

January 17, 2024
Location: WebEx
Sunshine Committee Members

Charlie Fisher, OSPIRG State Director / Co-chair
Morgan Smith, Polk County Counsel / Co-chair
Michael Kron, Department of Justice
Karin Johnson, Independence City Recorder
Bennett Hall, Blue Mountain Eagle-Editor
Cameron Miles, Government Accountability Attorney, Governor’s Office
Selena Deckelmann, Chief Product and Technology Officer, Wikimedia Foundation
Emily Cureton, OPB Reporter
Elliot Njus, Editor, The Oregonian

Guests

Andy Foltz, Public Records Counsel, Department of Justice
Alec MacDonald-Factor
Erin Jansen

Agenda

AUDIO STREAM 0:00:00-1:43:34

First Agenda Item – Minutes for November 8, 2023 meeting

Committee went over last meeting minutes. Mr. Foltz confirmed that the minutes posted were the most current and revised version. **Mr. Kron** moved to approve minutes, **Mr. Smith** 2nd that motion to approve minutes. Committee approved November 8, 2023, meeting minutes.

Second Agenda Item –Special Projects Subcommittee Update - Healthcare Exemptions

Mr. Kron, Special Projects Subcommittee has been reviewing a number of exemptions relating to medical professionals in context to have greater transparency to the public having better access to information about complaints and investigations of these professionals. Subcommittee’s recommendation is for legislature to require at the minimum basic sort of non-personally identifiable information concerning the complaints that are made to regulated agencies should be available to the public along with the outcome of the complaints and categorical information about the type of report that was made. Would be useful if legislature would ensure our regulatory agencies in Oregon are communicating openly with regulatory counterparts in other states to avoid similar implicating circumstances occurring again in another state.

Committee members discussed if whether a pending complaint that is still under investigation needs to be kept as confidential. Members agreed that if complaint is pending, the search result will say “pending” but the public or consumer can still see if a complaint was made.

Mr. Kron, went into more detail stating this would affect public disclosure rules for complaints about all the various medical and health related boards. There are some statutes that are on their list that are not affected. **Ms. Cook**, asked about what conversations were had about having a public interest balancing test for the disclosure of more information for example professionals or practitioner who aren’t necessarily just consumer vetting but are already the subject of scrutiny or if there was conversation about that? **Mr. Kron**, explained,

there wasn't discussion in particular about this at their last meeting in January. But there was a case where a doctor secured a decision from a judge in Marion County that overruled the Attorney General's order and required the public body to maintain the confidentiality of the materials. There is a public interest standard already in place in some circumstances. **Mr. Foltz** added that most of the exemptions that were reviewed that pertain to health regulatory boards incorporate by reference a statute that does have a built-in public interest balancing test in cases that do not result in discipline. The presumption is if discipline results, some or most information will be available to the public. In cases where discipline does not result in discipline, there is a public interest balancing test however it is a higher-than-normal test it requires the requestor to show clear and convincing evidence that the public interest requires disclosure.

Chair Fisher, proposed to add to the recommendation that in places where there isn't a public interest balancing test, to have one added. Committee members all agreed with the addition and there were no objections. **Chair Smith**, moved to adopt the recommendations from the subcommittee with the additions as discussed in this meeting. **Ms. Deckelmann**, 2nd that motion. All members voted, there were no nays.

Third Agenda Item – Educator Complaint Exemptions Research

Mr. Foltz, provided document titled "Comparison of Sample State Exemptions Relating to Investigations of Teacher Misconduct." (can be found on committee website) Mr. Foltz found from the seven states that he sampled, including Oregon, there isn't a one-stop shop where you can find every teacher who ever had an allegation substantiated or unsubstantiated file against them or what the disposition was. Every state does provide an educator licensee database similar to the lawyer and physicians database where you can look up the licensee's status and whether discipline was imposed, but it will only state if disciplinary action was taken or suspension. It will not go more into detail such as underlying allegations or investigative reports. The application access to these type of educator records depends on where the records are located as well, it could be personnel files, state licensing, State Department of Education, they could be with the child welfare agency, or law enforcement.

