

Oregon Sunshine Committee Meeting Minutes
January 31, 2018; 1:00 – 2:30 pm

Oregon State Capitol
900 Court Street NE, Hearing Room D, Salem, OR

Sunshine Committee Members

Oregon State Senator Brian Boquist (ex officio) (excused)
Selena Deckelmann, Director of Engineering, Mozilla Firefox
Eileen Eakins, Law Office of Eileen Eakins, LLC
Charlie Fisher, OSPIRG State Director
Mary Beth Herkert, Oregon State Archivist
Karin Johnson, Independence City Recorder
Michael Kron, Special Counsel, Oregon Department of Justice
Emily Matasar, Government Accountability Attorney, Governor’s Office
Oregon State Representative Karin Power (by phone) (ex officio)
Oregon State Senator Floyd Prozanski (ex officio) (excused)
Adrienne Roark, Vice-President and General Manager, KPTV Fox 12
Morgan Smith, Polk County Counsel
Brent Walth, Journalism Professor, University of Oregon
Christian Wihtol, Senior Editor, Register Guard (by phone)
Oregon State Representative Carl Wilson (ex officio)

Guests

Ellen Rosenblum, Oregon Attorney General
Rob Bovett, Legal Counsel, Association of Oregon Counties
Kevin Moore, Legislative Aide to Senator Floyd Prozanski (by phone)
Matt Friesen, Gallatin Public Affairs
Cameron Miles, Legislative Counsel, Committee Assistant
Kate Denison, Oregon Department of Justice

Agenda

VIDEO STREAM 0:00 – 1:35:50

1. Welcome and Introductions

Attorney General Ellen **Rosenblum** welcomed the members. Her goal for the Sunshine Committee is to help make Oregon the best state in the country for public access to government. Acknowledges the need to protect some legitimate interests while insuring that the public understands what government is doing and why. Refers to work on public records cases going back to the beginning of her legal career. Discusses work of the Attorney General’s Public Records Reform Task Force, and remaining issues including the

cost of records requests, existence of 550 exemptions from disclosure. Proposed questions for the Committee to evaluate exemptions: would Oregonians expect to be able to obtain this information, or understand why it is confidential? Is the exemption clear? Is it written too broadly? Does it, or should it, recognize countervailing public interests? Is it consistent with the way similar information is treated? AG Rosenblum thanked the members for their commitment to the work.

Members introduced themselves.

Michael **Kron** explained the agenda. He then spoke about the work expected of the group: reviewing exemptions, identifying inefficiencies and inconsistencies in the laws, recommending changes, and reporting to the legislature.

Representative Carl **Wilson** asked about the work plan for exemption review. Would the committee look at oldest exemptions first? Approach them based on subject area? Deal first with the ones creating the most issues today?

Mr. **Kron** replied that the Committee will want to ask those questions given the different possibilities and the need to create a manageable structure for the task. Mr. **Kron** asked the members to talk about their goals for the group.

Christian **Witohl** expressed that this would be complicated work. The end result might be general principles as fine tuning each exemption may be colossal or even impossible. He likes balancing tests and wonders about making them universal.

Eileen **Eakins** introduced herself.

Morgan **Smith** expressed interest in increasing awareness of law and simplicity of administering it. Is concerned that adding balancing tests will make the law more difficult to administer and contentious.

Emily **Matasar** stated that identifying outdated exemptions that could be easily eliminated would be a good start.

Charlie **Fisher** said he hopes that, in the absence of a compelling reason, the Committee would err on the side of easy public access. He is interested in looking at some of the exemptions the legislature did not require the Committee to examine, particularly trade secrets. It would be great to finish before 2026.

Selena **Deckelmann** expressed that she is looking forward to deepen her understanding of the process. She is encouraging corporate adoption of similar practices. She identified the importance of protecting private information. She explained that she has some experience facilitating the disclosure of public information. She is interested in the categorization problem.

Adrienne **Roark** would like to see the number of exemptions decreased, and seeks to

	<p>protect the free flow of information.</p> <p>Ms. Eakins explained that her clients are small government entities who are looking for bright lines rather than balancing tests. Wants the Committee’s work to simplify the law.</p> <p>Karin Johnson would like to see the number of exemptions reduced and the law made workable for cities.</p> <p>Representative Wilson looks forward to the learning aspect of the work. He brings experience as a broadcaster, business owner and legislator to the Committee. To the extent the Committee can improve public access to government, citizens are the winners.</p> <p>Brent Walth stated that the law is a law of disclosure, not government discretion. He expressed concern that exemptions change that dynamic. Governments can release data when they want to. He cited examples of public bodies using exemptions to justify large fees for access to public information.</p> <p>Representative Karin Power recounted that she has participated in the creation of exemptions. She is looking forward to learning how public agencies are managing requests and what tools are available to help them.</p> <p>Mr. Kron thanked the members.</p>
2.	<p>Committee Procedures</p> <p>Actions: The Committee unanimously elected Michael Kron as chair. The Committee adopted Robert’s Rules of Order as the procedural rules of the Committee, except as inconsistent with the Oregon Public Meetings Law.</p> <p>Mr. Kron stated that the Committee needed to choose a chair and solicited volunteers. Mr. Kron himself was nominated, the nomination was seconded, and he was unanimously elected chair without further discussion.</p> <p>Chair Kron talked about the need for rules and expressed a preference for relatively informal procedures.</p> <p>Ms. Eakins expressed general agreement but stated that formal process for yes and no votes is needed.</p> <p>Ms. Herkert agreed, citing the need for transparency.</p> <p>Chair Kron asked about roll call for votes. Ms. Herkert expressed that group voting is generally okay, but a roll call is needed if there is not consensus.</p> <p>Mr. Walth asked whether members could request a roll call vote. Ms. Herkert stated that</p>

	<p>they could.</p> <p>Mr. Fisher asked whether consensus is required for the Committee’s work. Chair Kron stated that it is not, but expressed optimism that consensus would be possible.</p> <p>Chair Kron asked how he should describe the rules under consideration by the Committee. Ms. Herkert proposed that the Committee adopt Robert’s Rules of Order to begin with.</p> <p>Representative Wilson stated his appreciation for the desire to have informal process but expressed the importance of having rules to accomplish the committee’s work. He suggested consideration of the rules used by the legislative assembly.</p> <p>Chair Kron asked whether Robert’s Rules of Order would be preferable.</p> <p>Rob Bovett, from the audience, discussed Mason’s Rules versus Robert’s. Explained that many public bodies use Robert’s Rules of Order, except as inconsistent with the Oregon Public Meetings Law. He thinks that Mason’s rules work better for larger group.</p> <p>Mr. Walth asked Mr. Bovett which rules he recommends. Mr. Bovett recommends Robert’s.</p> <p>Mr. Walth moved that the committee adopt Robert’s Rules of Order, except as inconsistent with the Oregon Public Meetings Law and received a second.</p> <p>Ms. Herkert asked whether members are familiar with the rules, and requested that Chair Kron send information about the rules to members.</p> <p>By unanimous vote, the Committee adopted Robert’s Rules of Order, except as inconsistent with the Oregon Public Meetings Law.</p>
<p>3.</p>	<p>Discussion of Method for Approaching Work of the Committee</p> <p>Chair Kron raised the need to manage the review of exemptions. He explained work the Attorney General’s Task Force did regarding exemptions and raised the possibility of borrowing the work done to categorize various exemptions. He also discussed other possible approaches to the work, including a utilitarian approach or a chronological approach.</p> <p>Representative Wilson stated that exemptions that have been superseded or made moot are less interesting to him. He expressed that the work could be more appreciated if the Committee attacks the exemptions at issue now for journalists and government.</p> <p>Ms. Deckelmann asked whether there is a log of public records denials. Chair Kron replied that there is not, but that some public bodies such as the Governor’s Office and the City of Portland might have logs that could potentially be representative.</p>

Mr. **Witohl** observed that the public records process is decentralized, making it difficult to evaluate which exemptions are most at issue. He suggested that the Committee might start with the exemptions in ORS Chapter 192.

Ms. **Herkert** expressed that, whatever approach the Committee chooses, capturing interrelated exemptions would be important. Asked whether exemptions could be better defined, or given limited durations.

Ms. **Eakins** noted parallels between the Public Records Law and executive session provisions of the Public Meetings Law. She stated that when her clients have problems it is often about process. She cited the example of repeatedly making public records requests which are not actually seeking records but simply asking questions.

Chair **Kron** speculated whether it might be possible to create links between exemptions in Chapter 192 and exemptions outside of that chapter.

Ms. **Matasar** made the point that it might be beneficial to organize review with stakeholders in mind, so that specific stakeholder groups could come before the Committee once rather than needing to come repeatedly. Chair **Kron** expressed uncertainty about how to do that.

Representative **Wilson** noted that the Committee will be hearing people and publishing agendas that inform interested parties whether they wish to attend.

Chair **Kron** suggested that he could write a report outlining various possible approaches to the work, and recapped his understanding of the possible approaches discussed so far.

Mr. **Witohl** suggested that the Committee might allow members to identify exemptions for the Committee to review. Chair **Kron** noted that approach could allow the Committee to focus on current priorities, given the expertise of the group. Representative **Wilson** expressed that the working press and smaller governments have particular things on their mind.

Attorney General **Rosenblum** suggested that morale could benefit from clearing up easy ones at the beginning of the group's work. Representative **Wilson** stated that clipping off low-hanging fruit while the Committee proceeds would be good. Chair **Kron** expressed the view that it would probably be easier to accomplish that by combining related exemptions than by eliminating exemptions entirely.

