opposed to an assumption that they wouldn't.

Ms. **Eakins** stated that Mr. **Fisher** raised a good point. In the broader discussion, they tended to assume the conversation is in relation to the State of Oregon when it, in fact, included all governmental entities in Oregon and that needed to be part of the larger conversation. The recommendation should be what was best and workable for other forms of local government in addition to the State. The public interest balancing test was subjective and it was hard to draw a bright line in terms of how to define it.

Ms. **Deckelmann** believed defining what disclosure meant in this context and differentiating between the rules that apply to bulk data access and individual records would be helpful. Mr. **Fisher** asked if she could state what she meant by defining what public disclosure meant. Ms. **Deckelmann** stated that the public records advocate talked about different kinds of disclosures that came about through different means and there was an important difference between the two. She didn't think the law differentiated between someone in the media obtaining information to confirm data for a story versus someone obtaining information to share publically.

Mr. **Walth** believed that in order for the committee to make a recommendation it would need to make the case that the current law does not work. He believed there were feelings and opinions about changing it, but it was unclear what all those were. He thought the subcommittee needed to identify ways in which the law should be changed. What was currently not working? What could work better? What should be protected? He suggested the whole committee provide 5 or 6 questions the subcommittee needed to address to help focus them.

Mr. **Fisher** agreed and suggested defining different levels of PII disclosure based on certain characteristics. Ms. **Eakins** mentioned a house bill that sought to carve out an exemption in public records law for members of the media and the question was who is going to define media. She questioned those representing the media in the group if there was a credible way to define media. Would it be a fair compromise to say that if a request is coming from the media, it should be treated differently or would it be too problematic? Mr. **Smith** echoed Ms. **Eakins** comments in relation to the struggle to define media and felt they needed some kind of opinion from the journalism community to define exactly what a media member is if they are going to set up ways to articulate different levels of disclosure. Otherwise there is added ambiguity on public entities trying to discern who the requestor is.

Mr. **Fisher** mentioned that there was something in the public records advocate's report about a contract related to the use of the information in terms of what cannot be disclosed publically. It seemed to him that the uses would be a better way to define the different ways of disclosure as opposed to the entity doing the requesting. Ms. **Eakins** mentioned one jurisdiction that appealed to her where one would have to attest to the fact they were going to use the information for a particular purpose and are penalized if they do not. She explained that her clients needed bright lines and clarifying in what circumstances disclosure is allowed or not allowed would help them tremendously.

Ms. **Deckelmann** believed a large body of work had been done to classify the uses of data and

the subcommittee could further research that work, see what is out there in terms of licensing data, and what can be applied in this situation.

Ms. **Eakins** and Mr. **Smith** volunteered to be on the subcommittee.

Mr. **Walth** suggested the following questions for the subcommittee to answer that could be used to come up with specific proposals:

1. What are the particular and specific issues people have with the way the Oregon public records law works now with regard to public PII.
2. In what ways can we actually increase transparency by addressing these problems?
3. In what way can we address concerns about misuse of PII? In other words, to address all the other issues that have been brought up by everyone there.

Mr. **Walth** struggled with trying to understand the question they were trying to answer and thought input from members of the community would be beneficial. Ms. **Deckelmann** thought one question they were trying to answer was how the government could effectively manage the exemptions. Ms. **Herket** felt the first three questions Mr. **Walth** suggested got to the heart of what they were trying to do.

Ms. **Matasar** suggested two questions: what should never be exempt and what should always be exempt and explained her reasoning. Mr. **Fisher** thought it would be great to articulate public interest reasons for each piece of PII. Ms. **Herket** liked where Ms. **Matasar** was going but if one piece of information that was not exempt was combined with an exempt item, then together, it would make both exempt. She was concerned this would only put them back to a push pull situation again.

Ms. **Johnson** asked if there was a way for the recipient to question the identity, motive, and need of the requestor since the law currently finds these irrelevant. Mr. **Smith** didn't think there was a good answer to Ms. **Johnson's** question. He thought it would open another minefield for the public entities from unequal treatment and discrimination in that they would then have to dictate which type of classes of individuals have access to information and which don't.

Ms. **Deckelmann** stated it was a question of what one will do with the information and a very reasonable baseline was thinking in terms of potential selling bulk data transfer, for example. Mr. **Fisher** talked about a potential license stating what information could be used for versus what it won't. [Note: audio cut out while Ms. **Deckelmann** and Mr. **Smith** were talking].

Ms. **Eakins** liked Ms. **Deckelmann's** approach with the subcommittee. She thought a part of the conversation would again have to be enforcement options when one violates a potential agreement.

Ms. **Matasar** asked for any further comments. Mr. **Smith** commented that given the sheer volume of different exemptions that reference PII, a main charge for the subcommittee might be to find a way to consolidate them into something more readable. The committee agreed. Mr. **Fisher** suggested discussing the questions the subcommittee would tackle. Ms. **Deckelmann's**

suggested taking a break so the proposed questions could be typed out, followed by a discussion of them and vote on the subcommittee. The committee recessed for a break.

Ms. **Matasar** brought the committee back to order and read the proposed questions that Mr. **Fisher** typed up and that were emailed to the committee members during the break. Mr. **Walth** suggested ordering the questions in a way that first defined the issue and ranking them to give the subcommittee a path and explained how that could be accomplished. Ms. **Matasar** wondered if they needed to order the questions at that moment or if the subcommittee could reorganize them. Mr. **Walth** felt the subcommittee could, however, Mr. **Fisher** wanted the committee to organize the questions. Mr. **Walth** suggested simply saying that their mission was to first identify the questions to answer, the problems to address, and identify potential steps, remedies, and resolutions. He was fine with not ordering the questions but it needed to be clear that the mission was to identify the issues. Ms. **Herkert** agreed. Ms. **Deckelmann** recapped the order of the questions with input from Fisher.

Ms. **Eakins** motioned to create a subcommittee with the charge of reviewing the PII information specifically considering the questions that the committee has directed them to consider and coming to the Sunshine Committee with a recommendation. Seconded by Mr. **Fisher**.

Mr. **Walth** added a friendly amendment so it was clear that the subcommittee's charge was to identify PII and issues and specific concerns with the current law, to make a recommendation to the whole committee. Ms. **Herkert** made a motion to amend the original motion with Mr. **Walth's** amendment. Seconded by Ms. **Deckelmann**.

After motion and second, the Committee unanimously voted appoint a subcommittee.

Ms. **Matasar** stated she would name the members of the subcommittee who had earlier announced they would volunteer. Those members were: Ms. **Eakins**, Ms. **Deckelmann**, Mr. **Smith**, Mr. **Walth** and Mr. **Fisher**. Ms. **Johnson** volunteered as an alternate member. After motion and second, the Committee unanimously voted to appoint the named members to the subcommittee. After motion and second, the Committee unanimously voted to appoint Ms. **Deckelmann** as chair of the subcommittee.

Fourth Agenda Item: Future Business

Ms. **Matasar** asked if the committee wanted to move onto the next exemptions on the schedule, still within the personal exemption category, or move forward with easier exemptions. Ms. **Herkert** motioned to go off schedule and move away from personal exemptions. Ms. **Matasar** wanted to know what exemptions should be considered next. Ms. **Deckelmann** suggested looking at outdated exemptions. Ms. **Herkert** agreed.

Ms. **Matasar** suggested Chair **Kron** and Mr. **Foltz** propose some outdated exemptions that might make sense to group together and review next. Mr. **Foltz** stated he would discuss this with Chair **Kron** and Ms. **Matasar** stated the list should be circulated well in advance of the next meeting.

The next meeting will occur at the State Archives.

Adjournment

After motion and second, the Committee unanimously voted to adjourn.

DRAFT

Oregon Sunshine Committee Meeting Minutes
March 20, 2019

Location: Oregon State Archives Building, 800 Summer Street NE, Salem, OR 97301

Sunshine Committee Members
Oregon State Senator Brian Boquist (excused) Selena Deckelmann, Director of Engineering, Mozilla Firefox Eileen Eakins, Law Office of Eileen Eakins, LLC Charlie Fisher, OSPIRG State Director Mary Beth Herkert, Oregon State Archivist Karin Johnson, Independence City Recorder Michael Kron, Special Counsel, Oregon Department of Justice Emily Matasar, Government Accountability Attorney, Governor's Office Oregon State Representative Karin Power (excused) Oregon State Senator Floyd Prozanski (excused) Adrienne Roark, Vice-President and General Manager, KPTV Fox 12 (excused) Morgan Smith, Polk County Counsel Brent Walth, Journalism Professor, University of Oregon Oregon State Representative Carl Wilson (excused) Bennett Hall, Newspaper Publishers Association
Guests
Josie [Last Name?] Nick Budnick Cameron Miles, Legislative Counsel, Committee Assistant
Agenda
AUDIO STREAM 0:00:00-1:38:29
January Minutes
Chair Kron did not post or circulate draft minutes from the January 29, 2019 meeting and will need approval at the next meeting.
First agenda item: PII Subcommittee Recommendation
Chair Kron proposed to delay voting until the next meeting to give the public and the body an opportunity to review it further. He thanked all those on the subcommittee for the work they did and invited Ms. Decklemann to go over the recommendation.
Ms. Decklemann read through the bullet points of the recommendation. When forwarding the recommendation to the body, Chair Kron did not include the email from Ms. Decklemann . In the email, she had mentioned two subjects she wanted to refer back to the larger committee and he asked her to speak to those subjects.
The first subject was the administrative burden of fulfilling public records requests. A document was sent to Chair Kron with Ms. Eakin's comments in full. The second topic was special problems around bulk data.
Mr. Hall asked if the subcommittee's recommendation was to leave ORS 192.363 as is or that

the standard should protect PII of all individual public employees, not just those covered by ORS 192.363. Chair **Kron** thought there was another provision in the statute that applied broadly to employees. The standard was incorporated in ORS 192.355(3). Chair **Kron** felt legislative counsel could review the awkward wording of the statute. Mr. **Smith** explained the information ORS 192.355(3) applies to. Mr. **Hall** asked and Mr. **Smith** confirmed that current law applied the standard to all public employee personal information.