Overall, Colorado and Florida appear most transparent about teacher misconduct. Arizona appears to be the least transparent as it removes such information from the purview of its public records law. Oregon appears slightly more transparent than the average sampled state because the disclosure of substantiated complaint information is not contingent upon public interest balancing or a determination of whether disclosure would constitute an unreasonable invasion of privacy.

Chair Fisher, expressed possibly adopting similarly between Florida and Colorado as those are the two most transparent states. May possibly need to be have the subcommittee review more comprehensively and also thinks there should be a balancing test. **Chair Smith**, agreed with Chair Fisher and explained concerns of having unsubstantiated allegations available to the public as it would also open the door to having this change affect other professions. **Ms. Cureton**, expressed that actually having all complaints eventually accessible regardless of the disposition is beneficial, speaking from a journalist standpoint. The goal is that that there could possibly be a pattern of poor investigatory work if there are several complaints and stated there

are plenty of other professions that have these records available as part of them being transparent. Ms. Cureton agrees with Chair Fisher, with Oregon being a leader in records being by default public, we would want to align ourselves more on the kind of side of these records being accessible but with careful consideration for how to protect against invasion of privacy.

Committee discussed the pros and cons on releasing records for unsubstantiated complaints.

Mr. Miles, expressed that although he agrees, he stated that he does believe that the person whom is being investigated should be exempt from requesting further records while the investigation is ongoing due them possibly changing their stories during the investigation. **Ms. Deckelmann**, expressed concern on someone's willingness to report an incident if the records are to be disclosed by default and believes this concern has come up before. She is also curious of how this would affect public schools vs. private schools. **Ms. Cureton**, asked if the names of victims or personally identifiable information would be already redacted from the records due to other exemptions in place? **Mr. Foltz**, stated that most likely, for anyone who is a minor TSPC would remove personally identifiable information, anything that is child sex related would also be exempt under a different set of exemptions.

Chair Fisher, it sounds like the committee is interested in making a recommendation in some way to expand access to these documents but there are some concerns about how to make it happen. Suggested for the subcommittee to go more in depth and come back with a recommendation?

Committee members agreed with having the subcommittee continue to work more in depth on this exemption. Committee members, agreed with having the subcommittee continue to review and make recommendation. **Mr. Miles**, would like the subcommittee to at least consider to create minimum requirements for disclosure of both substantiated and unsubstantiated complaints against teachers. **Mr. Njus**, was wondering if that is something that should be recommended across the licensed and regulated boards in general? **Ms. Deckelmann**, expressed that different professions have different hurdles to overcome and need to be addressed separately. **Ms. Cureton**, agrees with Ms. Deckelmann.

Fourth Agenda Item – Legislative Subcommittee Update

Chair Fisher, the bills haven't been posted yet and unsure yet which ones will be affecting public records. Last meeting, committee had agreed to empower the subcommittee to review and make recommendations on behalf of the entire committee. Legislature convenes on February 5th and subcommittee needs to have something before then. Chair Fisher suggested subcommittee to meet January 29th.

Subcommittee members agreed to meet January 29th at 3pm.

Mr. Smith, wanted to confirm if the committee had already recommended to not have any new exemptions this legislative session? Committee members all agreed and stated everyone has agreed to this previously.

Fifth Agenda Item – Future Topics

Chair Fisher, discussed that in a previous meeting the committee agree to revisit the law enforcement exemptions and possibly have additional people come and talk to the committee.

Ms. Deckelmann, adding that the special projects subcommittee coming back with a recommendation on the teacher exemptions.

Mr. Kron, committee does owe the legislature a report in June. **Chair Fisher**, recalling from a previous meeting, the timeline that was set is that committee would review the report in the May meeting and Chair Smith had agreed to write the report. **Ms. Cureton**, suggested perhaps the legislative subcommittee might also have recommendations on which exemptions to prioritize based on what is most pertinent in the upcoming legislative session. **Mr. Miles**, pulled up the 2020 report where it has a schedule of which exemptions the committee would be reviewing and next on that report is the Mental Health record exemptions. **Mr. Kron**, believes what happened is that the 2020 report is report that was filed but not until 2022 because the committee didn't meet the remainder of 2020 due to COVID, but technically 2020 report was skipped and that was submitted as the 2022 report. **Chair Fisher**, stated that sounds about right but review his notes and double check that is what happened.

Adjournment