Mr. **Fisher** spoke in favor of the idea of letting Committee members decide which exemptions merit review, and combining that approach with a more categorical approach.

Chair **Kron** stated some possible advantages of that approach and said that he felt he had a good idea of what should go to a report to the Committee to outline ways of approaching the exemption review.

4.	<p>Future Meetings</p> <p>Chair Kron raised the issue of scheduling future meetings. In the ensuing discussion, general consensus emerged around scheduling meetings for the third Wednesday of every other month at 1:00 pm, with a telephonic attendance option for each meeting.</p> <p>Representative Wilson asked whether Committee Staff might explain the microphone system. Cameron Miles explained that blue lights near the staff desk indicate that the system is recording and transmitting.</p> <p>Mr. Miles then explained that the exemptions formerly in ORS 192.501 and 192.502 have been renumbered.</p> <p>Mr. Fisher noted that he would not be available for the March meeting and raised the possibility of sending someone in his stead. After some discussion among members about proxy voting, he clarified that his representative would merely be observing.</p>
5.	<p>Future Tasks of the Committee</p> <p>Mr. Bovett suggested that the Committee should consider electing a vice chair. Chair Kron expressed support for that idea and stated that he would add it to the agenda for the next meeting. He asked members to consider whether they would be willing to serve as vice chair.</p>
	<p>Adjourn</p> <p>After motion and second, the Committee unanimously voted to adjourn.</p>

Oregon Sunshine Committee Meeting Minutes
 March 21st, 2018

Location:

Sunshine Committee Members	
<p>Oregon State Senator Brian Boquist (excused) Selena Deckelmann, Director of Engineering, Mozilla Firefox (by phone) Eileen Eakins, Law Office of Eileen Eakins, LLC Charlie Fisher, OSPIRG State Director Mary Beth Herkert, Oregon State Archivist Karin Johnson, Independence City Recorder Michael Kron, Special Counsel, Oregon Department of Justice Emily Matasar, Government Accountability Attorney, Governor's Office Oregon State Representative Karin Power Oregon State Senator Floyd Prozanski (excused) Adrienne Roark, Vice-President and General Manager, KPTV Fox 12 (by phone) Morgan Smith, Polk County Counsel Brent Walth, Journalism Professor, University of Oregon Christian Wihtol, Senior Editor, Register Guard (excused) Oregon State Representative Carl Wilson (by phone)</p>	
Guests	
<p>Matt Friesen– Oregon Newspaper Publishing Association Nick Budnick – Society of Professional Journalists</p>	
Agenda	
VIDEO STREAM 0:00 – 1:30:48	
1.	<p>Welcome and Introductions</p> <p>Chair Kron began meeting at 1:00 p.m. He introduced Andy Foltz, newly hired Public Records Counsel at DOJ, who will be providing legal assistance to Sunshine Committee, helping with meeting materials and organizing the committee's work.</p> <p>Members introduced themselves.</p>
2.	<p>Committee Procedures</p> <p>Chair Kron moved to discussion of who would serve as Vice Chair and what the responsibilities of the position would be. He asked volunteers to serve as Vice Chair.</p> <p>Ms. Matasar volunteered. A motion was made, and seconded, that Ms. Matasar be elected vice chair of the Committee. With no objections or discussion, Ms. Matasar was elected by unanimous vote.</p> <p>Chair Kron described proposed duties of Vice Chair and suggested that Committee would leave it up to himself and Vice Chair Emily Matasar to determine their respective duties, with the understanding that they would come to the Committee in the unlikely event of disagreement. A motion to that effect was made and seconded. With no objections or</p>

	<p>discussion, the Committee unanimously voted to accept this proposal.</p> <p>Mr. Budnick introduced himself and said he would like to comment later if possible. Chair Kron welcomed the comment at that time, noting there would not be a public comment portion of the meeting and that questions and comments had been accepted throughout the prior meeting.</p> <p>Mr. Budnick said he hoped everyone saw the value in this Committee and the work it's doing because it's easy to find the task daunting and lose sight of its importance.</p>
3.	<p>Discussion of Organizing Exemption Review</p> <p>Chair Kron opened the discussion by talking about his report to the Committee, and invited open discussion regarding options for organizing exemption review.</p> <p>Ms. Eakins spoke in favor of the categorized approach. Chair Kron expressed that he liked the approach as well, but pointed out that the Committee would still have to decide which categories to start with.</p> <p>Representative Power asked if Chair Kron had thought of any other possible approaches after sending the memo. Chair Kron replied no. In response to another question from Representative Power, Chair Kron explained that the numbers in parenthesis on his list showing the categories of exemptions indicated how many exemptions were in each category.</p> <p>Ms. Herkert noted the dangers of parsing categories of exemptions too finely, which could cause overlap between categories. She noted some overlap in some of the examples attached to the chair's report. She stated that, if the Committee goes the categorical route, it will need to decide which category is most important to tackle first.</p> <p>Mr. Fisher stated that he favors the categorical approach as well. He recalled that, in the prior meeting, it had been suggested that Committee members could recommend particular exemptions to start with. He also expressed support for the idea of using data about how often exemptions had generated disputes to decide which exemptions to consider first.</p> <p>Representative Wilson asked the chair to explain the document regarding exemptions with appellate cases and AG public records orders. Chair Kron explained that the chart shows how many times a particular exemption was at issue in a case before the Court of Appeals or Supreme Court, and how many times the Attorney General has issued an order regarding the exemption. Representative Wilson then asked whether Chair Kron recommended that the Committee adopt work done by the AG's task force, and Chair Kron replied in the affirmative.</p> <p>Ms. Herkert asked whether the Committee has power to reform a broad exemption or is limited to approving or disapproving exemptions. Chair Kron said Committee has</p>

authority to make any suggestion to legislature that they think is best. Chair **Kron** commented that the group seemed to agree that it should use the data about appellate cases and AG orders to proceed through a categorical review of exemptions.

Mr. **Walth** expressed skepticism that this approach would allow the Committee to provide reform to current unnecessary exemptions.

Mr. **Fisher** explained that is why he suggested combining the data driven approach with committee input regarding which exemptions should be reviewed.

Ms. **Eakins** and Mr. **Fisher** found common understanding on using categorical approach for starting point, and allowing Committee members to motion for particular exemptions to be looked at. Mr. **Walth** reiterated and general consensus was confirmed.

Representative **Wilson** asked if there are any “low hanging fruit” the Committee could reform to show progress. Chair **Kron** said yes, if that means combining redundant exemptions within a category to eliminate unnecessary ones.

Members then discussed the extent to which the Committee should develop guidance for members to assess exemptions, initiated by comments from Ms. **Herkert** and Ms. **Decklemann**. Chair **Kron** expressed doubt that the Committee could tell members what to think about particular exemptions. Ms. **Deckelmann**, Representative **Power**, Ms. **Herkert**, Ms. **Eakins** and Representative **Wilson** discussed that the idea would be to provide a consistent set of criteria for members to consider. Chair **Kron** expressed that he had misunderstood the nature of the suggestion, and proposed that the Committee should consider criteria presented by the Attorney General in opening remarks last meeting: essentially, what would the people of Oregon expect.

Ms. **Eakins** proposed specific questions. What public policy objective is intended to be accomplished? Is this exemption necessary to accomplish that? Is it clearly written? Is it duplicative? Is it appropriately broad or narrow? Representative **Wilson** summarized this suggestion as a “template for consistency.” Chair **Kron** and Ms. **Herkert** agreed. Chair **Kron** looked at the AG’s remarks from the prior last meeting and determined they are almost the same as Ms. **Eakins’**. He stated that these questions would leave room for various perspectives to be explored while providing a framework for approach.

Mr. **Budnick** knew of a similar list created by another state exploring the same issues and offered to send it to the Committee.

Chair **Kron** suggested that the Committee still needed to finalize a decision about structuring its review of exemptions.

Vice Chair **Matasar** asked whether the goal was to determine a schedule for evaluating exemptions over the next ten years. Chair **Kron** answered that the goal would be to outline a general order, and specifically identify what the committee intends to look at next. After discussion and consultation with the statutes governing the Committee,

	<p>members agreed that this approach would be consistent with statutory requirements.</p> <p>Chair Kron summarized general consensus regarding the approach to exemptions as a hybrid between a categorical approach, grouping similar exemptions together, and then setting an order for review based on the data, while also allowing members the ability to propose exemptions that the Committee will review before otherwise scheduled (along with other exemptions covering similar information). Members generally agreed that this was the consensus and Chair Kron asked for motion. The motion was made and seconded. None were opposed, there was no further discussion, and the motion passed unanimously.</p> <p>Chair Kron then returned to the discussion about establishing criteria for exemption review.</p> <p>Ms. Herkert suggested that the Committee should have a specific proposal to consider before adopting criteria. Chair Kron laid out four possible options: adopt Ms. Eakins questions, or the Attorney General's, with the possibility of amending them later; take the issue up as the first agenda item for the next meeting, after considering proposals that Chair Kron would develop based on the discussion and other materials provided by Mr. Budnick; add another meeting to the Committee's schedule; or else start the review of exemptions the meeting after next, instead of at the next meeting. Members ultimately agreed that Chair Kron should develop proposed criteria for assessing exemptions and circulate them in advance of the next meeting, where the Committee would discuss and adopt criteria.</p>
4	<p>Approval of Meeting Minutes</p> <p>Mr. Kron described a minor change to the meeting minutes requested by Ms. Eakins pertaining to her title and asked whether anyone else had changes they would like to request.</p> <p>Vice Chair Matasar asked if meeting minutes could be less detailed and lengthy.</p> <p>Ms. Herkert pointed out that without audio for public to reference the meeting minutes level of detail has to substantiate that. Chair Kron reminded that video/audio is available on OLIS. However, Ms. Herkert pointed out that it is unclear how long the video would be maintained and that detailed minutes allow for easy review of the Committee's business.</p> <p>Ms. Power advocated an intermediate level of detail, not verbatim but enough to capture general context. Mr. Foltz echoed that suggestion due to the duration of this task force (at least ten years). Chair Kron reassured Vice Chair Matasar that her duty of capturing the meeting minutes will likely be relieved by DOJ staff.</p> <p>A motion was made to accept the prior meeting minutes, with the change to Ms. Eakins' title. The motion was seconded, and without discussion or opposition, the Committee</p>

