

November 20, 2024 Location: WebEx Sunshine Committee Members
Morgan Smith, Polk County Counsel / Co-chair Cameron Miles, Government Accountability Attorney, Governor’s Office Elliot Njus, Editor, The Oregonian Mark Landauer, Lobbyist, Special Districts Association of Oregon Selena Deckelmann, Chief Product and Technology Officer, Wikimedia Foundation Karin Johnson, City Recorder for Independence
Guests
Andy Foltz, Public Records Counsel, Department of Justice Adrienne Anderson, Legislative Specialist, Oregon School Boards Association Sam Dupree, Senior Assistant General Counsel, Oregon Judicial Department
Agenda
AUDIO STREAM 0:00:00-0.5
<u>First Agenda Item: Review/Approve Minutes</u> Ms. Johnson moved to make an amendment to the minutes to indicate that she was present at the September meeting. Mr. Landauer moved to approve the minutes with Ms. Johnson’s amendment. Ms. Deckelmann seconded. Motion passed unanimously.
<u>Second Agenda Item: Report from the Subcommittee</u> Co-Chair Smith summarized the report from the subcommittee. The specific recommendation offered by the subcommittee was to address the situation that Ms. Cureton-Cook ran into regarding the interpretation of ORS 166.412-.436 to cover everything related to a background check. He said the crux of the recommendation was to protect the documents within the background check that are covered by the Criminal Justice Information System (CJIS) or otherwise federally protected, but other documents that don’t contain personally identifiable or CJIS might still be available for public disclosure, such as records reflecting the fact that a background check was conducted. He said the exemption should not be interpreted to be broader than what is necessary to effectuate the protections of federal law or CJIS. Ms. Deckelmann asked why just the fact that a background check was requested would need to be confidential. Co-Chair Smith said it had to do with the protections that surround concealed handgun licenses and privacy interests around whether someone has purchased a firearm. Disclosing that a background check was requested might reveal whether someone is a firearm owner. The current system does not really allow you to differentiate whether the background check was for employment purposes or for firearms purposes. Mr. Njus asked whether other protections around firearm ownership written into law were discussed. Co-Chair Smith said that ORS 192.374 is specific to concealed handgun licenses. This was due a history of sheriffs in Jackson County opposing release of that information because they didn’t feel it was the public’s right to know, and eventually their concerns got codified. The crux of the statute, he quoted, was that “a public body may not disclose records or information that identifies a person as a current or former holder of, or applicant for, a concealed handgun license, unless...” and there were several exemptions. He said there was past discussion that it would not be worth it politically for the committee to weigh in on gun issues when it’s not

likely to go anywhere. He entertained a motion to adopt the subcommittee's recommendation as a recommendation of the full committee.

Mr. Landauer so moved. **Ms. Johnson** seconded. The motion passed unanimously.

Third Agenda Item – Discussion of Juvenile Records

Co-Chair Smith discussed how other states have much more open juvenile records than Oregon does. As a lawyer for a juvenile department, he felt the extra protections were good and didn't need any changes.

Mr. Landauer agreed and made a motion to recommend no changes.

Co-Chair Smith discussed a case cited under the child abuse exemption related to the Pamplin Media v. Salem case. ORS 419B.035 relates to the confidentiality of child abuse reports and it's baked into the statutory scheme related to mandatory reports. So if there's a mandatory reporter that makes a report to law enforcement or DHS, then that abuse report is confidential from disclosure. The Pamplin v. Salem case essentially said that because the case didn't start with a report from a mandatory reporter, it's not confidential. He thought it was bizarre that in dealing with public records requests through his office, he has to look at what originated the investigation to see whether it's confidential or not.

Mr. Landauer modified his motion to reflect **Co-Chair Smith's** concern regarding what can be disclosed based on how an investigation originated.

Mr. Foltz agreed that in the other set of law enforcement exemptions that have been reviewed by the committee, juvenile information, including a juvenile's identity, could be releasable under that criminal investigatory exception if it is part of a "report of a crime" or a "record of an arrest." He clarified that the court in Pamplin v. Salem said that law enforcement agencies have independent obligations to investigate these as crimes. There are separate mandatory reporter laws that trigger 419.035B, a set of laws that covers DHS and not law enforcement. Because there are investigative activities independent of the characterization of a case as a child abuse case, some juvenile information could be disclosed as part of a law enforcement "report of a crime".

