

May 17, 2023
Location: WebEx
Sunshine Committee Members

Charlie Fisher, OSPIRG State Director / Co-chair
Morgan Smith, Polk County Counsel/ Co-chair
Stephanie Clark, State Archivist
Cameron Miles, Governor’s Office
Selena Deckelmann, Chief Product and Technology Officer, Wikimedia Foundation
Alec MacDonald-Factor
Bennett Hall, Blue Mountain Eagle-Editor
Michael Kron, Department of Justice
Elliot Njus, The Oregonian
Mark Landauer, Lobbyist, Special Districts Association of Oregon

Guests

Andy Foltz, Public Records Counsel, Department of Justice
Rebecca Hannon, DPSST Records Control Specialist
Suzy Herring, DPSST Director
Marsha Morin, DPSST Standards and Certification Manager
Haley Percell, Chief Legal Officer, Oregon School Board Association
Phil Donovan
Alec Mac

Agenda

AUDIO STREAM 0:00:00-02:08:46

First Agenda Item –New member introduction: Cameron Miles

Chair Smith, Original plan was to have Mr. Miles, lesion with the legislative Counsel Office, now works for the Governor’s office, he is the new designed from the Governor’s office. He is a full voting member.

Second Agenda Item – Update from the Legislation Review Subcommittee

Chair Fisher, As discussed at the last meeting or the meeting before the legislative review subcommittee was empowered to take a look at bills currently active in the legislature that implicated public records in some way; to the extent we had unanimity. The members were Charlie, Morgan and Elliot, who could make recommendations on behalf of the whole Sunshine Committee to the legislature. We went through all the bills that had an open government impact statement and identified 8 of them that we thought would be issue areas that the Sunshine Committee had already made some sort of recommendation on bills that were live in some way. The recommendations are on our website. The next step was to submit these recommendations on the record in front of committees that are having hearings on the bills. There was only one bill that we had recommendations on. It was for HB 3073; which is related to making exempt the information of certain public officials to the public. Planning on submitting our recommendations to the committee today.

Third Agenda Item – Update from the Special Projects Subcommittee

Mr. Kron, indicated special projects subcommittee has not met. There is no update, doesn't believe there is any outstanding projects.

Fourth Agenda Item – Discussion of law enforcement and public safety official's records

Chair Smith, Introduces Marsha Morin and team: Suzy Herring, DPSST Director, Rebecca Hannon, DPSST Records Control Specialist, Marsha Morin, Standards and Certification Manager. Chair Smith inform Ms. Morin that the committee we are tasked to review all of these exemptions and a lot of them we don't know the background, the business purpose for them. Request Ms. Morin to go through the exemptions that are in the list that were provided to her and talk about what they are, what purpose they serve if any from your perspective and what they are used for, how frequently their invoked.

Ms. Morin, the first one:

- ORS 181A.830 is photographs of investigations of safety employees. Exemption for our police officers that are training. No photos are kept after they leave the academy for the safety of that officer. That is for undercover type situations, to prevent criminals from finding photos on their webpage. Ms. Morin prepared highlight notes for today's meeting. (please see Sunshine Committee webpage) Exemption was established in 1999 at the request of law enforcement constituents. The release of information of employee without their knowledge while in undercover situations could jeopardize their investigations. (4)(d) was added in 2021 subsection (3) explains when you can not disclose it. When a public body determines that non-disclosure of the public body would affect the confidence in the public body. And then it was renumbered to ORS 181A.830 from 181A.674 in the 2021 edition of ORS. In the document provided the 2021 edition of 674, specifically related to that. We also provided ORS 192.355.
- ORS 192.345(35) DPSST Investigators of public safety officers and private security providers. This exemption was established in 2009 through HB 3215 at the request of the Board of Public Safety Standards and Training and the Department of Public Safety Standards and Training. We have had a long-standing practice of not releasing records to an opened professional standards case until the case was completed. In 2007 DPSST discovered through a ruling that the existing exemptions did not cover DPSST records. This bill codified that practice. This exemption was requested to ensure that all DPSST professional standards investigations adhere to due process. During an open investigation the records aren't disclosable but once the investigation has closed then they are disclosable.
- ORS 192.385 which is audio or video recordings of investigatory interviews of public safety officers. Prohibits the disclosure of audio or video records of internal investigation interviews for public safety officers. And it specifically states that a public body may not disclose audio or video records of internal investigation interviews of public safety officers. This is a may not disclose the audio not a will not or shall not. And there have been plenty of times where we have disclosed that audio; whatever we have received from the agencies. Usually in the form of a transcript with the rest of the investigatory information after the case is closed.