	unanimously voted to approve the minutes.
5.	<p>Future Meetings</p> <p>Chair Kron asked whether members had thought about how the Committee should conduct future meetings, and specifically how the committee should obtain stakeholder input and communicate information to stakeholders. He mentioned that an email address and webpage would be created, and raised the possibility of a listserv. Ms. Herkert advised against a listserv, citing the difficulty of administering it. She suggested that a blog might be a better idea.</p> <p>Mr. Smith spoke in favor of using a website to post meeting materials, agenda items, information received from public and details of next meeting. Chair Kron promised to let Committee members know when the website and the email address for public submissions are live.</p> <p>Representative Carl Wilson and Legislative Counsel Cameron Miles discussed the possibility of using Legislator’s site ‘OLIS’ to post. A separate page would need to be setup.</p> <p>Chair Kron asked for members views regarding stakeholder testimony. After some discussion, members agree that oral testimony would be welcome, with time limits imposed if agenda is tight.</p>
6.	<p>Report to Legislative Assembly</p> <p>Chair Kron discussed the need to submit a report to the Legislative Assembly by July of 2018. He explained his planned approach to the report, and promised to send a draft to Committee members for approval at the meeting in May.</p>
	<p>Adjourn</p> <p>After motion and second, the Committee unanimously voted to adjourn.</p>

Oregon Sunshine Committee Meeting Minutes
May 16, 2018

Location: Oregon State Capitol, Room 343

Welcome and Introductions

Chair **Kron** suggested that guests and members introduce themselves. He announced that Christian Wihtol has to step down and the AG is working with the Newspaper Publishers Association for a replacement.

Chair **Kron** went through the agenda, and noted that the new public records advocate, Ginger McCall, would be addressing the committee.

Members and guests introduced themselves.

First agenda item: March 16, 2018 Draft Minutes

Chair **Kron** proceeded to first agenda item. He received a suggestion from Mr. **Miles** that the minutes should reflect that he and Mr. **Foltz** were visitors. Chair **Kron** will make that change. No other comments on the minutes. On motion and second the committee unanimously approved the minutes edited to reflect the suggestion by Mr. **Miles**.

Second agenda item: Review Draft Report

Chair **Kron** sent all members a draft of the report and is open to suggestions. He sought authority to draft a description of the May meeting for inclusion in the report.

Ms. **Herkert** brought up that the report link does not work. The Committee recessed to obtain copies of the report. Chair **Kron** called back to order with sufficient copies of the report.

Chair **Kron** explained the report focused on foundations laid for the overall project, consistent with the discussion at the prior meeting.

All members agreed with report. Ms. **Matasar** found a typo. Chair **Kron** will fix. Ms. **Matasar** suggested that the vice chair selection vote should be added to the report. Chair **Kron** agreed. No objection.

Mr. **Budnick** asked if the public could make suggestions or comments on the report. Chair **Kron** responded that the report needed to be approved at the current meeting and, with the statutory deadline, it would be too late to make changes. Mr. Budnick commented on word choice.

Chair **Kron** asked for other comments. Rep. **Power** wondered how best to communicate the work plan and priority items to her colleagues in advance of the 2019 session. Chair **Kron** suggested creating an attachment that sets out a more detailed work plan. Ms.

Power agreed that would be helpful. Chair **Kron** asked for objections. No objections were made. It is Chair **Kron's** hope that Ms. **Power** and the other legislators on the committee will be a natural conduit to getting policy moving in the committee or through their caucuses.

Ms. **Harris** commented on the substance of the proposed criteria described in the report. Chair **Kron** reiterated that the report will reflect the criteria adopted at the current meeting, which is a separate agenda item.

No other concerns were raised.

Mr. **Smith** moved to adopt the report subject to the discussed changes. After a second, the Committee unanimously voted in favor.

Third agenda item: Criteria for Exemption Review

Chair **Kron** shared on the website a copy of material provided by Mr. **Budnick** regarding criteria adopted from other states. He read the proposed criteria, discussed some criteria from other states that he was not proposing, and discussed his thought process.

Chair **Kron** and Mr. **Foltz** discussed the summaries of exemptions created by Mr. Foltz and how those summaries could be used in connection with whatever criteria were adopted.

Mr. **Smith** asked whether the proposed question about whether exemptions expire appropriately was needed. Chair **Kron** explained the view that some information could be available sooner. Ms. **Herkert** agreed that most information does not need to be exempt for 25 years and commented that having multiple expiration periods can be confusing. Chair **Kron** suggested that perhaps a conversation about the length of the default expiry period was not necessary for exemption review, and Ms. **Herkert** and Mr. **Smith** agreed. Ms. **Roark** suggested this could be a data classification issue addressable by different classifications and exemption periods.

Mr. **Smith** suggested that the questions need not address statutorily required confidentiality provisions, as review should be focused on exemptions. Chair **Kron** explained that confidentiality provisions are incorporated as exemptions. His suggested the Committee should ask whether requiring confidentiality – as opposed to simply allowing it – makes sense for various exemptions. Ms. **Eakins** believed that is an important distinction. Public agencies will want to know what cannot be disclosed and what the legal risks are if they do disclose.

Ms. **Herkert** agreed with question 2, but believes it should be kept in the positive, especially since the intent of the law is for information to be open. Mr. **Smith** disagreed. It's written the way it is because the committee is looking at pre-existing exemptions. Ms. **Herkert** said exemptions are being looked at in the light of are they a necessary exemption or not. She would rather look at why is the information exempt and why

shouldn't it be disclosed, instead of trying to defend why the information is exempt. Chair **Kron** suggested the question could be phrased as, "Would Oregonians expect this information to be publically available?" He suggested that the two questions are logically the same. Mr. **Walth** suggested the Committee should not ask what Oregonians would think. Ms. **Roark** agreed.

Chair **Kron** noted the importance of asking whether members agree with the policy underlying the distinction. Mr. **Walth** suggested two questions to get at that issue: "Would the elimination of a particular exemption enhance transparency?" and "Would a particular elimination of an exemption facilitate rapid fulfillment of public records request?"

Chair **Kron** felt the answers to those two questions would always be yes, and was concerned that asking those questions would prevent the Committee from making recommendations regarding whether the law is appropriately protecting information that deserves protection. Mr. **Walth** and Chair **Kron** agreed that a question like "In light of the Committee's charge to increase transparency, is the committee satisfied that the information protected by this exemption should continue to be protected?" would be satisfactory for both of them.

Ms. **Eakins** agreed with Chair **Kron** that framing the question in the negative or the positive does not change the fundamental question: is the public policy purpose for this exemption evident? She suggested that reference to Oregonians could serve to encourage members to consider different perspectives.

In light of the time, Chair **Kron** suggested moving onto the seven members of the public who signed up to testify. Ms. **Herkert** moved that the discussion be tabled. After a second, the Committee unanimously voted in favor.

Before moving forward to public testimony, Chair **Kron** introduced Ms. **McCall**, the Public Records Advocate for the State of Oregon. Ms. **McCall** discussed her new role and her plans.

Fourth Agenda Item: Public Testimony

Before inviting forward those who signed up to testify, Chair **Kron** explained that the Committee was addressing exemptions for personal contact information, but not exemptions based on the personal safety of individuals. He also noted that some of the exemptions included other provisions besides personal contact information, but that the goal was to address personal contact information rather than that other information. He then briefly described the 11 exemptions on the list, and invited public testimony.

Mr. **Straka** of the Freedom Foundation in Salem discussed exemptions for information of homecare workers and public employees. He suggested that these particular exemptions were created specifically to create organizations like his from contacting the individuals in question. He encouraged the Committee to revisit these exemptions. He noted that they

include a public interest test that is different than the default public interest balancing test and suggested that is problematic.

Ms. **Eakins** asked Mr. **Straka** about contact information of privately employed individuals. Mr. **Straka** said his organization's interest is specific to employees who are in a public employee union. Ms. **Eakins** noted private employees' information wouldn't be publically available and the only reason this is at issue is because these are public employees or publically funded employees.

Mr. **Budnick**, of the Society of Professional Journalists, explained his view that access to personal information can serve the public interest. He offered examples of instances in which journalists' access to personal information helped expose that individuals offering to do business with public entities were not reliable, and said that the committee should preserve access in the public interest. Mr. **Budnick** also encouraged the committee to consider asking whether exemptions go further than they need to, and whether public interest tests should be added to exemptions that do not have them.

Chair **Kron** asked Mr. **Budnick** to elaborate on how personal contact information, in particular, was helpful in the two cases he described. Mr. **Budnick** explained that in one case his access to an individual's history of home and email addresses enabled him to learn the history of a person offering to buy Wapato Jail.