Mr. **Hall** expressed concern about information becoming more restrictive. Mr. **Fisher** said the recommendation was for the status quo to remain. The subcommittee agreed no additional exemptions would be created and any changes would increase access to PII. Mr. **Hall** gave an example of how the statute was restrictive, i.e. requiring the name of the individual whose information is sought.

Ms. **Decklemann** reiterated the need to discuss bulk data requests. In practice, information may be provided to avoid a separate request for a list of all employees. Mr. **Fisher** pointed out that the subcommittee intentionally put “individual” public employee so it was clear that it would apply to an individual rather than bulk data, which they wanted the whole committee to discuss separately.

Ms. **Decklemann** said an important issue they suggested was making the public interest balancing test apply to all exemptions, which is not currently the case.

Ms. **Herkert** asked if any consideration was given to eliminating all individual exemptions and creating one solely for PII. Ms. **Decklemann** answered that the committee felt it was beyond their scope to get into specifics as it would require PII to be defined and the legislature needed to create that definition. Ms. **Herkert** clarified that she was talking about making one statute for all PII and provided her reasoning. Chair **Kron** felt it would be impossible or extremely difficult with the subcommittee’s recommendation that they don’t expand the scope of the application of the exemptions.

Ms. **Herkert** spoke consolidation of the exemptions into as few statutes as possible. Ms. **Eakins** reiterated the subcommittee’s intent to have the legislature come up with a universal definition to include in 192 and then, as much as possible, direct PII into that one statute. Ms. **Herkert** didn’t feel the recommendation clearly reflected the intent of the subcommittee. Chair **Kron** suggested adding to the recommendation that the exemptions be consolidated to the extent possible.

Ms. **Decklemann** explained the subcommittee worked hard to avoid restricting access to information currently available. Ms. **Herkert** replied that their recommendation would be to just eliminate where there was duplication. Mr. **Fisher** worried that creating an overarching statute for all PII would make all PII conditionally exempt. Ms. **Herkert** was not advocating for that, but the statutes are currently worded similar but with different interest groups. She would ask the legislature look at those, consolidate them into ORS 192, and reduce them as much as possible. Ms. **Eakins** agreed the statutes should be consolidated where possible.

Ms. **Matasar** suggested a recommendation for when a request is not seeking PII but PII is included in the record. The recommendation would be that the PII, regardless of whom it

belongs, may be redacted. Chair **Kron** thought this might be a training issue rather than a statutory problem.

Mr. **Hall** mentioned that in previous meetings someone had talked electronic system that would flag PII to make it easier for entities to respond to requests and automatically redact PII. He thought maybe a check list where one can indicate whether or not they want PII. Ms.

Decklemann stated such systems are not currently common. However, a request template could ask whether requesters want PII. Chair **Kron** was unsure whether it would be wise to give people the suggestion that they may be able to obtain PII from the state, as some people with no real or legitimate need for the information may seek to take advantage of that. From his perspective, the current system works well and avoids inappropriately disclosing PII.

In Ms. **Matasar's** experience, state agencies do not feel like they can redact information legally without getting it wrong. Mr. **Hall** asked if there was an exemption in the law that talked about liability. Ms. **Matasar** stated once information is released, entities are not liable, but that was different.

Ms. **Matasar** stated that she didn't feel the recommendation considered consumer privacy concerns. Ms. **Decklemann** reiterated the desire to avoid restricting information currently available. Mr. **Fisher** added the biggest potential concern with consumer PII was bulk data requests and the subcommittee felt that issue required more discussion and needed to be part of another subcommittee.

There was further discussion between Mr. **Walth** and Ms. **Matasar** regarding protections around consumer PII and the subcommittee's charge. Ms. **Eakins** asked Ms. **Matasar** if it would help to have the legislature consider what, if any, additional protections needed to be considered for consumers specifically. Ms. **Matasar** thought so and thought it would fit in number 4 of the recommendation. Mr. **Fisher** pointed out Oregon's generic personal privacy exemption and opined that it should be sufficient to address consumer information concerns. He didn't think they should start recommending additional exemptions for other types of information unless it was to clarify what personal information was for the purpose of making it easier for agencies to discern what should or should not be released.

Ms. **Decklemann** added that ORS 192.377 included personal information the committee was discussing. Mr. **Smith** stated the statute was a little ambiguous in some ways and was in regards to information provided to the public body in confidence, but it didn't clarify the meaning of confidence. He thought having confidence defined would be helpful because the meaning varies depending on who is processing the request. Ms. **Decklemann** felt they could be clearer that they are recommending consolidation but organization of the chapter needs to be clearer. Chair **Kron** stated that 192.377 and in confidence exemption all involved public interest, which would be a specific place for them to recommend more clarity.

Second agenda item: Personal Financial Information Exemptions and Public Testimony

No public testimony.

Chair **Kron** did not provide notice to discuss these exemptions. He previewed that his main

recommendation would likely be consolidation and moving items to chapter 192. He stated they could discuss the exemptions at the next meeting and hopefully reach an agreement on them as well as the person privacy ones. Ms. **Deckmann** asked if their intent was to offer suggested text for consolidation. Chair **Kron** felt they needed to be clear with the legislature about the goals of the committee, but was reluctant to draft statutory language by committee, especially as legislative counsel wouldn't necessarily consider it anyhow. Ms. **Decklemann** clarified and Chair **Kron** agreed that the artifacts of each recommendationsuggestion were the text of the recommendation along with the list of relevant exemptions.

Ms. **Herkert** stated the committee should look at exemptions they would recommend getting rid of.

Chair **Kron** brought up a letter he received from the Society of Professional Journalist that identified 3 recommendations: legislative counsel input; subcommittees; and legislative reports. He invited Mr. **Budnick** to talk about his comments. Mr. **Budnick** spoke to the group.

Chair **Kron** asked Mr. **Miles** if he had any insight in terms of what the legislature is expecting in terms of the recommendation the committee is tasked with providing. Mr. **Miles** discussed the options the committee could take when providing their recommendations and what the legislature would potentially do with the information.

Chair **Kron** also asked for an update regarding the current legislature's activities and also about keeping the committee apprised of legislative activity. Mr. **Miles** felt with the frequency of the committee's meetings, keeping the committee apprised would be difficult to accomplish and explained why. Chair **Kron** stated that his reports were helpful for keeping the members apprised as well as the public. Mr. **Miles** agreed.

Mr. **Budnick** asked that Mr. **Miles** let members know of bills that may affect their work. Mr. **Hall** asked if there was a way to potentially vote on some sort of statement they could send back to the legislature on pending bills. Ms. **Decklemann** suggested creating a subcommittee whose role would be to look at current legislative business for the larger committee to convene on so a response memo can be drafted to the legislature.

To transition, Chair **Kron** moved on to the next agenda item.

Third Agenda Item: Subcommittees

Chair **Kron** talked about creating two additional subcommittees. A subcommittee for administrative burden and information design, and a standing committee to discuss current exemptions and provide recommendations. Mr. **Smith** and Mr. **Walth** agreed to create additional subcommittees. No members objected/

Ms. **Herkert** asked for and Chair **Kron** provided clarification on what the suggested subcommittees would do. Ms. **Decklemann** asked and Chair **Kron** agreed that he was intending for the bulk data to be part of the administrative subcommittee. Chair **Kron** stated another option was to do exemption review for the foreseeable future, but other topics keep arising.

Ms. **Herkert** felt it was too early to address the administrative topic and explained why. Mr. **Fisher** agreed with focusing on the current exemptions and creating a legislative subcommittee. Chair **Kron** stated if the goal was to provide input to the legislature, they would need a subcommittee, but if it was to be informed about what the legislature was doing, they could do without one. Ms. **Decklemann** explained why it would good to have a subcommittee and Ms. **Herkert** agreed.

Chair **Kron** asked if anyone objected to having the previous subcommittee be the standing subcommittee. Mr. **Fisher** would rather be on the legislative subcommittee. Ms. **Johnson** agreed to take Mr. **Fisher's** place for the standing committee.

Mr. **Hall** asked if they were considering as a subcommittee to deal with question of low hanging fruit. Ms. **Mataser** felt like someone needed to first identify the exemptions that qualified as low hanging fruit. Mr. **Hall** agreed. Ms. **Herkert** would be willing to identify the exemptions with some help. Ms. **Eakins** felt it could be a short term subcommittee to identify them. Ms. **Herkert**, Mr. **Hall**, and Chair **Kron** volunteered for this subcommittee. Ms. **Herkert** would chair the subcommittee.

