

## **Introduction**

The Oregon Sunshine Committee is pleased to submit its fourth biannual report to the Oregon Legislature. This report is particularly exciting as the passage of SB 890 (2025) now requires this report to be submitted to the legislature's judiciary committees. The Sunshine Committee is proud of its accomplishments since our last report. Should the Legislative Assembly have questions, the Sunshine Committee would be happy to address those at an upcoming meeting or through a supplemental report.

## **Statutory Basis**

ORS 192.511 establishes the Sunshine Committee and sets out its purposes. The Sunshine Committee's single largest charge is to review existing public records disclosure exemptions by 2031. In total, the Sunshine Committee is also empowered to "[s]tudy and identify any inefficiencies and inconsistencies in the application of public records laws that impede transparency in public process and government." And it is charged with making "recommendations on changes in existing law, policy and practice to enhance transparency and facilitate rapid fulfillment of public records requests made to public bodies." Finally, it is required to make a report to the Legislative Assembly by May 1 of every even numbered year.

## **Committee Membership**

Statutorily, the Sunshine Committee consists of fifteen members. Four legislators are members of the Public Records Subcommittee and participate *ex officio* without voting rights. Some of the changes from SB 890 outline that two members be from the House of Representatives and two from the Senate, respectively appointed by chair the the House and

Senate Judiciary Committees. For voting members, the Governor and Attorney General or their designees are voting members. The remaining seven members are selected by the Attorney General to represent various stakeholder groups. These are the current non-legislative members serving on the Sunshine Committee:

- Mark Landauer, Special Districts Association of Oregon
- Charlie Fisher, Oregon State Public Interest Research Group
- Emily Cureton Cook, Oregon Public Broadcasting
- Stephanie Clark, State Archivist
- Alex Downing, City of Corvallis
- Leslie Wu, Office of the Attorney General
- Cameron Miles, Office of the Governor
- Morgan Smith, Polk County
- Elliot Njus, The Oregonian

Collectively, these members represent the interests of a wide array of interests in public records including journalists, public entities and public interests. It should be noted that we currently have two vacancies. The vacant positions are slated for a representative of newspaper publishers and an individual with information technology experience.

The Sunshine Committee currently meets once every two months as a full group. Two subcommittees have been created as well. The special projects subcommittee exists to do a

deeper dive into specific exemptions recommended to it by the full Committee. Over time it has been discovered that the full board can be a bit unwieldy when addressing complicated issues, and usually specific facets of an exemption will be referred to the special projects subcommittee. The subcommittee then meets separately and generates a recommendation that can be brought back to the full committee for adoption or modification. A legislative subcommittee also exists to address legislative concepts and bills that fall within the charge of the Sunshine Committee during legislative sessions.

## **Structure of Report**

Following this introductory section, this report will describe the Sunshine Committee's work and recommendations over the past two years, as well as its plans into the future. Exemption review work is discussed first, starting with an explanation of exemptions reviewed to date and recommendations of the Sunshine Committee based on that review. An update on the Sunshine Committee's plans to finish its review follows.

## **Exemption Review**

The Attorney General's catalog of public disclosure exemptions — the statutes the Sunshine Committee must review — contains over 600 entries. As explained in the Sunshine Committee's previous reports, those have been divided into categories based on subject matter, and the Sunshine Committee has established the order in which they will be reviewed. The Sunshine Committee generally uses the following framework for assessing public records exemptions:

- Why should this information be kept from the public? What public policy interests are served?
- What interests suffer if this information is not available to the public? To what extent does it hinder government accountability?
- Is the exemption appropriately written in light of the above? Does it adequately balance the relevant interests?
- If there are multiple exemptions, do there need to be? Are the various exemptions written in a way that captures the relevant differences?

These have not been adopted as questions that the Sunshine Committee will formally answer with respect to every exemption. Instead, they are the principles that are guiding the Sunshine Committee's consideration of exemptions and underlie its recommendations.

### **Exemptions Reviewed Since the Last Report**

To date the Sunshine Committee has reviewed a vast swath of public records exemptions, which as noted above were grouped together by subject matter. In an effort to keep this report somewhat digestible, individual exemptions will be referenced by the subject matter which the exemptions fell under, rather than specific statutory citations of each individual exemption. The fact that this is the most practical method to provide a summary of existing public records exemptions highlights one of the continuing themes of the Sunshine Committee's work. Specifically, it is incongruent for the public records law to start with the basic premise that all records possessed by state and local governments in Oregon are open to public inspection while at the same time having over 600 specific exemptions of this general rule. This creates an

unwieldy legal framework for governmental entities to manage requests which can delay or obstruct transparency.