Ms. **Eakins** asked for more details about public records requests in the case. Mr. **Budnick** stated records were withheld and he was forced to cross reference publically available information. Ms. **Eakins** pointed out that the personal contact information being looked at primarily had to do with public employees and this individual was presumably a member of the public. She asked why the public body denied the request. Mr. **Budnick** said the reason was "pending real estate deal."

Mr. **Friesen** of the Oregon Newspaper Publishers Association stated that contact information provides essential ways for the Association to find people affected by government actions or inactions on issues like land use, toxic waste dumps, and services to the disenfranchised. It allows news organizations to assess whether candidates live in their districts. Access for citizens allows them to find others similarly affected, organize and exercise their democratic rights. Basic contact information is also used to make sure the association has the right person they are reporting on.

Morjenna, a homecare worker, noted that disclosing contact information can put people at risk. She gave an example of a DHS caseworker who was stalked, harassed and assaulted by a person seeking information about the location of people served by the caseworker, the survivor and the children. She stated this is not an isolated incident. She asked the committee to be proactive in preventing victimization, and to remember a healthy respect for Oregonians' privacy.

Ms. **Burrows**, also a homecare worker, explained that she takes care of elderly and disabled people in their own homes as well as hers, and that she has three children. She

described the experience of having someone paid by a private entity make contact with her at home while her children were present. She feels that protecting contact information is important to protect homecare workers' privacy. No one should come to her home or her consumers' home, or contact her personal or mobile phone. She asked the committee to look at this as not a transparency issue between governments but as a personal one concerning individual privacy.

Senator **Prozanski** asked for context about the contact she described. Ms. **Burrows** explained that the organization was actively working against her union to try to get people to leave union.

Emily **Harris**, a journalist, expressed support for Mr. **Budnick**'s testimony, and for the exemption review project. She encouraged the Committee to consider a public interest balancing test for every exemption, allowing the Public Records Advocate or the Attorney General to decide if a specific request meets the criteria. She suggested that many personal contact exemptions could have special interests behind them. She acknowledged privacy concerns and said journalists consider personal safety and privacy in their reporting. She also suggested that exempting personal information could justify redacting any record that has personal information on it, adding greatly to the cost. She proposed a distinction between general lists and personal information that happens to be relevant in the record. Journalists typically need contact information to find people affected by a public policy. Their stories can illuminate for others why they should care about the issue.

Ms. **Eakins** asked whether Ms. **Harris** would like public employees' personal information available to journalists who would decide whether to contact them. Ms. **Harris** responded that's a committee question. She clarified that journalists do not usually publish personal contact information. The information is used for a very specific purpose. They have their own internal test of whether that is worthwhile. Ms. **Eakins** asked about contacting public employees. Ms. Harris stated that in a journalist's ideal world information would be available and journalists would be trusted to decide to make contact.

Ms. **Eakins** asked if Ms. Harris would make the same pitch to a private employer. Ms. Harris thought there could be similar laws.

Chair **Kron** thanked those who gave public testimony. He noted that written comments were posted on Sunshine Committee's website and forwarded to members. He noted compelling points on both sides of the testimony.

Fifth Agenda Item: Future Business

Chair **Kron** proposed that the Committee return to discussion of exemptions at the next meeting. He asked about incorporating safety-related contact exemptions into the discussion. And he suggested that one rule, with some exceptions, should apply to contact information so there aren't different rules for public entities to follow, but felt any rule must adequately protect personal safety, particularly of victims.

Mr. **Smith** expressed that the pool of exemptions should be unchanged except that the pen registry-exemption should be lumped in with their criminal investigatory information. Chair **Kron** agreed to remove that exemption. He expressed doubt that the committee could resolve personal contact information separately from personal safety issues given the testimony.

Ms. **Eakins** agreed safety is related to the reasons for keeping contact information confidential. She also highlighted the separation between a public employee's public employment and their private personal life, and her view that access to contact information for reasons that have nothing to do with the job the employee is doing is inappropriate.

Representative **Power** expressed concern about the amount of time it took to go through exemptions and public comment. She suggested that the Committee either needs to focus its questions, discuss fewer exemptions, or create subcommittees.

Representative **Power** suggested that the Committee must clarify to members of the public that the Committee cannot change exemptions but only recommend changes to the legislature, which entails additional public process.

Chair **Kron** agreed with Representative **Power** that subcommittees should be discussed. He repeated his hope that the committee can propose one exemption that covers personal contact information, rather than make separate recommendations concerning each existing exemption.

Ms. **Eakins** moved to table the current agenda item. Committee unanimously voted in favor.

Chair **Kron** moved to the final agenda item, future business. He continued the discussion of subcommittees, proposing that members could inform the chair **Kron** which categories they would be interested in so that subcommittees could be formed to make recommendations to the larger group.

Mr. **Smith** expressed concern about subcommittees and proposed longer or more frequent meetings. Other members agreed meetings should be longer and Chair **Kron** agreed to schedule the July meeting for 3 hours.

Adjournment

After motion and second, the Committee unanimously voted to adjourn.

Oregon Sunshine Committee Meeting Minutes
July 18, 2018

Location: Oregon State Capitol, Room 343

Sunshine Committee Members
Oregon State Senator Brian Boquist (excused) Selena Deckelmann, Director of Engineering, Mozilla Firefox (by phone) Eileen Eakins, Law Office of Eileen Eakins, LLC (by phone) Charlie Fisher, OSPIRG State Director Mary Beth Herkert, Oregon State Archivist Karin Johnson, Independence City Recorder Michael Kron, Special Counsel, Oregon Department of Justice Emily Matasar, Government Accountability Attorney, Governor's Office Oregon State Representative Karin Power (excused; Richa Poudyal attended on behalf) Oregon State Senator Floyd Prozanski (excused) Adrienne Roark, Vice-President and General Manager, KPTV Fox 12 (excused) Morgan Smith, Polk County Counsel Brent Walth, Journalism Professor, University of Oregon Oregon State Representative Carl Wilson (excused) Bennett Hall, Newspaper Publishers Association
Guests
Andy Foltz, by phone Nick Budnick Ginger McCall Graham Derringer Zakir Khan Will Tatum
Agenda
VIDEO STREAM 0:00 –
Welcome and Introductions Chair Kron suggested that guests and members introduce themselves. He introduced Bennett Hall, Special Projects Editor at the Corvallis Gazette Times, who is replacing Christian Wihtol as the representative of newspaper publishers.
First agenda item: May 16, 2018 Draft Minutes Chair Kron proceeded to first agenda item. Ms. Deckelmann pointed out that the header was missing. There were some typos and a misattributed quote. Chair Kron will correct. No other comments on the minutes. On motion and second the committee unanimously approved the minutes edited to correct typos, misattributed quote, and add the header.
Second agenda item: Continuation of Discussion Regarding Criteria for Exemption Review Mr. Walth circulated proposed additions to the criteria and discussed the additions. He wanted to ensure the committee was framing their questions correctly and proposed slightly different

wording.

Chair **Kron** had no objection to reframing the question. He discussed concerns he had about the four questions at the beginning of Mr. **Walth's** email and reiterated his concern that the answer to those questions would always be yes.

Chair **Kron** suggested four new criteria questions. Mr. **Walth** pointed out that the new questions take into consideration government accountability when the previous questions didn't.

Ms. **Matasar**, Ms. **Deckelmann**, and Mr. **Hall** agreed with the importance of government accountability and supported Chair **Kron's** proposed questions. Mr. **Hall** stated that as the committee got more in depth with the exemption and found the framework wasn't working as needed, the criteria could be revisited. Mr. **Smith** agreed.

Chair **Kron** read them to the committee:

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

Ms. **Deckelmann** suggested the committee create a template summarizing the exemption with the criteria in mind. Chair **Kron** agreed. Mr. **Foltz** could incorporate that information into the materials he was preparing.

On motion and second the committee unanimously approved the criteria proposed by Chair **Kron**

Third agenda item: Exemptions Discussed During Public Testimony

Chair **Kron** circulated a proposal to the committee members with Ms. **Eakins** proposed additions. The proposal was intended to create an exemption for personal contact information that provided the same treatment to everyone, but that could be overruled if there was legitimate public interest and particular purpose for the request. Ms. **Eakins** felt public employees should be treated the same as private employees. He encouraged discussion of the proposal.

Ms. **Herkert** suggested that before making a blanket proposal, the committee should take into consideration whether each personal privacy exemptions contained the same information or if they were significantly different and gave her reasoning behind her suggestion. Chair **Kron** opined it would be disaster if the committee wanted to agree on specific language. He envisioned that the members would agree on policy recommendations. Ms. **Herkert** agreed and clarified her suggestion.

Chair **Kron** asked whether the committee favored separate recommendations for phone numbers, addresses and email addresses.

Mr. **Smith** asked for clarification of whether the committee was talking about personal contact information or information of a personal nature. Chair **Kron** stated that the goal was for the committee to look at the exemptions only in terms of personal contact information so a policy recommendation could be made. Mr. **Smith** thought the committee could agree on one personal contact information exemption and explained why. Chair **Kron** agreed, but expressed concern of policy implications.

Mr. **Smith** felt discretion should be left with the individual agency or public entity in possession of the records, assuming they were not completely abandoning the concept of the balancing test already in the public records law. This would allow for flexibility.

Ms. **Herkert** talked about the default expiry period of exemptions that her agency comes across and the problems they run into. An individual's address from 75 years ago shouldn't matter because they are most likely not at that address any longer. Ms. **Herkert** opined that very little information in historical records should be exempt from disclosure.

Ms. **Matasar** agreed and asked Ms. **Herkert** her recommendation on how to discuss expiry periods from a historical perspective. Ms. **Herkert** said the committee should look to see if it has a valid time frame and decide if the intent for the time frame is still a valid concern.