Mr. Hall, What is it about audio video records that the agency doesn't want to disclose those?

Ms. Morin, it would be, along the lines of this is going to damage that individual, they are in the witness protection program, something along those lines. But there could always be a chance, we would definitely be looking at it through the scrutiny of transparency.

Ms. Deckelmann, Is it necessary to have this specific exemption for public safety officers or is there another exemption investigations of this type that would end up producing things like this? **Mr. Kron**, The big difference I see between the DPSST investigation of like peace officers compared to investigators or firefighters etc. is the peace officer exemption basically provides for confidentiality of the investigation if no discipline is imposed. Whereas the other exemptions typically or appear to go away at the end of the process so that the process can be conducted and then at the end of the day there is transparency around what happened. But for that difference these exemptions would seem to me be duplicates of each other but there is this is a twist on the public safety officers. **Ms. Morin**, if an officer at a police department that is getting disciplined, unless there is discipline, we would not receive that information. There must be an action taken whether that is an economic sanction or termination or a non-voluntary separation, criminal conduct. When those types of things occur, we will open a professional standard for the non-voluntary separations and criminal conducts, and we want which like other investigations we don't want to disclose while that is open because we could be tainting that information. Once that is closed and we consider our final close as once the final report is written. And final is published to the board and policy committee we disclose.

Mr. Kron, I am talking about is one that doesn't apply to DPSST records but applies before DPSST gets information at all. **Ms. Hannon**, public safety officers are not our employees at DPSST so they would not, we would not consider a personnel investigation or an HR investigation exemption, we wouldn't even claim or use those statutes because they are not our employees. That is why we have a separate exemption for our own investigations that happen after the personnel investigation has taken place. When an officer or a public safety officer has been accused of wrongdoing the initial investigation takes place at their home agency that's where any exemption for HR records or personnel investigation would fall. Then once they come to us for our purposes that's when the 192.345(3)(5) would come in to play.

Chair Smith, commented on licensure for DPSST. **Mr. Landauer**, clarified it's a certification not so much a licensure.

Chair Fisher, requested the substantive difference between those two things?

Ms. Hannon, described to the committee on the exemptions and how they go about applying them. **Chair Fisher** did a quick overview to make sure he is understanding correctly. There is the law enforcement agency, like the police department that does their own and then separately DPSST does their own investigation. Two different things and likely two different public records; in terms of exemptions and laws. **Ms. Morin** DPSST utilizes professional moral fitness standards to determine if what they did to cause the termination violated our moral fitness standards. We might have it all from that investigation from the agency or we might need to add more and create our own report. Those reports, we post everything to our webpage, special standards page. **Ms. Hannon**, commented on her process for processing records requests at DPSST. Her primary job is to go through that process of reviewing each and every record and redaction that personal information and anything that falls under the exemption according to Oregon statute for records requests.

Mr. Kron, What kinds of information do agencies typically ask you to exempt? Are they similar to the types of things that you are talking about that you would exempt anyways in terms of personal information. What kind of things do you hear from police agencies that they

do not want you to disclose? **Ms. Hannon**, stated here are concerns with law enforcement agencies and other agencies when there has been an internal investigation that has resulted in no action or discipline. They are concerned that those records might be out there only because they don't want a bad mark to follow that officer when no discipline occurred. There are confidential informant names, there's victims, people would generally expect us to redact the names of victims, the names of minors who are involved in various investigations. The most common is the personnel discipline exemption and the concern over releasing records where the officer actually didn't have discipline applied.

Ms. Herring, reviewed:

- ORS 703.473 their personal contact information such as their home address, SS, home telephone, that information is not disclosable.
- ORS 703.480 if we get a frivolous complaint on an investigator and it is determined by staff or investigators that the complaint was false we will categorize it that way we have a different retention schedule for those. And those will not be releasable.

Committee members asked various questions to Ms. Morin and Ms. Herring, regarding their processes at DPSST. Questions were answered.