Mr. **Fisher**, Mr. **Walth**, and Ms. **Mataser** volunteered for legislative subcommittee. Mr. **Fisher** would chair the subcommittee. There was further discussion regarding the bills being considered that have a current impact on the committee and how to deal with them.

Ms. **Eakins** clarified that the standing committee's role was to essentially do the same thing with other categories of exemptions that they did with PII: analyze them, address any public policy issues, and make recommendations. It was agreed that the standing committee would be used only when needed.

After motion and second, the Committee unanimously voted to form subcommittees on certain issues at the request of the Chair of the full committee and that the subcommittee should have a chair who will have the authority to call meetings in order to complete their work and create an agenda.

After motion and second, the Committee unanimously voted to create a standing subcommittee made up of the same members for the PII subcommittee to review identified important exemptions.

After motion and second, the Committee unanimously voted to create a subcommittee on legislative activity comprised of Mr. **Walth**, Ms. **Mataser**, and Mr. **Fisher** as the chair.

After motion and second, the Committee unanimously voted to create a subcommittee to be named later to identify unnecessary or redundant exemptions and where to consolidate them comprised of Mr. **Hall**, Chair **Kron**, and Ms. **Herkert** as the chair.

Fourth Agenda Item: Future Business

The next meeting will take place in Independence.

Adjournment

After motion and second, the Committee unanimously voted to adjourn.

DRAFT

Oregon Sunshine Committee Meeting Minutes
May 15, 2019

Location: Independence Civic Center, 555 South Main Street, Independence, OR 97351

Sunshine Committee Members
Oregon State Senator Brian Boquist (not present) Selena Deckelmann, Director of Engineering, Mozilla Firefox (not present) Eileen Eakins, Law Office of Eileen Eakins, LLC Charlie Fisher, OSPIRG State Director Mary Beth Herkert, Oregon State Archivist (by phone) Karin Johnson, Independence City Recorder Michael Kron, Special Counsel, Oregon Department of Justice Emily Matasar, Government Accountability Attorney, Governor's Office Oregon State Representative Karin Power (not present) Oregon State Senator Floyd Prozanski (not present) Adrienne Roark, Vice-President and General Manager, KPTV Fox 12 (by phone) Morgan Smith, Polk County Counsel Brent Walth, Journalism Professor, University of Oregon (by phone) Oregon State Representative Carl Wilson (not present) Bennett Hall, Newspaper Publishers Association
Guests
Josie Turner (by phone) Boaz Dillon, Freedom Foundation (by phone) Andy Foltz, DOJ Cameron Miles, Legislative Counsel Ginger McCall, Public Records Advocate Steve Suo (by phone)
Agenda
AUDIO STREAM 0:00:00-1:23:39
Welcome and Introductions
First agenda item: Approval of Draft Minutes: January and March After motion and second, the Committee unanimously voted to approve the minutes for January and March.
Second Agenda Item: Subcommittee Reports Mr. Fisher announced the change of his subcommittee's name to the Legislation Review Subcommittee and explained the reasons for the change. The subcommittee felt comfortable recommending guidance to the legislature based on the assumption that the Sunshine Committee would adopt the PII recommendations in their existing form. This limited the bills they could discuss. They also limited the discussion to moving bills implicating PII. He described HB 2016 and HB 2331 and offered the subcommittee's recommendations. Chair Kron brought up the subcommittee's recommendation that the legislature consider Sunshine Committee's work before adopting new exemptions. He thought it would be helpful to discuss whether they wanted the legislative review subcommittee to advise the full committee of

other issues with legislation in the future. Particularly in light of the subcommittee's intent to adopt guiding principles and to provide a recommendation to the legislature that creating punitive penalties for disclosure of public records would be problematic. He asked Mr. **Fisher** if those were the kinds of matters the Sunshine Committee could expect his subcommittee to look for. Mr. **Fisher** felt the ideal scenario would be for the subcommittee to review bills before the legislation session began so recommendations could be provided before momentum gathered. In a perfect scenario, they would be consulted as the bills affecting public records were being drafted. The subcommittee also briefly discussed ways to make the review process better such as standardizing the way government impact statements are written so it can be easily interpreted where the bill was in the process. Chair **Kron** thought the idea of having the Sunshine Committee consulted prior to the adoption of new exemptions could be a recommendation to the legislature.

Mr. **Fisher** suggested creating a subcommittee in the interim to develop a recommendation to the legislature regarding bulk data requests for use in future legislative discussion on how they should be handled. Chair **Kron** stated they could revisit the topic later in the meeting and opened the floor to discussion regarding the current recommendation.

Ms. **Matasar** pointed out the second bill (HB 2331) was wrong in the recommendation and it was actually HB 2051, which already passed and therefore was moot.

Mr. **Fisher** believed there was also an amendment posted on HB 2016 removing the sections they recommended removing and felt it would be helpful to formally adopt the recommendation and provide the recommendation to the legislature. Chair **Kron** suggested tabling the recommendation until the other subcommittees presented their recommendations.

Ms. **Herkert** provided an update on her subcommittee. They decided to split the exemptions from the electronic exemption catalog so each member had 204 exemptions to review and report back on to the subcommittee for final discussion with the full committee.

Ms. **Eakin's** standing subcommittee did not meet. She did suggest the larger committee discuss whether her subcommittee should be tasked with the bulk data question.

Third agenda item: Standing (PII) Subcommittee's Recommendation

Chair **Kron** separated the recommendation into two parts and made the discussed changes from the last meeting. Some of the recommendations were very specific to particular exemptions while a handful were more general in nature. He suggested either adopting the general recommendations or continue work on them as a working document to present to the legislative subcommittee as a broader, general recommendation document. He tried to make it clear in the recommendation that the exemptions be consolidated where possible and moved, to the extent they can, to Chapter 192. He also listed the exemptions to clearly provide the scope of the recommendation to the legislature.

Ms. **Matasar** felt in light of their conversation regarding the recommendation against punitive measures, it would helpful to discuss other general legislative recommendations.

Mr. **Fisher** felt Ms. **Matasar** made a good point, but thought the existing general recommendations were good as written. Chair **Kron** suggested adopting the recommendation specific to PII, adopting the general principals as currently articulated, and to treat the general recommendations as an ongoing project.

After motion and second, the Committee unanimously voted to approve the PII specific recommendations.

After motion and second, the Committee unanimously voted to approve the general recommendations with the understanding that it was a living document to be amended periodically.

It was agreed that Chair **Kron** would work on the recommendation related to the committee being more involved in the legislative process or as a stopping place for those who attempt to get new exemptions enacted by the legislature for future approval by the committee.

The committee went back to address Mr. **Fisher's** subcommittee's recommendation.

Mr. **Fisher** re-summarized the recommendations. On the discussion of the legislature not adding more exemptions until the committee has completed their charge, Mr. **Smith** stated there should be an exception if there was an emergent need for an exemption. Chair **Kron** suggested and it was agreed that they would add to the end of the paragraph addressing this, "unless absolutely necessary."

Mr. **Fisher** described what HB 2016 pertained to. Particularly, his subcommittee did not like the proposed punitive action; it expanded the definition of personal information; and it contradicted the idea of adding a public interest balancing test to all PII release. Their recommendation was to remove those pieces. There was discussion regarding the amendments to the bill that seemed to remove the issues. Mr. **Fisher** suggested endorsing the amendment or adopting it with their recommendations.

Ms. **Matasar** explained that she would abstain from the vote.

Chair **Kron** asked if they were striking the part of the recommendation about HB 2051. After some discussion, it was agreed that part would be stricken.

After motion and second, the Committee unanimously voted to strike 2b from the overview and the discussion, to add "unless absolutely necessary" to the end of the paragraph in the discussion of section 1, and to adopt the recommendation.

Third Agenda Item: Recommendation Regarding Tax and Other Personal Financial Exemptions

Chair **Kron** drafted a brief recommendation with respect to the tax and other personal financial exemptions reviewed. He described the types of exemptions in the group and gave a summary of his recommendation.

Mr. **Fisher** had questions regarding disclosure of tax returns. There was discussion about

information automatically exempt, information available to requestors, federal laws vs. state laws, and whether or not an interest balancing should be applied. Mr. **Fisher** felt there should be very few circumstances where a record was unattainable even when in the public interest. Chair **Kron** was concerned that by adding that there should be some level of public interest access for all public records, particularly in relation to tax returns, it would become necessary to litigate the public interest every single time, for little apparent benefit. Mr. **Fisher** thought that was a valid point.

After motion and second, the Committee unanimously voted to adopt the recommendation.

It was agreed that the standing subcommittee would meet to discuss the bulk data requests. Chair **Kron** suggested some stakeholders that would be interested in attending the meeting.

Steve Suo expressed his agreement with the subcommittee addressing bulk data requests.

After motion and second, the Committee unanimously voted the standing subcommittee to discuss bulk data requests.

Fourth Agenda Item: Future Business

Discussion of miscellaneous exemptions.

Chair **Kron's** shared his plan of forwarding the two adopted recommendations to the Subcommittee of the Legislative Counsel Committee with a brief memorandum.

Adjournment

After motion and second, the Committee unanimously voted to adjourn.