Co-Chair Smith said that mandatory reports get cross-reported between DHS and law enforcement.

Ms. Deckelmann suggested that the issue being raised could be outside of scope of the committee's work.

Mr. Miles said that he looked at the case and he would be in favor of removing the portion of the criminal investigatory information exemption that involves 192.3453(d) which would then exclude the identity of and biological information concerning both complaining party and victim from the "report of a crime." He thought that information shouldn't be released during an investigation.

Mr. Njus said he is sympathetic to the idea that the laws should at least be compatible, but he doesn't agree that the solution is to remove the identity and biological information concerning the complaining party and victim from the exemption. He thinks that's part of the public record and will become known throughout the life of the case.

Co-Chair Smith said that all criminal information is, generally speaking, exempt from disclosure until the conclusion of the criminal proceeding.

Mr. Miles said he had an issue with how you have to wait until the matter is in court for a judge to seal a victim's name, but it could be reported prior to that. He said that's a problem for him.

Co-Chair Smith said he doesn't think it comes up a lot because news outlets generally don't publish the names of minors. But we can't treat the media different than any member of the public who would ask for the same information.

Mr. Miles said there is also a proliferation of bloggers and alternative media that doesn't have the same ethical guidelines as traditional news outlets, and this could be a safety issue for a victim trying to get away from their attacker.

Co-Chair Smith said that since there did not appear to be any specific recommendations about juvenile records, the group could move on without a recommendation.

Mr. Landauer expressed a concern with the way the criminal investigatory exemption was written so as to possibly require the disclosure of some juvenile information.

Ms. Deckelmann noted that the committee had already reviewed the criminal investigatory exemption and made recommendations to the legislature. She also asked whether it would be appropriate to refer this issue to some other group, such as a juvenile advocacy group or a legislator with interest in this topic.

Mr. Foltz clarified that the statute that created this issue and discussed in the Pamplin v. Salem case is not one of the juvenile specific exemptions, but is rather part of the criminal investigatory exemption that the committee has reviewed. He quoted the statute, "The record of an arrest or report of a crime shall be disclosed unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim." He said that in the course of an investigation, just about every law enforcement and child abuse investigative agency is going to rely upon that exception to withhold the identity of minor victims. He also noted that even after a case is completed, other exemptions might permit the withholding of juvenile information such as disclosures that might constitute an unreasonable invasion of personal privacy. But it's unclear given the Pamplin v. Salem case whether the courts would require the disclosure of a juvenile victim's name.

Co-Chair Smith said that it would be in the committee's purview to streamline the law. That level of confusion leads to a lack of transparency overall because of the lack of clarity in the law, he said. He suggested a recommendation along the lines of the identity of victims that are juveniles in sex abuse or domestic violence cases are categorically exempt. He suggested not making any recommendation on the bulk of the juvenile records exemptions, but kick the issue of the interaction between the criminal investigatory information exemption and ORS 419B.035 to the subcommittee for a more detailed discussion.

Mr. Landauer amended his motion to adopt Co-Chair Smith's recommendation about referring the outstanding issue to the subcommittee.

Co-Chair Smith asked for a vote. The motion passed unanimously.

Ms. Deckelmann agreed that the relevant role for the subcommittee is to examine ways to provide clarity, consistency, and to streamline the matter so that there is a speedy execution of justice.

Fourth Agenda Item – Discussion of Disability Records

Co-Chair Smith said the judicial fitness exemptions were particularly interesting to him within the disability records overall. He could see why that information didn't need to be disclosed and could also see why news media would want to have it.

Mr. Foltz said that Sam Dupree from the OJD was joining the committee as a guest today.

Mr. Dupree said he was there to listen but would try to answer any questions that came up.

Ms. Deckelmann questioned whether there was an opportunity for consistency in the use of initials or an alias in decisions.

Mr. Miles said this was a common practice.

