

**June 15, 2022**  
**Location: WebEx**  
**Sunshine Committee Members**

Eileen Eakins, Northwest Local Government Legal Advisors LLC / Co-chair  
Charlie Fisher, OSPIRG State Director / Co-chair  
Morgan Smith, Polk County Counsel (Brief Appearance)  
Karin Johnson, Independence City Recorder  
Stephanie Clark, State Archivist  
Emily Cureton Cook, Editor/Reporter at OPB (Bend) – New member  
Bennett Hall, Newspaper Publishers Association

**Guests**

Andy Foltz, Public Records Counsel, Department of Justice  
Cameron Miles, Office of Legislative Counsel  
Michael Ritchey, Assistant Attorney General, Department of Justice  
Jacob Bell  
Rebecca Gladstone  
Tim Lewis  
Cynthia Domingo-Foraste

**Agenda**

**AUDIO STREAM 0:00-01:14:33**

**First Agenda Item – Call to Order / Introductions**

Enough members for a quorum – Mr. Smith to leave early.

Self-introduction of committee members including new member, Emily Cureton Cook. She will represent broadcast media.

**Second Agenda Item - Approve Minutes from March 16 Meeting**

**Chair Eakins:** reminder to approve minutes at each meeting moving forward. Minutes approved for March 16<sup>th</sup> meeting.

**Third Agenda Item – Correspondence to Committee**

**Chair Eakins** states the committee has received a letter from a citizen. Encourages conversation to implement an incoming mail process for the committee, proposes that both chairs process mail and decide what should be forwarded to full committee, or forwarded to outside agencies, if necessary. **Mr. Foltz** shared that DOJ manages a sunshine committee email. He will continue to forward items related to the committee, to co-chairs to process. **Chair Eakins** reminds group all correspondences are public record. **Chair Fisher** specifies there should be a record kept of all incoming mail, that can be made available to members of the committee and the public. Motion for incoming correspondences to be filtered through chairs was approved.

**Fourth Agenda Item – Old Business**

- 1) Committee Membership: Brent Walth continues to be on the committee on behalf of print journalism. It’s possible he may be replaced, more information to come. Few other member spots to fill as well.

- 2) Legislative Review: Chair Fisher - more exemptions keep getting added to the already long list of exemptions and as the committee has discussed, it's hard to keep up. He's having conversations with elected officials on how bill drafting can be improved. Spoke with Kimberly McCullough, Legislative Director at DOJ, on how committee can have these conversations with various leadership figures in the legislature. One meeting with Staff of the Speaker of the House discussing how the sunshine committee could be a stakeholder in drafted bills regarding public records. By having conversations with members, plans to inform about the committee and its role, then make the ask to the extent possible, consult with the sunshine committee when drafting bills. It will be an ongoing process. Encourages members to contact himself or Chair Eakins if they'd like to participate in these discussions. When some member seats in the sunshine committee are filled again, he hopes to create a legislative subcommittee to take the lead on these conversations. **Chair Eakins** encourages membership in this subcommittee once the chair position has been filled. **Mr. Hall** thanks Chair Fisher for his involvement to advocate a seat at the table for the committee.
- 3) Special Projects Subcommittee Update Mr. Smith (Chair) reports: group met to discuss exemptions regarding family law issues following last full committee meeting (including adoption records, child custody, child support, child welfare, and other misc. exemptions). Child support is largely a creature of federal law – not much flexibility in state law for change. In the last committee meeting, there was some discussion about the difficulty victims can experience to obtain their own records. Mr. Smith met with stakeholders to discuss victim access to records. It was determined that victim access to records is outside the scope of this committee. However, perhaps the committee could encourage legislature to work with stakeholders to enact a process for victim access to records.

Regarding adoption records: group agreed there are probably good policy reasons why records are exempt from disclosure. **Mr. Hall** encourages conditional exemptions so a public benefit could go into it too. Subcommittee supports moving adoption records into conditional exemptions with burden of proof on requester, to demonstrate public interest in disclosure. **Chair Fisher** asks if Mr. Hall has any examples of a situation where the balance would tip towards disclosure. **Mr. Hall** responds with a hypothetical example and believes that it is not possible to foresee all reasons why there might be legit public interest, in making confidential records public. That is why he advocates to have a public interest balancing test applied to every record. **Chair Fisher** states this sounds like a good recommendation. Report of subcommittee approved.

#### **Fifth Agenda Item – New business / Health Information Exemptions:**

**Chair Eakins** introduces health information exemption review. Following the approval of the report from the subcommittee on special projects, DOJ organized a list of these exemptions to review. Expresses there could be some limitations due to federal confidentiality laws, as the committee ran into with review of the family law exemptions. In which case, there won't be much room for improvement unless it's at the state level. Acknowledges list of recommendations, "Index of Public Records Exemptions" all exemptions DOJ could identify as relatable. "PR Summaries for Jan 2020 SC Meeting" 14 statutory exemptions listed

regarding personal health information. Maybe committee breaks this down in categories and review subcategories.

**Mr. Hall** expresses difficulty determining which exemptions contain federal code and is disappointed by the notion the committee has their hands tied by federal law. **Mr. Foltz** states there is no implication of state law containing a federal requirement in the list he created. It comes down to doing the legislative history review. He and his team do not have the capacity to do this research, as most history dates to the 70's. In the past with child support examples, it was a matter of reaching out to stakeholders to obtain information.

**Chair Fisher** prompts two questions, 1) thoughts or recommendations on examining these exemptions and 2) Perhaps group reviews one section and collaborates on how to break out exemptions.

**Ms. Cureton Cook:** There is an expectation that health information should be private but did notice about 5 exemptions from the list that she would be interested in exploring if a public balancing test is needed. Recommends outreach to health reporters who specialize in publishing public health, for the public. Offers to reach out to a health journalist list serve, forwarding the list of exemptions and asking if anyone has reported on areas, and if so, would they be interested in speaking to the committee?

**Chair Eakins** encourages group to contact her and/or Chair Fisher with exemptions to review. **Mr. Hall** shares his interest in reviewing ongoing investigations used by law enforcement, he will send an email to the chairs. **Ms. Cureton Cook** expresses interest in disciplinary records of law enforcement, only high level of punishment matters gets published. **Chair Eakins** points out Chapter 192 (in PR law) that relates to investigations (law enforcement, OSHA, Workers Compensation) and there is a default that those records are exempt from PR disclosure. At least, until there is a resolution within that agency. If the group begins to examine one agency's investigation method, it might make sense to follow with reviewing other agency's rules as well. **Ms. Clark** would like to help state agencies and government employees understand the changes that are made, and how to apply them.

Group decided to move forward with health care exemption review. At the next meeting, the group will have reviewed the list of exemptions. **Ms. Cureton Cook** will attempt to contact her list serve and get some names of interested folks to the chairs prior to her maternity leave. **Chair Fisher** notices live birth records are public except for those who originally had unknown parentage. **Mr. Hall** acknowledges the disclosure from inmate accounts exemption, gives an example of a prison inmate that makes a claim of inadequate care. What this exemption doesn't account for is bureaucratic timelines and holding periods, what if the inmate died in the interim, who would records be released to? **Chair Eakins** it would make sense to have everything be conditional, but from a PR standpoint, it can be tricky to apply that.

No public comments. The next meeting Wednesday, August 24<sup>th</sup> at 1:00pm.

Adjournment