Oregon Sunshine Committee Meeting Minutes
July 17, 2019

Location: Mozilla, Portland Commons

Sunshine Committee Members
<p>Oregon State Senator Brian Boquist (excused) Selena Deckelmann, Director of Engineering, Mozilla Firefox (present) Eileen Eakins, Law Office of Eileen Eakins, LLC (present) Charlie Fisher, OSPIRG State Director (present) Mary Beth Herkert, Oregon State Archivist (via phone) Karin Johnson, Independence City Recorder (via phone) Michael Kron, Special Counsel, Oregon Department of Justice (present) Emily Matasar, Government Accountability Attorney, Governor’s Office (present) Oregon State Representative Karin Power (excused) Oregon State Senator Floyd Prozanski (excused) Adrienne Roark, Vice-President and General Manager, KPTV Fox 12 (excused) Morgan Smith, Polk County Counsel (via phone) Brent Walth, Journalism Professor, University of Oregon (present) Oregon State Representative Carl Wilson (excused) Bennett Hall, Newspaper Publishers Association (excused)</p>
Guests
<p>Cameron Miles, Legislative Counsel, Committee Assistant Ginger McCall, Oregon Public Records Advocate (via telephone)</p>
Agenda
AUDIO STREAM 0:4:58-47:53
Break at 12:10 – 18:48 (to fix audio)
<p>Welcome and Introductions</p> <p>Introductions were made including the members attending by phone, and audience members. Chair Kron did not post or circulate draft minutes from the May, 2019 meeting and will need approval at the next meeting.</p>
<p>First agenda item: Reports from Chairs on Subcommittees</p> <p>Charlie Fisher: Subcommittee will be meeting later this Summer. Agenda for that meeting: How to make the review of legislation related to Public Records changes easier.</p> <p>Eileen Eakins: Subcommittee met June 12, 2019 at her office. Andy Foltz, Karin Johnson (City of Independence), Morgan Smith (Polk County) and Selena Deckelmann (via phone). Guests: Steve Swuell (sp?), from The Oregonian, Boaz Dillon, from the Freedom Foundation (via phone) and Nick Budnick (via phone). Discussed analysis of bulk data requests. Recommendation of storage or record maintenance and how large data requests are processed. Possible implementation of data transfer/limited use agreements.</p> <p>Mary Beth Herkert subcommittee will meet in early August. Will compile everyone’s input and discuss at next meeting.</p>
<p>Third Agenda Item: Testimony on Family Information Exemptions</p>

No witnesses offered testimony.

Fourth Agenda Item: Future Business

Next meeting tentatively scheduled next meeting for September 25, 2019, Salem

Adjournment

After motion and second, the Committee unanimously voted to adjourn.

DRAFT

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 14th 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

November 4, 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 (by phone)
Morgan Smith, Polk County Counsel
Bennett Hall, Newspaper Publishers Association
Charlie Fisher, OSPIRG State Director
Eileen Eakins, Law Office of Eileen Eakins, LLC
Kim Thatcher, PRAC non-voting member / member of Sunshine Committee? – *Chair Kron asked Mr. Foltz to update website for this*

Guests

Nick Budnick, SBJ
Andy Foltz, Public Records Counsel, Department of Justice
Cameron Miles, Office of Legislative Counsel
Adrienne Roark, Vice-President, and General Manager KPTV Fox 12
(by phone)
Alexia (**last name unknown**) Chief of Staff for Representative Karrin Power (by phone)
Steve Suo, The Oregonian
Courtney Graham, SEIU Local 503
Scott Winkles, League of Oregon Cities

Agenda

AUDIO STREAM 0:00 to 02:41:00

Chair Kron introduces Committee and agenda items.

Agenda Item #1 - Records Advocate Independence Proposal/ approved by PRAC

Chair Kron: Council approved proposed Legislative language in hopes to create more independence for the PR Advocate. PRAC is responsible to appoint or terminate (for cause) the advocate. The Advocate is no longer required to be chair, but it's not forbidden, Council can choose its own chair. There is now a provision that specifies Council can support or oppose Legislation relating to Public Records Law and can request one or more Legislators to introduce Legislation. The language was posted on website, which was approved by the PRAC, with one dissenting vote.

Suggestions were made to Ginger McCall about a Statutory Amendment, which was circulated to the group and pros/cons were discussed. **Mr. Fisher** asked about the beginning to end process. **Chair Kron** responded in that, its intention is being played out. *Some audience discussion took place in which was hard to hear.* **Mr. Suo** mentioned finding a funding source that is more stable and less political.

Mr. Smith shared the Advisor would still be on the board, of the body that oversees their work, which is awkward. **Chair Kron** shared Rob suggested changing the provision that makes the advocate the chair.

Mr. Fisher questions whether the Sunshine Committee should endorse this since the work aligns with the Committee. **Chair Kron** already voted for it. **Ms. Herkert** is in favor of the independence of PR Advocate, believes its awkward the Advocate oversees the board. **Mr. Hall** endorses independent PR Advocate.

Mr. Budnick mentions other Legislative ideas out there. Senator Hass has Legislation out there on this which is slightly different than what was presented by PRAC.

Meeting Attendee Introductions Made (forgot to open with this).

Agenda Item #2 - Recommendation on Bulk Data Request – Ms. Eakins’ Subcommittee

Ms. Eakins: Bulk records requests are a new phenomenon. Need a definition of “Bulk Data” there was one provided in HB 3361 (2017). However, one in ORS 192 would be appropriate. There are specific privacy concerns with data requests for PII (the type that generates the most interest). Recommendations have been made specific to PII, but these would include bulk data, which may or may not include PII.

A lot of bulk data disclosure can be addressed by different storage methods. One recommendation is that Legislature consider modifications to OR’s Public Contracting Code to establish transparency by design. So that when public entities go to purchase data storage technology, it’s with the understanding the goal will be to make it easier to redact and reply to requests.

Need Legislative guidance on publicly accessible bulk data. It’s possible to run into problems with trade secrets because data dictionaries and algorithms that go into setting up the system can be considered propriety, which can be problematic to the government, in terms of disclosure.

Suggested to create a pre-certifying option (compared to a “TSA Precheck”) for public entities, those authorized, have been approved by Government in a manner they know they can disclose without any issues. Those not named on the list would have to go through the formal request process, which would include redactions as any other request would.

Also, could set up a website so information that is not subject to disclosure, can be easily obtained, and not have to go through a public records request. If there is going to be a mandate for electronic data storage changing, just having the understanding that some local governments won’t have the funds to make those changes well. There should be some sort of “out” or need-based assistance available for support.

Perhaps, a bulk data transfer agreement – where the party requesting the data agrees not to use it for improper purposes. It should include a private right of action, so that if someone is harmed, the issues are between the requester and not the government.

Chair Kron reads email from Selena Decklemen, “I feel I got my substantive comments in, but I’m primarily concerned about ensuring that algorithmic transparency is part of the recommendation. In addition to the data dictionary, where it concerns the creation of data that impacts citizens’ access to government services”. **Chair Kron** provides an example: an applicant applying for a DHS program through a third-party system. This system collects analysis of data that the state has about the person that results in a computed value, that then lives in a field of database. **Ms. Decklemen’s** point means the public should have access to the data dictionary and the data inputted into the system to determine eligibility. **Ms. Herkert** recommends making just a summary available, instead of the algorithm because it is such a complex issue. **Ms. Eakins** confirms this item is on the subcommittee’s recommendations. **Mr. Smith** states these comments stemmed from the trade secret conversation that took place in the subcommittee. To the extent you have a data contractor who develops a database for you, if that database or software includes creating new figures based on inputted data. Ms. Decklemen would like to have that algorithm disclosed publicly. As opposed to most public contractors who are going to consider that propriety and usually don’t consent to giving up their intellectual property rights.

Agenda Item #3 – Public Comments

Mr. Steve Suo:

Shares story about OHA declining/removing people for Medicaid eligibility for psychiatric services based on judgements made by its contractor. The contractor had a 20-30 question list that determined eligibility, that questionnaire was considered propriety. It was questioned if the basis in which this work was being conducted was appropriate and if it created any harm for OHA participants.

Feedback from subcommittee’s meeting: he likes the transparency by design and believes it’s strong to have the Sunshine Committees support behind this and believes it will help cost of disclosure and security of PII.

Encourages committee to urge easy custom export of bulk data without specialized programming by public. One core item of transparency by design that City of Portland and other agencies have been encouraged to adopt. City of Portland did recently for Police.

Discusses and reads ORS 192.363(2) “the party seeking disclosure shall show by clear and convincing evidence that the public interest requires disclosure in a particular instance”. He doesn’t feel this makes sense in bulk data request and it would be difficult for the requestor to meet these needs. He recommends changing to, “the party seeking disclosure shall show by clear and convincing evidence that disclosure serves the public interest”. He believes this is a lower bar.

Mentions SEIU requested changes regarding ORS 192.363 – personally identified information can be requested and disclosed by a public body. Requester must list names of individuals whose PII has been requested. Forces requester to make two requests: 1) a list of all employees

of State of Oregon 2) submit a list of names who they want information for. Does not believe this supports privacy.

The used to proprietary software by the public bodies should not be used to impinge the public's right to inspect public records, which would include data dictionaries.