Fourth Agenda Item - Discussion of educational providers records

Ms. Percell, introduced herself and her background. She is chief legal officer at the Oregon School Board Association. They assist all of the k-12 schools in Oregon, 198. 198 school districts, 17 community colleges, that is all the community colleges in Oregon. One topic is public records. We do not assist OHSU or universities. To be clear they represent and provide services to the district as a whole, they are not from a union, they don't advocate on behalf of teacher or faculty. ORS 339.378, ORS 339.388 is that we refer to as the sexual conduct law. This law is relatively new for schools. Ms. Percell gave examples of how these laws help schools. With respect to the exemptions, she has not had any PRR for these documents. Ms. Percell would not want for this exemption to go away for the protection of the victims.

Mr. Kron, what extent protecting victims requires us to also protect people to have been found to engage in this conduct?

Ms. Percell, believes what would happen if these were subject to PRR these individuals would be precluded from working in a variety of other places as well. If you googled someone's name and they has a substantiated sexual misconduct finding against them which sounds pretty bad they might not get hired in other context which would lead them to challenge these findings a little bit harder when they are made by the school which would increase their costs in going through the sexual misconduct finding process and would also make it more costly for them to get these people out. They want it to be as quick as possible to get these people away from kids and not have them on paid admin leave.

Ms. Dickelmann, was wondering on the lack of disclosure, if the standard was applied to someone who is advocating on behalf of trans rights? could this exemption be implied to a teacher who was advocating for that, for health care for trans kids. **Ms. Percell**, she has seen this in the context of teacher teaching sexual education. Ms. Percell used examples on how DHS assisted in that instance.

Mr. Hall, had concerns as Mr. Kron did. ORS 339.378 and ORS 339.388 cover both sexual conduct and reports of abuse and concerns about keeping that kind of information from the public. **Chair Fisher**, wanted to know more about the process for substantiated cases?

Ms. Percell, stated if the police or DHS does an investigation and they turn over their investigation to the school so they can see what those entities have done. Gave an example of a case that could be looked at both ways even when it wasn't substantiated. The key goal is to keep the kids safe.

Chair Fisher, the two concerns that Ms. Percell had about being released is #1; privacy of the child. #2 the potential blow back to the program itself if they were public. Is there anything else? **Ms. Percell**, expressed how she truly would not want these exemptions to go away and agrees that Chair Fisher understood those two points correctly.

Fifth Agenda Item - Discussion of other regulated profession records

Chair Smith, opened up the discussion as it was previously discussed regarding the disciplinary action for employees in general a lot of these regulatory agencies all have their own separate scheme for how they conduct their investigation into licensees or people who have certifications. Chair Smith isn't sure why the Landscape Contracting Board investigation records should be treated any different from any other regulatory board. **Mr. Kron**, doesn't see the benefit to the police as an institution, to officers individually but most of all to us as policed members of the public to treating officers investigations differently when they don't result in discipline. Believes that there is a profound interest in those terminations are based on real investigations and are reflective of what actually happened.

Mr. Hall, had a number of conversations who feel that they have been unfairly targeted by internal investigations for retaliatory reasons rather than for disciplinary reasons. **Ms.**

Deckelmann, feels it would be helpful to simply say for licensing, certification or staff here is a set of exemptions that apply to all. **Chair Smith**, indicated similar to the health care regulatory schemes had a few months ago. Kind of the same concept. **Mr. Hall**, agreed that would be beneficial. **Ms. Deckelmann**, agreed that having a consistent approach to transparency for substantiated vs unsubstantiated investigations. Being consistent, in some of the content areas and age of the people involved are important to also take into consideration and maybe in those cases maybe there is a statistical approach. **Mr. Hall**, believe that all these discussions should be deferred to the special projects committee. **Mr. Kron**, will be having guests from TSPC come to the special project subcommittee meeting.

Mr. Hall, has concerns about some of these exemptions pertaining to colleges and universities. Faculty records etc. **Chair Smith**, recommended to have someone from the universities and TSPC to the special project subcommittee for further in detail discussion.

Agenda Item Six - Set next meeting time/location

Next Sunshine Committee meeting date: July 29, 2023 at 1:30pm, location TBD.

The special projects subcommittee will determine next meeting.

Adjournment