Chair **Kron** wondered if the public records advisory might be a better place to discuss the expiry of exemptions. Ms. **McCall** said there was already a general 25 year limit on use of exemptions with the exception of four specific kinds of records and suggested preserving that law as it was. Ms. **Herkert** agreed. The committee briefly discussed expiry periods for exemptions.

Noting that communications methods change over time, Ms. **Deckelmann** thought it might be helpful to recommend enumerating the different kinds of personal contact information in statute. Instead of creating a separate rule with each, new types of contact information should just be added to the list.

Chair **Kron** stated that if the committee recommended enumerating different types of contact information it would give them the opportunity to think about whether they all should be treated the same. Discussion occurred on different types of contact information and how some information was already available online, such as property records. Ms. **McCall** argued that exemptions nevertheless create practical security, as a single records request is simpler than searching property records in many counties.

Ms. **Eakins** expressed concern about requests made with the intent to harass; if information is freely available the problem would only worsen. She agreed with delineating types of contact information, but would err on the side of exempting anything that is not directly related to the public employee's employment unless there is a compelling public policy reason to disclose it.

Chair **Kron** opened the discussion to the journalist and public interest members to get their opinion in terms of the tension between legitimate need for the information versus the desire to protect it as a default rule when there is not a legitimate need.

Mr. **Hall** agreed that public records law could be abused by individuals for purposes of harassment or to send out spam or to try to scam innocent citizens, but countered that it is important for journalist to occasionally reach out to public employees. He gave examples from his own experience of how he was denied information despite there being a public interest for the information. In his opinion, having access to public employee contact information can in many instances serve a legitimate public interest.

Chair **Kron** stated that it sounded like there is a simultaneous recognition of the reasonableness to protect personal contact information from illegitimate use, but a concern that legitimate uses are getting swept up with the illegitimate. Mr. **Hall** agreed.

Mr. **Smith** pointed out as a general rule, public bodies do not look at the reason behind the request to justify release. Members discussed the public interest test that applies to some exemptions as an example of circumstances in which that can be considered. Chair **Kron** returned to the difficulty of a recommendation that accounts for legitimate use but prevents illegitimate uses. Members agreed that was desirable.

Because there are different classes of contact information and specific classes of individuals, Mr. **Fisher's** inclination would be to go through the individual exemptions, use the four criteria questions, and determine whether each one meets those criteria as opposed to trying to give the legislature a broad recommendation. Chair **Kron** expressed doubt about treating different classes of individual differently, suggesting that the privacy concerns identified in this area were common ones.

Mr. **Fisher** responded that the privacy exemption is already a blanket way of addressing personal information. The committee's recommendation should be that as a default, the information should be public, while assessing whether particular exemptions the legislature deems important actually rise to the level of importance that they should and are in the public interest.

Mr. **Miles** approached the table and questioned who was going to make the list for the legislature to eliminate the numerous existing exemptions. Chair **Kron** directed Mr. **Miles** to the list he brought on the table. Mr. **Miles** didn't think the committee could say blanket eliminate all of them without talking about each one. Chair **Kron** described that part of the committee's charge was to ensure consistency and efficient administration of the law. From his perspective both of those interests are served by having one rule instead of several. Mr. **Hall** asked if it would be possible to identify a set of reasons for withholding personal contact information on a case by case basis, articulate those, and say otherwise contact information should be disclosed. Chair **Kron** commented that in theory that would work. It would just be a more specific version of the public interest test.

Ms. **Johnson** stated that as a public employee, it should be the other way. Her private contact information should be hers and a balancing test given to her onto why it should be public. Chair

Kron thought it was logically the same to do either **Mr. Hall's** suggestion or **Ms. Johnson's** suggestion. **Mr. Smith** opined that the requestor has the burden to make a showing of necessity of public interest.

Chair **Kron** expressed agreement with **Mr. Hall's** suggestion. **Mr. Hall** clarified that he made his suggestion because there is value in consolidating many of the exemptions as possible. **Ms. Herkert** agreed.

The committee recessed for a break.

Chair **Kron** called back to order after break and summarized the discussion prior to break. He asked for **Mr. Hall's** opinion. **Mr. Hall** suggested that contact information should be publically available unless there is a compelling reason not to, with a set of general circumstances under which the information could be withheld, and explained his reasoning.

Chair **Kron** pointed out there are a lot of other personal information that are going to have similar public policy issues and it could be a mistake that the committee wasn't discussing them altogether. **Mr. Hall** stated it would be nice to consolidate the information and simplify them to the extent it is possible.

Chair **Kron** stated that there is always going to be default of availability and the existing default of availability applies to most people who are not government employees but who use government services. The committee can keep that default or propose the default be applied more broadly. It is his belief that at the time the current rules were enacted, the dangers we face today with various data theft weren't an issue then. **Ms. Herkert** agreed. It all has to do with ease of access. The laws have not kept up with technology. The broader question is if the information is easily accessible, does it still need to be exempt?

Ms. Deckelmann commented on the risks. At Mozilla, their focus is preventing mass disclosure. It is very difficult to protect an individual person because if an adversary really wants the individual's information, they're probably going to be able to get it, but in the case of everyone's information, there are things Mozilla can do to try to prevent everyone from being subject to a data breach. Chair **Kron** asked whether that was primarily driven by the pragmatic difficulty of protecting individuals or based on a policy determination. **Ms. Deckelman** answered that it was a very pragmatic issue for them. It is a more practical problem to think of it in terms of what in general can they do to protect personal information. Chair **Kron** asked if that would have implications for the default rule the committee might propose. **Ms. Deckelmann** stated in general if there is a compelling reason, it is worth protecting most individuals.

Ms. Eakins agreed with **Ms. Deckelmann's** comments. The law should create a reasonable degree of protection for personal contact information with the understanding that there may be times when the information does need to be disclosed. She wondered what the public policy argument was for a public entity that presumably values its employees for it to make all information easily accessible to anybody who wants it.

Chair **Kron** asked the committee whether members felt the law should protect public employees

but not people who are government's customers.

Ms. **McCall** approached the table and urged the committee to consider that just because information is submitted to the government by an individual does not make that information the government's information. It is still the personal information of the individual. The government should not be the tool by which someone who wants to gain an individual's private information for nefarious purposes manages to gain the information and undermine a person's control of their personal information. She doesn't think that's the business the government should be in. She thought the balancing test included in the law and included in the proposal does a good job of addressing a lot of the concerns she heard people voice and gave her reasoning. She suggested it might be helpful to look at that public interest balancing test and consider what kind of factors should be included in that and to spell that out in the law. Chair **Kron** stated that could be counterproductive because an individual applying for government services has less protection than a public employee who has an exemption for their personal address. Ms. **McCall** stated the consideration should be the same regardless of an individual's status as a public employee or a member of the public applying for government services.

Mr **Walth** didn't think the committee should treat public employees the same as private sector employees. He agreed with Mr. **Hall** that the presumption should be full disclosure unless there are compelling reasons not to do so. He asked the attorneys in the room how the general privacy exemption and its public interest test apply to contact information. Chair **Kron** answered that if the only basis for protecting your address would be the privacy exemption, then it is likely to be disclosed unless the person who is looking for it is a stalker. The committee is currently reviewing a handful of exemptions that protect personal contact information but only for select classes of people, such as medical licensees and public employees. Both of those statutorily require clear and convincing evidence that the disclosure be in the public interest.

Mr. **Fisher** expressed indecisiveness. He suggested the committee should only address the current exemptions and determine whether they are justified, rather than try to make a general rule for contact information. Ms. **Eakins** asked if the committee had to decide the public policy questions among themselves or do they tell the legislature what they think it should do it. Mr. **Fisher** opined that if the committee wanted to come up with something productive to send to the legislature, they should try to confine their conversation within this broad framework to the task of this committee.

Chair **Kron** stated that would entail going through all 11 exemptions, either recommending they stay the same, recommending specific changes, or recommending they be eliminated. He felt that would be more work because they will need to agree on a principle and also agree on the application of the principle as opposed to just agreeing on the principle. Mr. **Fisher** suggested the principles may be different for each scenario. The committee should think about the different reasons information was given to the government. Ms. **Deckelmann** agreed that was possible.

Ms. **Herkert** stated that part of the issue was that they started with the most difficult exemption. The committee needs to look at each exemption, determine similarities and differences, and have a better understanding on how they were crafted. Chair **Kron** stated that the memo Mr. **Foltz** prepared strived to provide that framework. He accepted that the committee may be inconsistent

in the recommendations with respect to various exemptions. Therefore the recommendation would either need to be principled or not principle. Mr. **Fisher** asked if the principle was the four questions the committee had at the beginning. Chair **Kron** stated yes.

Ms. **Matasar** agreed with Chair **Kron's** approach. She didn't necessarily want to go through each exemption. She gave an example from 192.345(25) and stated that Chair **Kron** drafted a statement that addressed specifically the 11 exemptions. She agreed more with suggesting a policy rather than specific language changes for each exemption. The committee has the opportunity to potentially change the law and make it something that it should be.

Ms. **Eakins** felt the committee should start with the current laws and work on how to improve them or provide recommendation on what to keep or how to change them. Chair **Kron** felt there are different ways of fulfilling that role. The proposal drafted was written so it would apply to these specific exemptions and it would result in a specific direction of change without making 11 different recommendations.