Mr. Fisher understands the bulk data transfer agreement to not change status quo, since currently they need to satisfy the public interest. He questions whether this is a current issue or if he foresees this being an issue down the road. **Mr. Suo** responded in that he has not had a denial on these grounds but believes that this statute will become a bigger part of the process since there is a focus on bulk data and if Legislature adopts data transfer agreements, this statute will become the main channel.

Mr. Suo recommends for 3(a) regarding data transfer template – it just refers to “data” right now and should explicitly say “PII” or “bulk data PII”. Additionally, adding a proposal of easy custom export of data.

Chair Kron states that ORS 192.363 pertains employees, but there are similar provisions for contracted employees providing healthcare and childcare. **Mr. Suo** confirms this is the area of his concern.

Mr. Nick Budnick

Applauds subcommittee's work to plow through this topic. Nothing in bulk data transfer agreement should impede public interest access to bulk data PII. Calls on Sunshine Committee to provide guidance to legislature, following the testimony that was given from Rob Davis, Oregonian, Tony Shick, OPB, Rachel Alexander and other folks who discussed how society benefits from public interest access last October.

Recommends adding a line in 3a “since its inception the OR Sunshine Committee has heard compelling testimony that public interest access is vital to our society, nothing in the data transfer agreement template should impede public interest access, to the information such as is currently provided for under existing law”. He believes something like this would align with SPJ's intention to avoid

He is concerned that a data transfer agreement could contain language that detours public interest access. When this concept was first broached, the concept was to balance privacy and transparency. “This language could go to Legislature without a very explicit statement that we should not restrict public interest bulk data. There's a loophole where things could go array”. Clarify bulk data transfer agreement is not intended/cannot impede public interest access to data that exists under current law.

Mr. Smith: bulk data transfer agreement outlines what you will be using the data for, which could be much less of an invasion of privacy for the individual employee, which would tip the scale for public interest test directly in your favor. That works to only assist you in the public interest balancing test for the public's interest right to have information compared to the individual's information that they have a right to privacy within that information. Without an agreement, you'd still have the access under the law, but it would be less of an invasion of

privacy for the individual. **Mr. Budnick** responded to this example by stating there are assumptions in how a situation would be played out, and without having terms in writing, there are loopholes.

Chair Kron shares about a letter from SEIU (posted on website) submitted 10/20/19, by Jared Franz, staff attorney that asks committee to consider some amendments to ORS 192.363 statute. He invited Courtney Graham to speak on behalf of SEIU regarding comments made.

Ms. Courtney Graham: Overall directive from Governor's office for Sunshine committee is to find balance between privacy and transparency.

- Proposed to committee a handful of suggestions for public interest test (ORS 192.363).to clarify that representatives of individuals must be notified within a proposed 48-hr time frame, since response time for state or local government is seven days. Specific concerns in Notice Requirements (3) *she reads from statute.*
- Proper notice is not being given consistently across state agencies. Notice has only been provided recently to individuals whose information is being requested. This isn't in compliance with the statute, it is to adhere to a contractual change the union made in bargaining with the State of Oregon.
- SEIU supports **Mr. Fisher's** recommendation that the information that is disclosed can only be used for the purpose for which it was requested.
- SEIU has concerns with transparency by design – and not relying on the database that protects information / ensuring there is some human intervention at some point. To maintain privacy.
- If there is interest in expanding criteria to be considered when PII is applied, SEIU encourages preservation of individual privacy and safety.
- SEIU generally supports having some right of action. But there is some general concern about what would constitute a misuse of data, what level of specificity would need to be included in a complaint for a private right of action, criteria for pre-certification needs to be much clearer.
- Asks to consider amendments to ORS 192.363 statute
- Comments on recommendations from subcommittee

Chair Kron replies in response to SEIU recommendation about PII including privacy and safety.

He describes the AG's office applies exemptions and analyzes two sides: 1) what interests are in that exemption and what is it trying to protect? 2) what are the public interests and disclosure of this information? He asks if the recommendation if spelling out in statute what the interests are that public bodies should be considering as reasons, they might preclude the information may not be disclosed to go alongside the public interest and disclosure arguments? The interests that favor non-disclosure can be public or private interests.

Ms. Graham responds in speculation (since she didn't write this letter) outlines a value statement in statute whether you put it in statute or forward it along to legislatures with recommendations. Making it explicit that the other side of the scale is privacy or safety.

Ms. Eakins shares a discussion in the standing subcommittee, the last recommendations made were specific to PII and asking legislature to clarify considerations for public interest balancing test. So that the recommendations become a checklist for public interest. If you have a bulk transfer Agreement, then the public doesn't have to consider any of the above. But they should be weighed together.

Chair Kron believes the recommendations coming from the subcommittee is responsive to the Governor's letter. He questions if the Committee needs to focus on the larger issue of "potential public records legislation related to requests bulk data containing personally identifiable information" not specific to one statute. Wonders if we should table discussions surrounding 192.363 to address the Governor's general question.

Mr. Hall questions what would constitute authorized/unauthorized uses of data? Why did Subcommittee feel it was necessary to specify the law should include a private right of action? **Mr. Smith:** if we are holding onto private information that gets potentially misused by a third party, it shouldn't be a risk of the public entity, the consequences should be on the requestor of the data. **Ms. Herkert** questions what happens with that data when they are done? If someone is hacked, how does that work? Is there a requirement that you return the information? Goes back to Mr. Budnick's question of does it lessen transparency v. increase it. Some of the previous laws in place around this were created before the more recent technology developments.

Ms. Eakins suggests it will be the responsibility of the requester and to enforce that if anything goes array, no liability for agency. Statutory protections are there, and if the committee is going to make an agreement, there should be language in there surrounding indemnifications and liability. That way there is no gray area of whether the statue or agreement is to uphold in conflicts. **Mr. Fisher** states the information that is being requested is not entirely confidential.

Chair Kron says there are laws that require if you're acquiring data, you must use reasonable measures to protect it. Committee should consider that into the agreement. He wonders about penalties in the agreement. You can choose not to sign the agreement, if you take the short cut, you agree to the purposes of use. **Mr. Hall** says there may be people that interpret the message as, if you don't sign the agreement, you're not going to get the data. Emphasis that signing an agreement would always be optional and is not intended to impede on access to public records. **Mr. Fisher** recommends keeping the recommendation as is, relying on other state/federal statutes for that protection. **Ms. Herkert:** SB 481 (2017) then reads bill and finishes by stating this is an example of law that needs to be updated.

Mr. Hall has concerns of private right of action and does not feel he is ready to make an informed vote today. **Ms. Herkert** agrees with the recommendation but believes there are still some gray areas. **Mr. Smith** agrees with recommendation. **Ms. Eakins** agrees but to add clarifying language. **Mr. Fisher** feels like they are close, incorporate changes, but more time.

Chair Kron shared that Selena, Morgan, Eileen, and Bennett's are members whose terms are up at end of year.

Chair Kron summarizes recommendations made. Mr. Suo's were to add requirement that easy custom export of data should be feature of transparency by design. **Chair Kron** agrees to add this as a separate bullet under section two of this recommendation. In section three, regarding releasing bulk PII, repeat qualifier PII when discussing bulk data.

Mr. Budnick's proposed adding to paragraph regarding bulk data transfer agreements – those terms cannot impede public record access. **Chair Kron** believes that would be easy to add, and important to disclose that existing avenue would not be closed off to access data. This is an alternative. Any penalties can be enforceable against requestor and not public entity.

SEIU suggested four recommendations: failing to review information before it's disclosed puts individuals at risk. Chair Kron believes it could make sense to acknowledge that technological solutions alone are not a good practice, but technology practices could be improved. To the extent, we are talking about public interest served by disclosure, also talk about counter-vailing interest that these exemptions are designed to protect. Misuse of data, be spelled out. Recommend to legislature to identify permissible uses, and any penalties would apply to impermissible uses. Clear and rigid requirements to TSA precheck method. Create a single decision maker to ensure consistently.

Mr. Miles: Deadline for members to request bills for short session to be pre-filed is November 22nd. Doesn't recall final deadline. They are in the middle of compilation and haven't completed 2019 ORS. No drafting of legislative and none will start until about December/January.

Reports from other Subcommittee Chairs

Mr. Fisher's subcommittee has not met.

Chair Kron, Ms. Herkert and Mr. Hall's Subcommittee:

Ms. Herkert: split exemptions three ways. Each of them had about 200 to review. What could be eliminated or combined with something else? She will compile exemptions that she believes we can do away with. Revised lists were going to be sent to Mr. Foltz afterward.

Adjournment

November 25, 2019

**Location: Oregon State Capitol, Hearing Rm 343, 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
Bennett Hall, Newspaper Publishers Association
Charlie Fisher, OSPIRG State Director
Karin Johnson, Independence City Recorder (by phone)
Brent Walth, Journalism Professor, University of Oregon (by phone)
Selena Deckelmann, Director of Engineering, Mozilla Firefox (by phone)

Guests

Nick Budnick, SBJ
Cameron Miles, Office of Legislative Counsel
Karin Power, State Representative (by phone)

Agenda

AUDIO STREAM 0:00:00-01:30:00

Welcome and Introductions

Chair Kron opens with sharing about an email from 10:20am regarding feedback from Oregon Newspapers Publication Association (ONPA) and Society of Professional Journalists (SPJ) in which he forwarded to members. A second email came in with additional feedback at 1:26pm and was forwarded to any members missing.

Chair Kron expresses interest in leaving Sunshine Committee.