Mr. Miles said that his general opinion was that any information about personal disability that in any way reflected their health, whether mental health or substance abuse or anything, should generally be protected and outside the scope of employment. However, he had recently watched a Law and Order episode in which a judge was protected who was using opioids who had put several cases in jeopardy, and he could see that being a concern.

Ms. Deckelmann said that regarding the disability of a judge, unless received as competent evidence in the course of a hearing, the competency hearing would be an opportunity to look at cases that might have been affected by an impaired judge.

Mr. Foltz said he has not dealt with judicial disability, but he has dealt with some cases that have involved conduct complaints against judges that have a parallel process that has similar exemptions at various stages of the proceedings. In those cases the allegations of misconduct do become public at a hearing, whereas he reads the judicial disability rules as making the hearing closed and making the evidence received at such hearings confidential.

Mr. Dupree said he was not as familiar with this process as he should be, but he knew people he could ask to get more information about it.

Mr. Miles said that he disliked the idea of an impaired judge making decisions and the public not knowing about that, but he doesn't believe that their personal medical information should be disclosed.

Committee members discussed other examples of judicial impairment, such as if a judge was getting Alzheimer's or was drunk on the bench.

Mr. Njus wanted to know more about the process regarding the competency hearings. He wondered whether the fact of a disability investigation is a matter of public record or whether the public would not have access to that information.

Mr. Foltz noted that in his experience, OJD would decline to even acknowledge whether a complaint has been filed against a judge, but that he could get more information from OJD.

Committee members agreed they wanted to hear more about these processes and to discuss them in greater detail at the next meeting.

Co-Chair Smith said he would work with Co-Chair Fisher regarding information about the judicial fitness exemptions for the next meeting. He also asked whether there was any discussion or recommendations relating to the other disability exemptions. There were none.

Fifth agenda item – Draft Legislative Concept 1281 and Resulting Bill

Mr. Miles noted that the bill does exactly what the committee wanted, including: (1) moving the committee's reporting requirement from July 1st to May 1st; (2) gets rid of the Public Records Subcommittee of the Legislative Counsel Committee; (3) Senate President and Speaker of the House appoint 2 members to the committee since the subcommittee would be removed; (4) the committee's reports will go to the Judiciary Committee instead of the

Legislative Counsel Subcommittee; and (5) it extends the Sunshine Committee's deadline from 2026 to 2031.

Mr. Landauer asked who sponsored the bill.

Co-Chair Smith said he thought it was Senator Thatcher.

Co-Chair Smith said Co-Chair Fisher asked him to point out to the group that Legislative Days happen Dec. 10-12 and asked for volunteers to assist in advertising the bill.

Mr. Landauer said he didn't think the bill needed a lot of co-sponsors. He felt it was more housekeeping than making substantial policy changes. He also said that if the committee wanted it pre-session filed, the best way to get this passed was to get it in early.

Mr. Miles agreed and that it was more important to get a hearing than to get co-sponsors.

Mr. Landauer said it would most likely go before the Rules or Judiciary committees, and that the most likely way to get a hearing is to get it filed pre-session.

Ms. Deckelmann offered to volunteer if deemed necessary.

Co-Chair Smith said he would work with Chair Fisher, Mr. Landauer and Mr. Miles on next steps to expedite the process and they will work behind the scenes to get the bill passed.

Sixth Agenda Item – Next meeting date and future topics

Co-Chair Smith said there was a desire to get in-person meetings going and discussed picking one meeting a year to be an in-person meeting, most likely in the spring or summer.

Ms. Deckelmann suggested May.

Mr. Landauer suggested meeting at the end of June after the legislative session.

Mr. Foltz said the next set of exemptions is offender information and then education records. He suggested jumping ahead to education records. There are only six of them and they have already been summarized.

Co-Chair Smith agreed to tackle education records.

Mr. Foltz said he could also reach out to Rachel Mortimer, the Executive Director of the Commission on Judicial Fitness and Disability, to see if she's available to talk to the group in January regarding judicial fitness issues.

Ms. Johnson said goodbye to the group as she is retiring at the end of the year. The League of Oregon Cities is looking for a replacement appointment for her position.

Meeting Adjourned.