

March 20, 2024
Location: WebEx
Sunshine Committee Members

Charlie Fisher, OSPIRG State Director / Co-chair
Karin Johnson, Independence City Recorder
Bennett Hall, Blue Mountain Eagle-Editor
Cameron Miles, Government Accountability Attorney, Governor’s Office
Elliot Njus, Editor, The Oregonian
P.K. Runkles-Pearson, Chief Legal and Risk Counsel, Office of Secretary of State LaVonne Griffin-Valade
Mark Landauer, Lobbyist, Special Districts Association of Oregon

Guests

Andy Foltz, Public Records Counsel, Department of Justice
Erin Jansen, Office of Legislative Counsel

Agenda

AUDIO STREAM 0:00:00-0.12

First Agenda Item – Minutes for January 17, 2024 meeting

Committee went over last meeting minutes. **Ms. Johnson** moved to approve minutes, **Mr. Landauer** 2nd that motion to approve minutes. **Ms. Runkles-Pearson** abstained. Committee approved January 17, 2024, meeting minutes.

Second Agenda Item – Legislative Review Subcommittee Report

Chair Fisher said that the legislative review subcommittee report was going to come from Mr. Smith, who was absent today. In Mr. Smith’s absence, Chair Fisher provided a brief update. He said that the subcommittee was supposed to make recommendations during session, but he didn’t have the capacity to prioritize that and at least initially, very few bills had open government impact statements that would be relevant to the committee’s work. There were only four or five bills out of several hundred introduced that had open government impact statements, so the subcommittee did not make recommendations. There will be an update about those at the next meeting. He also wished to discuss procedures for open government impact statements later in the meeting.

Third Agenda Item – Future Agenda Items

Chair Fisher wanted to revisit the discussion regarding law enforcement exemptions, even though Mr. Smith and Chair Fisher weren’t able to pull together a good set of people to talk to the committee at this meeting. Chair Fisher indicated that more transparency was desired, but more detail and guidance was needed regarding specifics. He wanted to discuss whether the committee wished to dig into this further and who they could invite to talk to them at a future meeting with greater expertise in the topic.
Ms. Runkles-Pearson asked if the legislature had a clear direction regarding law enforcement exemptions.
Mr. Landauer said there have been some reforms made over the last couple of bienniums by the legislative assembly. He wanted to see a summary from DOJ regarding the reforms implemented over the past couple of years. He said it was an important topic and the

legislature recognized the importance of it in the last couple of sessions, but he was not familiar with the recent changes made regarding law enforcement exemptions.

Mr. Hall said that in the committee's previous recommendation, they had made some progress in the direction of clarifying the existing exemption, so that it would be more likely to be followed by law enforcement agencies, and useful to journalists and members of the public in cases when there has been an arrest. He inquired why this topic needed to be revisited and expressed concern about going backwards.

Mr. Foltz indicated that this was a source of confusion at the January meeting as well, because the discussion centers around two separate sets of exemptions. Chair Fisher's question relates to the exemptions for misconduct allegations against law enforcement and not the exemption for the criminal investigatory information. Mr. Foltz reviewed the recommendation approved at the September 2023 committee meeting, which called for greater transparency in the professional oversight of law enforcement officers to increase public confidence in the regulation of law enforcement. Mr. Hall said that addressed his concerns.

Mr. Njus said that he would be interested in a summary of changes made over the past couple of years, as he wasn't sure the scope of the changes actually implemented.

Chair Fisher said that there seemed to be consensus in obtaining an update from DOJ and maybe others on what, if any, legislative changes have been made.

Mr. Foltz said that he could put together a briefing on what changed within the last couple of legislative sessions, although he said that DPSST would have data on the effect of the implementation of those laws and not DOJ.

Committee members talked about inviting DPSST experts to a future committee meeting after they reviewed the changes implemented over the last couple of years regarding law enforcement exemptions. The committee agreed to put a preliminary update and conversation as an agenda item for the next meeting.

Chair Fisher discussed whether there was a process for the way that Legislative Counsel included open government impact statements in drafting measures. He inquired whether there were standards for how to draft bills that created new exemptions for public records. He discussed whether it would be possible on the technology side for committee members to be notified through the OLIS website when there was a new open government impact statement added to a bill. He mentioned House Bill 4031, which had to do with transparent tax information, and discussed how it had received an updated open government impact statement in an amendment passed the next day, and expressed concern about the rushed nature of the process and making sure standards were followed correctly.

Ms. Jansen commented that she was happy to serve as a contact within Legislative Counsel for any new procedures to make it work better for everyone. She said part of the issue is that bills move fast in a short session.

Ms. Runkles-Pearson expressed appreciation for the work of Legislative Counsel and discussed her role in looking at statutes and codified exemptions, indicating that it would be helpful to have clearer standards for drafting measures regarding public records exemptions.

Mr. Landauer thought that it would be helpful to invite Legislative Counsel to a future committee meeting to explain the process. He discussed that there is likely not a formal written process, but it may not be efficient for the committee to provide timely feedback in the time frames required in a fast-moving session. He also inquired as to whether such a process was in the purview of the responsibilities of the committee.

Mr. Miles, who had previously worked for Legislative Counsel, discussed that the problem with implementing new drafting standards is that Legislative Counsel uses the wording of the requestor because those are policy decisions and Legislative Counsel can't have a hand in regulating what's contained within an open government impact statement or how you define what's exempt.

Chair Fisher said that such a procedure of reviewing new open government impact statements would fall within the purview of the committee. Ms. Jansen said that the interim would be a good time period to inquire about the technological piece of setting up notifications when new open government impact statements are added to bills. Chair Fisher suggested Ms. Jansen talk to the subcommittee at some point and discussed setting this as an agenda item for a future subcommittee meeting.

Mr. Njus discussed Oregon's new health care marketplace oversight program, which was a new framework created for reviewing health care mergers and acquisitions. It has been in the process of reviewing mergers, including the Kroger/Albertsons grocery merger (because of the associated pharmacies), the acquisition of the Corvallis Clinic and the merger of OSU and Legacy Health Systems. He said the law as passed essentially exempts any submitted materials from disclosure, because of the trade secrets exemption. Mr. Njus expressed concern that this resulted in a large amount of material being redacted, information which he felt had immense public interest but the public was unable to review most of it. He expressed interest in hearing about trade secrets exemptions and confidentiality rules at a future meeting.

Mr. Foltz encouraged members to review a primer on the website regarding trade secrets exemptions that state agencies have used in applying the various statutes that implicate trade secrets.

Members came to a consensus that they would like to put this on as an agenda item for a future meeting to discuss. They raised ORS 415.501(13C) as a statute that related to confidentiality.

Mr. Foltz said it would be in the same category of exemptions that cover insurance exemptions, which is a DCBS-led program. He said he could provide a summary at the next meeting.

Mr. Foltz mentioned House Bill 4117 and how it expands the procedures for citizens to make complaints concerning public meetings law violations. Committee members expressed interest in having Mr. Foltz provide a presentation on the new rules at the next meeting. He also reminded members about the semi-annual report coming up soon.

No other issues were raised prior to adjournment.

Adjournment