Agenda Item #1 - Consideration of Revised Proposal

Consideration of Revised Proposal report for Legislature regarding bulk data. **Chair Kron** posted two weeks ago. SPJ was unfavorable and OMPA's letter was brief and unclear of concerns.

Chair Kron opens for discussion among members of proposal and next steps.

Mr. Fisher shares about a discussion in subcommittee – where additional language is added into request to encourage clarity. This would require the requestor to make a contractual agreement that limits use of info, which may lead agency to then be more willing to release information and by adding security there could be recourse for inappropriate action of data. Balancing test could be more on the side of disclosure, because of harm associated with releasing that information would be minimized. He proposes language in Section 3a: in first sentence after “comments”

“Whereby the requestor agrees to use bulk data in a manner consistent with the public interest reason stated in the request”.

Ms. Herkert expresses there is a lot of liability that comes with releasing this type of information and the stronger the agreement is better to prevent any complications down the road.

Chair Kron questions whether **Mr. Fisher's** suggestion make sense or if agreement should specify purposes that are permissible. Should there be an "express lane" option where individual types of requests are grouped and processed in the same manner OR should agreement address collateral downsides of disclosure, that makes public interest easier to assess? **Ms. Herkert** suggests that both models work.

Ms. Matasar explains it may be easier to identify unauthorized uses of bulk data transfers. She questions the purpose of the not fast-tracked option.

Section 3 revised after parenthetical and end with,

"By facilitating easier and more consistent balancing of interest to see what conditional exemption applies"

"Providing a standardized data transfer agreement template, whereby the requestor agrees to use the PII data in a manner consistent with public interest purposes identified either in the request or by the legislature in the agreement template. The template may also specify unauthorized uses of data. Obtained under such commercial solicitation, transfer, or sale of data, and/or harassment. Requestors would also take reasonable steps to prevent authorized use by others. Penalties on public bodies for violations of agreement by requestors nor tasked with enforcement is unobjected too. Any penalties should be imposed on requestors who violate the agreement"

Chair Kron asked for a motion on both amendments and tabs were kept:

Ms. Johnson, Mr. Walth, Ms. Deckelmann, Ms. Herkert, Mr. Fisher, Ms. Matasar, Chair Kron voted for amendments.

Mr. Hall, Nay

Chair Kron to revise proposals and email on memo format to former legislatures on PRS committee and ex-officio members and governor.

Agenda Item #4 – Future Business

Discuss family law exemptions at next meeting. **Chair Kron** was going to check in with other attorneys on this matter. May or may not have further input on exemptions at next meeting.

Legislative session begins in January – work to avoid 13th-15th for subcommittee meeting.

Mr. Fisher believes the bills will be posted on January 17th and his subcommittee will begin reviewing then.

Adjournment

January 29, 2020

**Location: Oregon State Capitol, Hearing Rm 343, 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 (by phone)
Bennett Hall, Newspaper Publishers Association
Charlie Fisher, OSPIRG State Director
Morgan Smith, Polk County Counsel
Brent Walth, Journalism Professor, University of Oregon (by phone)

Guests

Andy Foltz, Public Records Counsel, Department of Justice
Cameron Miles, Office of Legislative Counsel
Leslie _____ (last name and organization?)
Todd Albert (Deputy Public Records Advocate)
Kaylee (spelling?) Klein, Attorney General's Office, Department of Justice

Agenda

AUDIO STREAM 0:00:00-01:19:43

Welcome and Introductions

Agenda Item #1 - Family Law Exemptions

Chair Kron solicited input surrounding this topic from the list of stakeholders that was generated in a previous meeting. However, to date, there's been a lack of stakeholder input. **Chair Kron** reiterates how the Committee was on the verge of a recommendation that would have mirrored some other exemptions, in that, there is not a compelling reason to change law; except it would be more efficient if exemptions were clearer, kept in the Public Records Law, and if redundancies could be eliminated/combined.

Mr. Hall expresses frustration with the way the public records interest test is interpreted by people who are custodians of records. He wonders if they need guidance from AG on how conditional exemptions should be weighed in the request of disclosure. Provides an example of a recent public records request to the medical examiner's office seeking a report from the death of county employee who was killed on the job, decedent has no privacy, and request was denied. Encourages reviewing how the public interest test plays out in the real world.

Chair Kron states that due to a lack of public participation, he has curiosity in refining the mission statement of the Sunshine Committee, questions what could be recommended to the legislature, that will help committee members stay engaged to provide good policy. **Chair Kron** inquired to policy team in AG's office about outreach to Stakeholders and ways to encourage involvement and was unsuccessful in obtaining substantive recommendations.

Chair Kron explains familiarity with complaints surrounding the public interest test: where one side says it's interpreted too narrowly, and the Government side is unclear on how it's supposed to work / doesn't necessarily support the discretion this authorizes.

Mr. Fisher says public interest test should be expanded to include more exemptions but doesn't feel it should be revised for every kind of exemption. **Chair Kron** explains this could increase volume of public comments for AG's office / transactional costs, as the resolver of these issues.

Mr. Fisher encourages some conditional exemptions within the exemptions because some topics are out of his area of expertise. Finds it difficult to make recommendations based on this and without any support from stakeholders.

Chair Kron states that attaching a public interest blanket test, could create difficulty, and he's not sure if he would support that. **Mr. Hall** expresses he would support that because it's hard to predict every scenario.

Mr. Fisher shares personal comments made on: ORS 25.2609(2) – Confidentiality of Records in Child Support Program

1. Doesn't know what goes into exceptions in this area of law.
2. Potentially should be access to redacted bulk child support record. Could be public interest in some circumstances.
3. Are there cities, counties, state agencies, more vulnerable than others?

Chair Kron to contact Child Support Division to discuss what data is available and Federal constraints that come into play, especially for confidentiality requirements.

Mr. Foltz shares he needs to review the statute for exceptions to see if this statute or another statute covers the bulk automated data.

Chair Kron to draft up written recommendations on family law exemptions to vote on at next meeting. Including, adding two specific recommendations: 1) Child Support – disidentified data should be available; 2) DHS Statute should be re-visited

Chair Kron: ORS 418.250 – gives broad authority to collect information and make it completely off-limits. How are they using this authority and what kind of worms would be uncanned if a recommendation is made that legislature re-visit this? What information is DHS collecting under this authority since certain information is confidential.

Including language that exemptions should ensure that identified aggregate data is available. As long as it's not personally identifiable, it should be available. **Chair Kron** likes idea of having more specific recommendations. The committee sees good reason to protect the privacy in children in foster care, and anything that does more than necessary to protect their privacy, should be revisited.

Mr. Fisher to put together a mock public records request.

Ms. Matasar to obtain a DHS Representative to speak to committee about powers.

Bulk data was sort of a “distraction”

Agenda Item #4 – Future Business

Member discussion for next meeting to add another item to May agenda, including one non-exemption review task. Prepping exemption review work with more active topics to keep individuals engaged.

February meeting will be based on the Legislative Subcommittee deciding if there are merits worth discussing. For March, hoping to incorporate public bodies in discussions.

Mr. Hall is looking for health record exemptions surrounding more patient care and outcomes.

Adjournment

February 10, 2020
Location: 343 of the Oregon State Capitol, Salem
Sunshine Committee Members

Michael Kron, Special Counsel, Oregon Department of Justice / Chair
Bennett Hall, Newspaper Publishers Association (by phone)
Charlie Fisher, OSPIRG State Director
Morgan Smith, Polk County Counsel
Brent Walth, Journalism Professor, University of Oregon
Mary Beth Herkert, Oregon Secretary of State
Karin Johnson, Independence City Recorder (by phone)

Guests

Andy Foltz, Public Records Counsel, Department of Justice
Rachel Alexander, Society of Professional Journalists

Agenda

AUDIO STREAM 0:00:00-00:25:03

Welcome and Introductions

Ms. Alexander (Guest): Apologizes for tardiness on comments. Membership urges Committee to support SB 1506 to create independence of PR Advocate and promoting transparency. **Chair Kron** states the letter from SBJ will be posted to the website ASAP.

Agenda Item #1 - Legislation Review Committee

Mr. Fisher and Mr. Walth reviewed bills with open government impact statements (15 or so). Provides an example of one government impact statement around trade secrets; since this isn't an area of expertise for members, he recommends not weighing in on topics that they won't have an impact on. With that being said, they decided to only weigh in on a couple of bills.

1505 was reviewed and recommended opposing in its current form, since there are potentially problematic issues around accessed information of settlements made my legislature. This bill didn't make it past deadline.

He feels like 1506 is important and has been discussed before in this body, which is the PRAC bill that would codify the independence of PR Advocate, given the former advocate felt she did not have the independence necessary to do her job. As a body that advocates for PR Laws, **Mr. Fisher** believes it would be important to support this bill. **Chair Kron** already voted as a member of PRAC in favor of. There are 13 voting members on PRAC.

Mr. Fisher believes they can submit testimony today and it would be on record.

Hearing for today and work session scheduled for Wednesday. **Mr. Fisher** believes the committee would just submit testimony for the public hearing. At the very least, it could be put on for the work session and it would be available then.

Mr. Smith agrees with the independence of advocate. They shouldn't have a vote on the board that supervises and selects them. **Ms. Johnson** agrees in that the PR advocate should be of its own office.