Chair **Kron** asked Mr. **Fisher** what the work product would look like if the committee did what he was suggesting. Mr. **Fisher** stated the work product would be to determine if an exemption fits the four criteria that the committee set out. If not, why? If so, why? Should the exemption be combined with another or should they get rid of it? Ms. **Herkert** suggested they could recommend to the legislature that the exemptions for contact information should be combined and the legislature should specify who they apply to. Mr. **Fisher** suggested that there would be different considerations for each exemption.

Chair **Kron** reiterated that he didn't see a good reason to treat some people's contact information differently than others, but it sounded like there were some members who felt otherwise. If that was the case, the recommendation like the one he proposed wasn't going to work.

Mr. **Budnick** moved to the table and encouraged the committee in the interest of advancing through their tasks in a timely manner to join the current discussion with other personal privacy issues and allow more time for research to be done into the issues.

Mr. **Khan** moved to the table and recommended embracing the different opinions of the committee and to use the minority report model so the legislature can have both opinions and decide the best model to implement. He also encouraged the committee to provide the media proper access to materials at a low cost. There are some governments who are abusing the public records law by preventing the media from obtaining records at a reasonable cost. He urged the committee to also think about the impact these laws will have on marginalized communities. He gave examples of how marginalized communities of color can be harassed based on the current laws. Finally, he agreed with Ms. **Matasar's** point of working toward the future and there are models they can use. He recommended that the Committee consider Florida's model.

Ms. **Matasar** expressed confusion on the committee's role. Her understanding was the committee would be prepared to talk about the exemptions based on the information Mr. **Foltz** prepared and then make a recommendation. It now seemed like the committee wanted to go through each exemption next time.

Chair **Kron** suggested members refresh their recollection of what the exemptions are in order to facilitate a discussion. He noted the committee seemed to be split regarding how many rules there should be for different types of personal contact information.

Mr. **Smith** stated that he thought the committee could all agree that there wasn't a need for all 11 exemptions for this type of information. He suggested figuring out what buckets to put the information in. The committee needed to look at the 11 existing rules, understand how the information comes to the government, how it should be disseminated, figure out their own interest test, and come prepared to discuss it at the next meeting. Mr. **Fisher** expressed concern that the committee would only be adding to the list of exemptions. Mr. **Walth** agreed with both Mr. **Fisher** and with Mr. **Smith** about approaching it with different buckets and felt they needed to be clear when sending the exemptions to the legislature that need to be removed, otherwise he didn't think they would be giving the legislature enough guidance.

Chair **Kron** thought fundamentally, the committee would need to decide at some point what the recommendation will be. If it was going to involve 11 specific recommendations, then it was very different than what he wrote and meant a more granular exemption by exemption conversation.

Ms. **Herkert** commented that she liked the approach of determining what is the information being used for and why. She felt the statement broadened the exemption. If she had to go through a test with every single public records request, it will become expensive and the cost will get passed off.

Ms. **Matasar** stated that more clarity in the law, even if it exempts more information, would allow public records requests to be fulfilled quicker without necessarily hindering transparency in most cases.

Chair **Kron** said he did not understand how the committee could recommend in good faith that the legislature keep any of the exemptions without expanding the exemptions to also cover others. He felt that if there was a legitimate reason to protect the information, that reason would not be specific to the public employees, licensees, and other people favored under the current law. Mr. **Walth**, Ms. **Herkert**, and Ms. **Deckelmann** agreed. Mr. **Walth** clarified that he was concerned that the exemption was going to get broader.

On motion and second the committee unanimously tabled the discussion on the 11 exemptions personal contact information until next meeting.

Fourth Agenda Item: Future Business

Chair **Kron** asked if the committee should take Mr. **Budnick's** suggestion to broaden the discussion. Should there be more public comment for things like dates of birth? If so, did the committee want him, as the chair, of prepare a proposal on his own and decide whether to broaden their agenda.

Mr. **Hall** would like to hear more about why people would want to protect dates of birth. Chair **Kron** stated that the question is not whether we have it, it's do we include that in the conversation because it's basically the same thing. Mr. **Hall** stated he thought it would fall under the general heading of types of personal information that perhaps should or should not be disclosed. Chair **Kron** suggested expanding it to everything that is included in any one of the 11 exemptions.

Ms. **McCall** commented on Ms. **Herkert's** comment about the usefulness to have some research and data points to look at instead of going based on emotion. As part of her office as the public records advocate, she offered, with the assistance from others in the committee, to do this research and drafting and submit a report to the committee that can potentially be discussed at the November meeting. All agreed.

Chair **Kron** suggested using the September meeting to solicit public comments on the additional topics they will now be addressing, which would theoretically give Ms. **McCall** until October to submit her report. Ms. **McCall** said it would be helpful to hear from the committee what they thought the useful research avenues or questions would be. She discussed potentially looking at what other states or the federal government is doing for similar information and gave an example of how the federal FOIA differed from Oregon law.

Chair **Kron** clarified for the committee that they were free to directly contact Ms. **McCall** since she was not a part of the Sunshine Committee. Ms. **McCall** also encouraged members of the public to contact her and assured that all decisions would be based on data points and research regardless of her personal opinion.

Ms. **Matasar** added a suggestion of taking up the question of individualized requests for data vs. data base requests specifically. She discussed a recent AG decision denying the use of dates of birth in order to seek personal home address information. The governor's office had already asked Ms. **McCall** to prepare a presentation and report on specific data sets of information and suggested it be lumped in with the rest of the exemptions if the committee would agree to take that on. Ms. **McCall** stated that if anyone wanted to volunteer to assist with that research, she would be happy for the assistance.

Mr. **Fisher** stated there seemed to be confusion about the purpose of the committee and he suggested at least having a conversation to make sure everyone was on the same page about what they actually wanted to achieve. He thought the question of whether the committee was going to make blanket recommendations, which may then expand what was exempted, or if they were going to just look at the exemptions is an important question to answer and may also raise other implications. Chair **Kron** didn't conceive of them as different things. He believed the committee's job was to come up with a recommendation and in different circumstances, different people may feel that different recommendations are appropriate. He gave an example. There may not be a universal answer to what the committee will do and they won't know until they've looked at all the exemptions.

Mr. **Hall** stated that generally he liked the way Chair **Kron** framed the draft recommendation to the legislature, but shared Mr. **Fisher** and Mr. **Walth's** concern regarding broader exemptions.

However, he believed the committee should get the larger question of personal privacy versus the public's right to know out of the way. He asked if the committee could look at other model public records law, which could cut through a majority of the discussion, and have those added to Ms. **McCall**'s report. Although Ms. **McCall** was very interested in researching other models, she thought it would have to be a separate inquiry in a future task.

For the next meeting, Chair **Kron** will figure out what the other privacy related information is covered in the current exemptions and what other exemptions they implicate. The September meeting will be entirely public testimony and in November, the committee will reconvene to discuss what was heard from the public, what they learned from Ms. **McCall** in the meantime and whatever other information they get.

Adjournment

After motion and second, the Committee unanimously voted to adjourn.

Oregon Sunshine Committee Meeting Minutes
October 3, 2018

Location: Oregon State Capitol, Room 343

Sunshine Committee Members
Oregon State Senator Brian Boquist (excused) Selena Deckelmann, Director of Engineering, Mozilla Firefox (by phone) Eileen Eakins, Law Office of Eileen Eakins, LLC Charlie Fisher, OSPIRG State Director (excused) Mary Beth Herkert, Oregon State Archivist Karin Johnson, Independence City Recorder (by phone) Michael Kron, Special Counsel, Oregon Department of Justice Emily Matasar, Government Accountability Attorney, Governor's Office Oregon State Representative Karin Power (by phone) Oregon State Senator Floyd Prozanski (excused) Adrienne Roark, Vice-President and General Manager, KPTV Fox 12 (by phone) Morgan Smith, Polk County Counsel Brent Walth, Journalism Professor, University of Oregon (by phone) Oregon State Representative Carl Wilson (by phone) Bennett Hall, Newspaper Publishers Association
Guests
Ginger McCall Todd Albert Andy Foltz Cameron Miles Kimberly McCollough Carey Wilson (?) Nick Budnick Aaron Withe
Agenda
VIDEO STREAM 04:40 – 1:28
First agenda item: July 18, 2018 Draft Minutes Chair Kron started with the first agenda item. No comments. On motion and second the committee unanimously approved the minutes pending any typographical errors.
Welcome and Introductions Chair Kron materials he brought with him for the committee. He stated he received several written testimony the previous afternoon and that morning and would share those with the committee on the website. He moved forward with guest and member introductions.
Second agenda item: Public Testimony Aaron Withe of the Freedom Foundation explained how in home care providers are public employees and reiterated previous testimony of his organization's suggestion that they are the

cause for the current exemptions. He talked about the work of his organization. He discussed various ways to obtain personal information including through public records. He stated that unions and government see organizations like his as a threat. He suggested that expanding exemptions would directly contradict the Sunshine Committee's mission of creating a more transparent government.

Tony Schick of the Oregon Public Broadcasting testified that personal contact information was essential to the pursuit of journalism in the public interest. He gave examples of how access to address, date of birth, employee issued identification numbers, and driver's license numbers were beneficial to his reporting. He explained that having access to this information proved useful to his analyses and, in some cases, forced corrective action.

Chair **Kron** asked if personal contact information obtained for his publications had or would be disseminated. Mr. **Schick** could not say there would never be a case where disseminating the information would be in the public interest, but he didn't believe they have ever published personal contact information.

Ms. **McCall** asked what Mr. **Schick** thought about an opt-out option to not provide personal contact information when filling out a complaint form for individuals with valid retaliation concerns. Although he saw the value in an opt-out option, Mr. **Schick** felt there was also a question of whether people should be held accountable for their complaints and there should be a way to independently vet through the complaints, which is much more difficult if they're anonymous.