It should be noted that this total number of recommendations appearing in this report is a bit smaller than previous iterations. However, several of the subjects we covered required deeper discussion and analysis before a recommendation could be made and/or were Oregon laws and exemptions that mirrored federal law and could not be changed at a state level. Attached to this report are the specific statutes/exemptions reviewed and the summaries prepared by the Department of Justice.

#### Background Check related information

Review of the exemptions related to background checks was a robust discussion but with limited recommendation for substantive change. Most of the exemptions were related to compliance with the federal privacy restrictions around Criminal Justice Information Systems (CJIS) under federal law and different state and local government access to those protected records. CJIS provides approved pathways for information contained in state and federal criminal justice databases, and most of the exemptions reviewed worked to protect those pathways. The one major recommendation was for a modification of ORS 166.412 and 166.436 relating to background information for gun purchases and transfers. There was concern that the verbiage in statute was overbroad and could be interpreted to make every document related to a background check conducted by the Oregon State Police exempt from disclosure. This could include anything related to whether a background check even occurred, rather than simply protecting the confidential results of the background check.

#### Juvenile Records

Review of Oregon's privacy scheme and public records exemptions related to juvenile proceedings was light on recommendations. There was a consensus from the group that protecting juvenile information from public inspection was beneficial as a while and no recommendations were put forward or adopted. The conversation however did steer into an analysis of the treatment of juveniles as victims in criminal proceedings. A recommendation on this issue was adopted that there should be a clear exemption for identifying information related to a juvenile victim in cases involving sexual abuse or domestic violence.

### Disability Records

The Committee had no recommendations for approximately half of the disability related exemptions. The exemptions related to judicial fitness were of particular interest to the group as there would be greater public interest in the potential disability of a judge because of the position of authority they hold within a community. The records exemptions for these materials related to the Oregon Commission on Judicial Fitness. Accordingly, the executive director, Rachael Mortimer attended a Committee meeting and provided input on the process and protocols around the Commission on Judicial Fitness' inquiries into judicial disability issues.

The current state of the law was that all complaints (conduct or disability related) were confidential, along with any investigation of the matter by the Commission on Judicial Fitness. If an investigation concluded there was sufficient evidence of possibly disability or wrongdoing then the matter would proceed to a hearing. At the hearing level the disability information could still be confidential. Finally, at the conclusion of the hearing, a recommendation would then be transmitted to the Oregon Supreme Court for final determination. When the matter is before the Supreme Court, all records related to the underlying proceeding become public.

Ms. Mortimer further explained that the three forms of discipline that can be meted out are public censure, suspension or termination. All judges subject to a complaint are free to stipulate to a finding and discipline if they so chose at any point in the process, and the stipulation would then be adopted by the Supreme Court which is available to the public. However, the Commission on Judicial Fitness' jurisdiction extends only to judges in Oregon and as a result, at any point in this process they could resign their position and any investigation would cease as they are no longer under the Commission's jurisdiction. Accordingly, complaints that never make it to hearing or the Supreme Court would never become available to the public.

The special projects subcommittee met to discuss the exemptions further with the assistance of Ms. Mortimer again. After lengthy deliberations, no unified path was clear but three options were coalesced for consideration by the full board. Option one would be no change to the current confidentiality. Option two was more closely aligned with how other public employee complaints/investigations are treated which is to make them public once they are founded. A third option would be to approach confidentiality the same as the Oregon State Bar which has all no restrictions on materials related to complaints against lawyers.

Balancing the privacy interests of judges and of complainants (there concerns over a chilling effect of complainants) the eventual recommendation adopted was that documents currently exempt from public disclosure should be conditionally exempt. Complaints and investigatory materials related to a judge who resigns or retires shall no longer be exempt from public disclosure. Complainants that wish to remain anonymous should be allow to do so.

#### Education Records

The Committee reviewed a wide swath of public records exemptions related to educational records. To bring some expertise to the table, Spencer Lewis from the Oregon School Boards Association joined and provided extensive background information on the records exemptions. Specifically, how the current state of Oregon law relates to privacy requires of federal law under the Family Educational Rights and Privacy Act (FERPA). After discussion, the committee declined to recommend substantive changes to Oregon's privacy scheme as they were largely duplicative of federal law. The one recommendation coming from this discussion was to alter ORS 341.290 to align with the the record exemptions applicable to other public employees.

## **Conclusion**

In sum, the Committee reviewed 36 different exemptions to Oregon's Public Records law in the past two years. The next subjects anticipated to be reviewed will be mental health and counseling exemptions and correctional institution exemption.