Mr. Fisher questions if the Committee agrees with the approach this subcommittee is taking, in terms of deciding what to weigh in on and what to not act on. **Chair Kron** expresses it would be nice to know about the items that concern this group but agrees it can be difficult to make a recommendation on an issue that hasn't been addressed. **Chair Kron** explains the current statute makes the advocate the chair and is not directly hired by the board. If the bill passes, **Ms. Herkert** questions if it can be revised afterward.

Mr. Smith recommended **Mr. Fisher** to be a spokesperson on behalf of the Sunshine Committee to testify in front of the Legislature on the bill.

Mr. Walth stated that Wednesday is the next work session hearing. Public hearing was that morning. Drafting and sending a letter may be the best option at this point. Language established:

“SB 1506 establishes the PR Advocate as an independent office and clarifies the accountability of the advocate to the Oregon Public Records Advisory Council. This measure proposed by the council seeks to strengthen the role of the PR Advocate.

Chair Kron recommended adding, “The Oregon Sunshine Committee at its meeting on February 20, 2020, voted to support this concept as an important improve to the Public Records Law in the State of Oregon.”

Mr. Walth, “if the committee voted to support which would strengthen the role of the pr advocate, committee believes this measure will serve the public interest to find government transparency and improving access to public records”.

Ms. Herkert moved for the letter to be sent that was drafted.

Chair heard move to adjourn.

Adjournment

September 22, 2021
Location: Via WebEx
Sunshine Committee Members

Michael Kron, Special Counsel, Oregon Department of Justice / Chair
Kevin Gleim, Governor's Office (replaced Emily Matasar)
Charlie Fisher, OSPIRG State Director
Morgan Smith, Polk County Counsel
Karin Johnson, Independence City Recorder
Eileen Eakins, Northwest Local Government Legal Advisors LLC
Brent Walth, Journalism Professor, University of Oregon
Selena Deckelmann, Director of Engineering, Mozilla Firefox

Guests

Andy Foltz, Public Records Counsel, Department of Justice
Cameron Miles, Office of Legislative Counsel
Stephanie Clark, State Archivist, previously on PRAC
Phil Donovan, OHSU
Lori Sattenspiel, OR School Board Association
Melissa Leoni, Analyst Legislative Research Policy
Nick Budnick, SPJ

Agenda

AUDIO STREAM 0:00:00-01:05:56

Welcome and Introductions

Chair Kron welcomed committee back and reviewed the action that had taken place thus far: the committee had formed subcommittees, outlined a plan to organize and review exemptions and created some recommendations for governing laws. Group was in the process of making second recommendation to Legislature. It was not put on the agenda for today's meeting to finalize. The recommendation was left in pretty good shape and should be revisited at some point.

Chair Kron forwarded letter from Nick Budnick (SPJ) which recaps work done thus far and recommends ways to move forward. **Mr. Budnick** had mentioned to **Chair Kron** that the focus for the committee may need to be on reorganizing the law to make it accessible to the people.

Mr. Albert (at PRAC) suggested to **Chair Kron** that the committee look at categorial exemptions, and refrain from line items. He also expressed some willingness to researching a model like that and bringing it to Oregon. However, he is busy during this time and might be short-staffed.

Mr. Fisher asked about meeting minutes for entirety of committee and suggested letting individual committee members offer agenda items prior to meetings and/or distribute to appropriate subcommittee (if they will be re-developed). He applauds the committees work to respond to emerging legislation. **Chair Kron** stated he will post minutes. **Mr. Smith** encourages subcommittee involvement because of its success prior to COVID.

Chair Kron shares that he has been extremely busy with his workload this last year defending the Governor's actions. He has not felt he has been able to provide adequate leadership and service to the Sunshine Committee. Prior to this meeting, he surveyed the members of the group about leadership moving forward and heard a consensus that there should be two co-chairs: one from the requestor community and one from the government community.

Mr. Fisher and **Ms. Eakins** did express they had interest in taking over leadership and expressed they would still like to have **Chair Kron** involved, since his position has the most access to stakeholders, in addition his knowledge and experience is extremely beneficial. **Ms. Eakins** and **Mr. Fisher** agreed to co-chair the committee moving forward.

Chair Kron suggested a motion for the next meeting introducing **Ms. Eakins** and **Mr. Fisher** as co-chairs. **Mr. Walth** proposed the motion and **Mr. Smith** seconded. **Chair Kron** and **Mr. Foltz** to collaborate to pass off pertinent information to new co-chairs.

Chair Kron shared how **Ms. Decklemen** inquired from him during the time of the George Floyd protests about police discipline data. He stated that if he wasn't so busy at that time, that would have been great work the committee could have focused on. – police disciplinary exemptions are broader than public employees. The Legislature may have gone in and made some changes around these exemptions. Several head nods follow in agreeance.

The Sunshine Committee is required to review exemptions by statute and make recommendations. **Ms. Eakins** shares how she read **Chair Kron's** report and agreed that new legislation continues to be implemented and does have an impact of the work the committee does. If the committee could get involved earlier in that process, it would be easier to maintain the work. Because it's been hard playing "catch up" each time after legislation gets passed. She asked for page numbers on the report.

Mr. Walth always thought the group listened to proposals and responded quickly. He wants to ensure government agencies are being heard, both government and requesting sides.

Chair Kron mentions an organizational proposal that John Kroger led indirectly a list that was being developed of categories of exemptions. Schedule those out, without a target date to be done by. **Chair Kron** to pass on subcommittee lists as well. **Ms. Eakins** asked about SB 41 (2011) and if it was adopted and was it a proposal.

Mr. Miles shares ex-officio state legislative members: Senator Kozansky, Representative Wallin, Senator Thatcher and Representative Power. That committee was not assigned for the interim so technically no standing subcommittee and unsure what that means for ex-officio members.

Committee approves third Wednesday meetings every other month just like before COVID. DOJ will continue to host meetings and providing minutes. We will just look to co-chairs for agenda. **Chair Kron** to pass on subcommittee lists as well.

Adjournment

<p>January 19, 2022 Location: WebEx Sunshine Committee Members</p>
<p>Eileen Eakins, Northwest Local Government Legal Advisors LLC / Co-chair Charlie Fisher, OSPIRG State Director / Co-chair Morgan Smith, Polk County Counsel Karin Johnson, Independence City Recorder Stephanie Clark, State Archivist Selena Deckelmann, Director of Engineering, Mozilla Firefox</p>
<p>Guests</p>
<p>Andy Foltz, Public Records Counsel, Department of Justice Cameron Miles, Office of Legislative Counsel Carmen Graham, Department of Justice Isabela Romero, Department of Justice Lydia Loren, Lewis & Clark Law School Mike Rogoway, The Oregonian Sofie Parr Phil Donovan Bennett Minton Dan Garrett Andrews Les Ruark Josie Koehne Daniel Maguire</p>
<p>Agenda</p>
<p>AUDIO STREAM 0:00:00-01:50:22</p>
<p><u>First Agenda Item –Administrative Business</u></p> <ol style="list-style-type: none"> 1. December 2021 Minutes approved as presented. 2. No attendees had a membership vacancy update, so this discussion will be moved for next meeting. 3. Group decided to polish/work to submit previous 2020 Report to Legislature as is. Chair Fisher moves to approve report and delegated himself to figure out how to make revisions, submit and circulate to appropriate parties.
<p><u>Second Agenda Item – Subcommittees Update</u></p> <ol style="list-style-type: none"> 1. <i>Legislative Review Committee</i> – Chair Fisher on behalf of Mr. Walth: Mr. Walth will update the group in March about Legislative Subcommittee. Group will meet in early February to review new bills with open government impact statements, that might impact public records exemptions. Chair Eakins: Mr. Kron had previously written an email to her containing the new laws that were passed in 2021, that impacted public record exemptions. She forwarded this email to Mr. Walth for subcommittee review. 2. <i>Special Projects Subcommittee</i> – Mr. Smith lists members (Morgan, Bennett, Selena, Karin) and shares there are no special projects at this time.
<p><u>Third Agenda Item – Trade Secret Discussion</u></p> <p>Chair Eakins: Each Chair recruited individuals to discuss Trade Secrets and Intellectual Property to Committee, following the group’s decision to discuss these topics in previous</p>

meetings. She introduces **Professor Lydia Loren** from Lewis & Clark Law School, to present – Ms. Loren displays slideshow to discuss with group.

Introduction to trade secrets and its core elements (copyright, patent, trademark, and trade secrets). in the realm of intellectual property. Copyright and Patent Laws (generally discussing “utility patents” new and nonobvious inventions that are disclosed to the public) are exclusively Federal Laws (aka “Broad Preemptive Suite”) which means no room for states to have any copyright/patent protection in these areas. Trademarks and trade secrets have Federalism competent – federal and state law protection.

Why are there trade secret protections?

1. There are certain things that competitors should not do to one another e.g., misappropriation of a trade secret.
2. Top-level protection creates an incentive for individuals and companies to invest in the creation of valuable information/innovations.
3. The protection a patent receives is high-quality. Because the public gets disclosure of information - quid pro quo on disclosure.
4. For trade secrets, we are not disclosing it, so the public isn't getting that knowledge.