Chair Kron limited all other questions to committee members only.

Mr. **Smith** commented that he struggled with the concept that if information is available to journalists, it is available to the public. He asked Mr. **Schick** if he saw a distinction between the two. Mr. **Schick** thought that was a tricky distinction to draw. Mr. **Smith** explained that if this was journalists' position, the committee would have to wrestle with whether there is a different standard for access to information by journalists versus access to any member of the public because the public records law was established to create access to everyone despite profession or what the information is being used for. Mr. **Schick** believed there was an implicate distinction and explained that the laws were written in a time where the only people with the ability to disseminate the information were those with a publishing platform versus now where everyone has a publishing platform.

Mr. **Hall** asked Mr. **Schick** if he could provide examples where personal contact information obtained by a journalist, either by himself or another journalist, was published as part of the story. Mr. **Schick** could not think of an.

Steve Suo, team leader of the Oregonian's Watchdog and Data Team, speaking on behalf of himself, discussed examples of how journalists use personal identifiable information in their work and how his members use data to inform and build stories they feel are in the public interest. He provided suggestions on what shouldn't be exempt, such as employee ID numbers and added that they do not publish personal information. He concluded that he thought privacy

was important and there are possible ways to protect it while ensuring that journalists are able to continue their important work in the public interest.

Chair **Kron** stated that it sounded like Mr. **Suo** had specific ideas about what the committee's recommendation might look like that adequately protects privacy while also protecting public interest access to the information for journalism.

Mr. **Suo** responded that many aspects of the law have worked for him on many occasions so in terms of fixes to the law, he wasn't prepared to propose anything concretely. However, he has been exchanging ideas with some of his colleagues. He believed there were positive ways forward and certain exemptions that could be more limited.

Chair **Kron** stated that if Mr. **Suo** came up with suggestions between then and the next meeting, they are accepting written testimony. Suggestions should be submitted by the beginning of November.

Nick Budnick of the Portland Tribune, representing the Oregon Territory Chapter of the Society of Professional Journalist, thanked the committee. He stated that journalists used personal information regularly to verify basic facts about individuals. He believed that preserving the public interest balancing test was crucial because it applied to everyone, not just journalists. He strongly disagreed with having an opt-out option because of very good public interest reasons to know who the person is behind the complaint. He gave an example of how the city of Portland gave this option to job applicants and by doing so, limited the public's ability to know who applied for bureau director jobs. This made it impossible to know if job selections were made based on merit or cronyism. Like Mr. **Schick** pointed out, when someone is contacted for comment, whatever the perceived intrusion is minimal. Mr. **Budnick** gave an example of a phone call with an individual who didn't want to talk to him and later thanked him for respecting her refusal. It is his belief that providing an opt-out option would be very dangerous to the public's knowledge.

Chair **Kron** discussed his struggle to understand why current exemptions treat different people differently. He asked Mr. **Budnick's** opinion on whether or not he felt there were legitimate reasons for treating people differently, depending whose information was being sought. Mr. **Budnick** said he would need to discuss that with his organization.

Joy Roman, a homecare worker, introduced herself as a survivor of domestic violence. She described the steps she took to protect her children from her abuser. Subsequently, the Oregonian published information about her daughter, including where she went to school and pictures, without her permission. She stated that this put her daughter at risk of being killed by her abuser. When she complained she received only an apology and an 8x10 picture. After that incident, she pulled her children from public school and homeschooled them. She described individuals being harassed by organizations like the Freedom Foundation who gain access to their personal information and stated it was getting out of control. She wanted the committee to keep in mind that this isn't only about businesses or individuals who think they have the right to personal information, but also about all Oregonians who really need the protection.

Chair **Kron** wanted to make sure that the public was aware that the committee would be taking a lot of testimony and recommendations to the legislator would be made based on the testimony and the committee's views. The legislator would then act on the recommendations. From his own perspective, the personal safety justifications heard are extremely compelling to him and it is important for the committee to consider them and make sure they are adequately protected.

Mr. **Suo** spoke again to respond to Chair **Kron's** question of whether or not there were legitimate reasons for treating people differently, depending on whose information was being sought. He thought to an ordinary person it would be odd that individual professions are treated differently, but there are exceptions, particularly in terms of public safety officers. He also wanted to bring to the committee's attention the existence of the Department of Justice's confidentiality program and explained how it could be used as model. Chair **Kron** confirmed the existence of the program and felt that part of the answer may be to make the provisions in it stronger. Mr. **Suo** stated that he wasn't sure how widely that option was advertised to state employees. Chair **Kron** clarified that the program isn't just for state employees but to anyone whose personal information is in the hands of the government. He thought looking at that in connection with the current exemptions was a good idea and thanked Mr. **Suo** for raising it.

Third Agenda Item: Future Business

The Committee discussed **Ginger McCall's** report on privacy concerns. Ms. **McCall** gave a brief summary of what she has done, but stated she still needed access to Westlaw before she could finish the report. Chair **Kron** asked for assistance from the committee to get Ms. **McCall** access. Until Ms. **McCall** receives access, Chair **Kron** suggested that **Andy Foltz** prepare a notebook of cases using his access. Ms. **McCall** thought that would be helpful.

Chair **Kron** expressed hope that the Committee would arrive at a reasonable recommendation on the privacy issues. He strongly encouraged members to send him their thoughts on what their ideal recommendation would look like, which he would then disseminate to the group for discussion at the next meeting. He explained that the public records meeting law doesn't allow them to do their deliberations in writing, it has to be done publically. He gave a deadline of Friday, November 9, 2018 for the submissions. He pointed out that the committee was not required to come to consensus. If it reached the point where the committee couldn't agree, he would encourage the committee to embrace **Zakir Khan's** suggestion to submit a minority report with the recommendation.

Chair **Kron** thought it could be beneficial for the legislative members of the committee to perhaps provide guidance regarding what sort of recommendation they would like to see from the Sunshine Committee's recommendations. He expressed that the legislator members' views of the Committee's role are ones that matter most.

Adjournment

After motion and second, the Committee unanimously voted to adjourn.

Oregon Sunshine Committee Meeting Minutes
January 23, 2019

Location: Mozilla Firefox offices, 1120 NW Couch St #320, PDX

Sunshine Committee Members
Oregon State Senator Brian Boquist (excused) Selena Deckelmann, Director of Engineering, Mozilla Firefox Eileen Eakins, Law Office of Eileen Eakins, LLC Charlie Fisher, OSPIRG State Director Mary Beth Herkert, Oregon State Archivist (by phone) Karin Johnson, Independence City Recorder (by phone) Michael Kron, Special Counsel, Oregon Department of Justice (excused) Emily Matasar, Government Accountability Attorney, Governor's Office Oregon State Representative Karin Power (excused) Oregon State Senator Floyd Prozanski (excused) Adrienne Roark, Vice-President and General Manager, KPTV Fox 12 (excused) Morgan Smith, Polk County Counsel (by phone) Brent Walth, Journalism Professor, University of Oregon Oregon State Representative Carl Wilson (excused) Bennett Hall, Newspaper Publishers Association (excused)
Guests
Ginger McCall (by phone) Andy Foltz (by phone) Brett Budnick Todd Albert
Agenda
VIDEO STREAM 00:00:00-1:57:40
Welcome and Introductions
Vice Chair Matasar chaired in for Chair Kron who was unable to attend the meeting.
First agenda item: Approval of 10.3.18 draft minutes
There were some typos and Ms. Johnson was present in person, not by phone. Ms. Matasar will correct. No other comments on the minutes. On motion and second the committee unanimously approved the minutes edited to correct typos and make Karen Johnson present in person.
Second agenda item: Discussion on Personal Privacy Exceptions
Todd Albert, Deputy Public Records Advocate, presented an overview of the investigative report on privacy information related to government bodies' holding personal identifiable information (PII) Ginger McCall's team was asked to prepare in support of the Sunshine Committee's work. He concluded by stating the disclosure of PII proposes significant risks that should be closely considered by the committee as it proceeds. In light of the risks, other jurisdictions have taken a cautious approach to release of PII, particularly personal contact information. Many jurisdictions limit the disclosure of personal addresses, personal email addresses, personal phone numbers and other related PII. While some states draw distinctions between the privacy of government

employees and privacy of members of the public, the federal government does not. One possible path to balancing the privacy interests with the public interest and disclosure was to closely align with Georgia's approach, which states in part, "records and information disseminated pursuant to this paragraph may be used only by its authorized recipient and only for the authorized purpose."

Mr. **Fisher** asked if Ms. **McCall's** team ran into how states' or FOIA handled situations where an agency wasn't applying the public interest test appropriately. Mr. **Albert** stated they had not explored that area for their report. Ms. **McCall** added that there were robust review opportunities under federal FOIA if one is wrongfully denied information with the chance of recovering attorney fees if they prevail. Federal FOIA also has a lot of case law that Oregon doesn't to help direct agencies on how to handle FOIA requests. Mr. **Albert** added that states also varied. Some had no right to appeal where others did like Connecticut.

No further discussion was had on the report.

Third Agenda Item: Discussion on Recommendations on Personal Privacy Exemptions.

Ms. **Matasar** wanted to acknowledge receipt of comments from both committee members and the public that they consider tabling this recommendation for the future. She gave options on what the committee could discuss and opened the floor for discussion.

Ms. **Herkert** made the recommendation to table the discussion and gave her reason why. She did not feel they were to the point where they could make a recommendation moving forward. She would rather look at other exemptions to get a decent process and credibility in place before moving forward.