Uniform Trade Secrets Act was created in 1985, Oregon adopted this act in 1987. Each time a state adopts this act, they can make changes to wording – Oregon has done that. In both state and federal laws there is a trend line of greater protection over time. Congress adopted Defend Trade Secrets Act, which granted civil action of trade secret law in 2016. Oregon has made it easier to get trade secret protection and perhaps, protecting more information than the Uniform Act might normally protect. The Uniform Act doesn't have the public side to it – this act only applies to competitors. Federal Statue is almost identical to Uniform Act. ORS 646.461: information that has independent economic value from being not generally known from public or competitors. Its value must stem from its secrecy. **Chair Fisher:** asks about holes between state and federal law. **Ms. Loren:** the Defense Grade Secret Act is only 5 years old, so there's not a ton of litigation. This kind of scenario is probably not too likely because Federal Statue is narrow, and Oregon is broader.

Judge will evaluate if there really is a trade secret. The disclosure of the trade secret is given to the Judge, under seal for protection. The person asserting trade secret ownership must fulfill these requirements:

- a. Must identify exactly what information is alleged to be a trade secret
 - b. Prove that it is not “generally known” or “readily ascertainable”
 - c. Identify the commercial value it has by being kept secret from competitors
 - d. Demonstrate measures taken to protect information's secrecy
- 2) Trade secret owner must demonstrate misappropriation (Trade secrets are protected against “misappropriation” e.g., acquired the trade secret through improper means (hacking a computer system) or disclosing or using a trade secret when you have a duty not to disclose or use e.g., an employee with knowledge of employer's trade secret information).

Ms. Deckleman asks about incentivizing an innovation. **Ms. Loren:** trade secrets don't help advance knowledge like patents do because they require disclosure. So, there is an incentive

to have kinds of information you can exploit without disclosing it e.g., the sequence of ingredients, or the temperature at which something is developed.

Chair Fisher: Questions if a state agency disclosing information they had (and deemed to have public interest) prevail over the trade secret? Or if information was deemed not a trade secret, and later through perhaps judicial process, was determined to be a trade secret, would this qualify as misappropriation? **Ms. Loren:** explains she is not an expert in public records law and does not know the answer to the questions. Trade secrets are a protection a state decides to grant, and that state has the authority to decide how the law will be shaped.

Chair Eakins asks if someone were to sue a public entity for misappropriation of trade secret, how are damages determined? **Ms. Loren:** Uniform Act and ORS provides damage remedy for actual harm, so you'd need to prove the actual loss of value, because of the disclosure. Or if a competitor is using the information and they haven't disclosed, but they are gaining profit. Then you'd have a disgorgement of the ill-gained profits. With a public official, we wouldn't be talking about disgorgement but of acts of harm. A monetary award against the state, you'd have to bring up sovereign immunity.

Mr. Smith: If government officials release documents that are perceived as trade secrets, would a ROI that someone argues in trade secret, invalidate trade secret protections since it's publicly known? **Ms. Loren:** once information is "generally known" it no longer qualifies as not being "generally known". It will affect what type of damages you get.

Second guest speaker introduced. **Mr. Mike Rogoway**, Technology Business Reporter with the Oregonian:

The Oregonian started looking at Google's plans to expand its data centers in the Dallas, the company wanted a new package of tax breaks, and a new deal to ensure they had enough water to cool their office. He had a chat with Dave Anderson (Facilities Director of Google) and walked through the report. He forgot to discuss Google's water consumption, so he followed up to Mr. Anderson via email. His email was an exhibit in the lawsuit Google filed against him and the paper, asserting that Google's water consumption was a trade secret and were exempt from disclosure.

The Dallas collected, maintained, and owned the information as the operator of the City's Public Water Utility. The city filed the lawsuit, not Google - companies can contractually oblige their cities to enforce a company's understanding of what constitutes a trade secret. The city has a non-disclosure agreement (NDA) with Google, and it does not mention water use. The Oregonian appealed to the Wasco County DA and the DA ruled that water use did not meet the definition of a trade secret. The Dallas won on appeal and the city filed a response. The Dallas who is being represented by the Reporters Committee for Freedom of the Press, has not responded yet. This litigation began in September and is ongoing.

An argument made by The Dallas is that Google's water use in other centers is public because there's been litigation or public records finds. DA did not rule on this either.

It did not occur to him this could be a trade secret; he mentions he's worked with many other cities who have previously responded to public records requests about this kind of information. Willamette Week published this last year their list of residential customers with largest water use in Portland. Our current process allows companies to intervene and delay disclosure.

Chair Fisher: wonders if there has been conversation about the public interest or if it has solely been litigation on if this is a trade secret. The public balancing test seems easier to conduct rather than examine for a trade secret. Questions if the government folks have had a lot of experience determining something is a trade secret, but there's public interest, so you must disclose it. or is it mostly just competitors trying to get an advantage. **Mr. Rogoway:** The Dallas made the argument that it doesn't constitute a trade secret and that there is public interest. The DA did not rule on whether there is a public interest in disclosure, he said there is no reason to rule on that question, because this is not a trade secret. **Chair Fisher** adds that it would be in the private interest not to have it disclosed. There's no public interest in trade secrets being secret. **Chair Eakins:** expresses disagreement since Ms. Loren explained there may be a public interest in promoting competition and enabling certain companies to keep information private. There could be public interest in the confidentiality side of things.

Mr. Rogoway: files very little public records requests, it's not what he focuses on. **Mr. Foltz:** there are qualified immunity provisions both in PR law and Oregon's UTSA and both have a good faith requirement. It would not be a good faith disclosure under the UTSA, to disclose something that does meet the definition of misappropriation. So how does that work when you have a trade secret public records exemption, that says regardless of if it's a trade secret, it's a public interest and requires disclosure. The PRR's that he sees most often are those that have been appealed involving state agencies.

Mr. Smith: usually this comes up with vendors, and their competitors, making PRR's for what that vendor is currently contracted in. A competitor made a PRR trying to seek information of the pricing of commissary of food in jail. The contract with the vendor, outlined certain portions of the contract are confidential. It would be better to find some way to get the government out from being the middleman in these. The Dallas are like clients he's represented in that they don't have a ton of resources to defend themselves against these big companies, like Google. Question about conditional disclosure if its disclosed, then it's no longer a trade secret. Feels odd organizationally to have a trade secret as a conditional disclosure - the very nature of a trade secret is that it's in the public interest to not be disclosed. He argues it's an incongruity within the law.

Mr. Foltz: states he put together the primer (as a non-committee member he is not acting on behalf of the AG). There was 1 unreported case, trial decision, in Chevron. One of the most recent cases where the AG did not decide on if the information was in fact a trade secret, she stated that regardless of it was a trade secret or not, the public interest required disclosure. The information that the AG ordered the agency to disclose, was obtained under some assurance that confidentiality would be maintained. The Trial Judge overruled the AG on that stating the information did qualify as trade secret because it was obtained with the assurance of confidentiality, therefore citing misappropriation. There is some ambiguity between trade

secrets exemption and Oregon's UTSA. Confirms that public agencies have a tough time and lack expertise needed to evaluate trade secrets.

Mr. Smith contributes the immunity mentioned is all tort-based immunity and his concern is the contractual responsibilities with vendor to not disclose. **Chair Fisher:** if public bodies are entering into a contract that potentially requires them to conflict with another statute, that feels wrong. **Mr. Foltz:** clarifies they didn't contract their way out of information that would otherwise be exempt.

Another caveat to PR law is that there are some agencies that question whether to disclose otherwise exempt information. An agency can contract with a third party agreeing not to exercise its discretion, the law permits that. One of the ways you can reconcile the UTSA with the trade secrets law but there are some holes. **Mr. Smith:** if you did eliminate the ability to have contractual requirements, then an argument could be made that the third-party entity didn't take the appropriate measures to keep your trade secret, secret. So, they could lose their protection regardless.

Chair Fisher asks Mr. Foltz on the cases he handles, what's the general length of time it takes to adjudicate. **Mr. Foltz:** mixed timeline every time. There are the normal response timeframes in statute that the custodian of records must comply with, which is considered the 15-day rule, so the agency should either complete its response or provide a reasonable completion date during that timeframe. After that, there's no statutory statute of limitations on the requestor filing an appeal if they don't like the results. Appeals have been seen two years later. Once an appeal is received, DOJ only has 7 calendar days to respond. There's usually a lot to do in that timeframe and DOJ will usually request an extension, which is usually first step. The agencies are not equipped to make this decision, but PR law leaves them with the burden to do so. He observes the difficulty in understanding what constitutes a public record.

Fourth Agenda Item – Future Business

Chair Eakins: mentions the work of Mr. Foltz in preparing summary of law on trade secrets and public records law. Mr. Kron will discuss case law on this matter next meeting. Applauds discussions had from all sides thus far. Question based off the issues that have been raised, is it an appropriate next step to delegate this issue to the special projects subcommittee to evaluate some potential recommendations for legislature? **Mr. Smith** of the subcommittee confirms they will review and will have an update for next meeting in March.

Mr. Foltz mentions 30 some exemptions the committee already reviewed. However, it was pre-covid, so no action or recommendation was taken.

Next Sunshine Committee meeting date: 3/16/22 at 1:30pm

The special projects subcommittee will meet on 2/16 at 1:30 -3:30pm

Adjournment

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 statutes 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 15th since both chairs will be on vacation for meeting date in May.

Adjournment