Ms. **Deckelmann** agreed and suggested a subcommittee to investigate the data and exemptions and parallelize the effort with more frequency. Mr. **Walth** agreed with Ms. **Herkert** and with Ms. **Deckelmann** on the creation of a subcommittee and explained his reasoning. Mr. **Fisher** also agreed to a subcommittee. Ms. **Eakins** didn't have a strong opinion one way or the other. She didn't necessarily think tabling the discussion would make it any easier the next time it is brought up and it may be that a subcommittee could strike a compromise, assuming the whole committee would accept it.

Ms. **Matasar** said sounded like the members were more open to the idea of a subcommittee than before when it was suggested. Ms. **Eakins** stated that if it helped advance their agenda, she would be in favor of it.

Ms. **Deckelmann** asked Ms. **Herkert** what exemptions she would recommend as being an alternate to the personal privacy exemptions. Ms. **Herkert** suggested looking at exemptions that are no longer needed or that are in direct conflict with the federal FOIA. Her biggest concern with personal privacy PII is that it is the most difficult of all other exemptions and the committee didn't have a good handle on how they wanted to deal with it. Mr. **Smith** thought a subcommittee that met more frequently would allow for more robust discussion, while the Sunshine Committee could move onto lower hanging fruit to get some momentum.

Ms. **Matasar** asked if they should consider a motion or vote on creating a subcommittee. Ms.

Deckelmann thought they should spend some time talking about the charter for the subcommittee. **Mr. Fisher** thought they should think about what the sidebars and mandate for the subcommittee would be and then entertain a motion on creating the subcommittee and its members.

Ms. **Matasar** opened the floor to the committee to discuss the subcommittee tasks. She stated they have the criteria, but it sounded like they needed more. Ms. **Eakins** agreed and opined that the ultimate role of the subcommittee would be to come up with a recommendation for the whole committee to vote on. As for the subcommittee's task, her thought was for them to first define PII and then discuss the benefits of disclosure for each item. The recommendation would be based on that discussion. She believed an approach could be taken that helps enable the press to do their jobs without necessarily giving away more information than necessary.

Ms. **Matasar** commented her understanding is the subcommittee would tackle the PII question while the main committee moved onto easier, less contentious group of exemptions. Ms. **Deckelmann** viewed it as parallelizing the efforts. She thought it would be interesting to also research the impact of the decision points the subcommittee may come up with and weigh out the different issues that occur with both electronic and paper records. She also wanted to talk with Mozilla's chief data officer to see if there was a better way to label and classify data and how that would play a part in the decision points.

Mr. Fisher had similar ideas. He didn't completely understand the implications of tightening up personal information in terms of how that would impact a journalist for example. Based on public testimony, even if they came up with a perfect interest balancing test, they would still have agencies who weren't applying it correctly. He felt they would need to include in the scope of the subcommittee a way to ensure compliance in a consistent manner. **Mr. Smith** disagreed that should be part of the scope and stated ensuring compliance would be more of an enforcement issue and effectuation of the law, rather than if the exemptions are appropriately needed, rebost, etc. He felt the subcommittee would need a clearer recommendation on what the laws would look like and from there take the next step of how to enforce compliance if the balancing test is not being interpreted correctly at a local level. **Mr. Fisher** didn't think they could have a conversation regarding of theory of a perfect balancing test unless they were also thinking of how to put it in practice.

Ms. **Eakins** asked if **Mr. Fisher** saw a difference in discussion of how PII would be handled from an enforcement perspective than just having a general discussion about enforcement of exemptions with PII being included in the discussion. **Mr. Fisher** stated he felt it was more relevant since the balancing test is especially important in this particular instance. However, maybe it needed to be thought about in a broader context.

Although Ms. **Eakins** saw **Mr. Fisher's** point why it might necessitate some separate enforcement conversation, she was inclined to agree with **Mr. Smith's** approach to have a general discussion about enforcement once they figure out what should be exempt and what shouldn't in all areas. She explained why. She would like to see enforcement as part of a larger conversation that looks at all possibilities. **Mr. Fisher** stated his concern was that his recommendation in terms of how they would want the public records laws to look like would be

different if the thought was agencies were going to try to circumvent the law as opposed to an assumption that they wouldn't.

Ms. **Eakins** stated that Mr. **Fisher** raised a good point. In the broader discussion, they tended to assume the conversation is in relation to the State of Oregon when it, in fact, included all governmental entities in Oregon and that needed to be part of the larger conversation. The recommendation should be what was best and workable for other forms of local government in addition to the State. The public interest balancing test was subjective and it was hard to draw a bright line in terms of how to define it.

Ms. **Deckelmann** believed defining what disclosure meant in this context and differentiating between the rules that apply to bulk data access and individual records would be helpful. Mr. **Fisher** asked if she could state what she meant by defining what public disclosure meant. Ms. **Deckelmann** stated that the public records advocate talked about different kinds of disclosures that came about through different means and there was an important difference between the two. She didn't think the law differentiated between someone in the media obtaining information to confirm data for a story versus someone obtaining information to share publically.

Mr. **Walth** believed that in order for the committee to make a recommendation it would need to make the case that the current law does not work. He believed there were feelings and opinions about changing it, but it was unclear what all those were. He thought the subcommittee needed to identify ways in which the law should be changed. What was currently not working? What could work better? What should be protected? He suggested the whole committee provide 5 or 6 questions the subcommittee needed to address to help focus them.

Mr. **Fisher** agreed and suggested defining different levels of PII disclosure based on certain characteristics. Ms. **Eakins** mentioned a house bill that sought to carve out an exemption in public records law for members of the media and the question was who is going to define media. She questioned those representing the media in the group if there was a credible way to define media. Would it be a fair compromise to say that if a request is coming from the media, it should be treated differently or would it be too problematic? Mr. **Smith** echoed Ms. **Eakins** comments in relation to the struggle to define media and felt they needed some kind of opinion from the journalism community to define exactly what a media member is if they are going to set up ways to articulate different levels of disclosure. Otherwise there is added ambiguity on public entities trying to discern who the requestor is.

Mr. **Fisher** mentioned that there was something in the public records advocate's report about a contract related to the use of the information in terms of what cannot be disclosed publically. It seemed to him that the uses would be a better way to define the different ways of disclosure as opposed to the entity doing the requesting. Ms. **Eakins** mentioned one jurisdiction that appealed to her where one would have to attest to the fact they were going to use the information for a particular purpose and are penalized if they do not. She explained that her clients needed bright lines and clarifying in what circumstances disclosure is allowed or not allowed would help them tremendously.

Ms. **Deckelmann** believed a large body of work had been done to classify the uses of data and

the subcommittee could further research that work, see what is out there in terms of licensing data, and what can be applied in this situation.

Ms. **Eakins** and Mr. **Smith** volunteered to be on the subcommittee.

Mr. **Walth** suggested the following questions for the subcommittee to answer that could be used to come up with specific proposals:

1. What are the particular and specific issues people have with the way the Oregon public records law works now with regard to public PII.
2. In what ways can we actually increase transparency by addressing these problems?
3. In what way can we address concerns about misuse of PII? In other words, to address all the other issues that have been brought up by everyone there.

Mr. **Walth** struggled with trying to understand the question they were trying to answer and thought input from members of the community would be beneficial. Ms. **Deckelmann** thought one question they were trying to answer was how the government could effectively manage the exemptions. Ms. **Herket** felt the first three questions Mr. **Walth** suggested got to the heart of what they were trying to do.

Ms. **Matasar** suggested two questions: what should never be exempt and what should always be exempt and explained her reasoning. Mr. **Fisher** thought it would be great to articulate public interest reasons for each piece of PII. Ms. **Herket** liked where Ms. **Matasar** was going but if one piece of information that was not exempt was combined with an exempt item, then together, it would make both exempt. She was concerned this would only put them back to a push pull situation again.

Ms. **Johnson** asked if there was a way for the recipient to question the identity, motive, and need of the requestor since the law currently finds these irrelevant. Mr. **Smith** didn't think there was a good answer to Ms. **Johnson's** question. He thought it would open another minefield for the public entities from unequal treatment and discrimination in that they would then have to dictate which type of classes of individuals have access to information and which don't.

Ms. **Deckelmann** stated it was a question of what one will do with the information and a very reasonable baseline was thinking in terms of potential selling bulk data transfer, for example. Mr. **Fisher** talked about a potential license stating what information could be used for versus what it won't. [Note: audio cut out while Ms. **Deckelmann** and Mr. **Smith** were talking].

Ms. **Eakins** liked Ms. **Deckelmann's** approach with the subcommittee. She thought a part of the conversation would again have to be enforcement options when one violates a potential agreement.

Ms. **Matasar** asked for any further comments. Mr. **Smith** commented that given the sheer volume of different exemptions that reference PII, a main charge for the subcommittee might be to find a way to consolidate them into something more readable. The committee agreed. Mr. **Fisher** suggested discussing the questions the subcommittee would tackle. Ms. **Deckelmann's**

suggested taking a break so the proposed questions could be typed out, followed by a discussion of them and vote on the subcommittee. The committee recessed for a break.

Ms. **Matasar** brought the committee back to order and read the proposed questions that Mr. **Fisher** typed up and that were emailed to the committee members during the break. Mr. **Walth** suggested ordering the questions in a way that first defined the issue and ranking them to give the subcommittee a path and explained how that could be accomplished. Ms. **Matasar** wondered if they needed to order the questions at that moment or if the subcommittee could reorganize them. Mr. **Walth** felt the subcommittee could, however, Mr. **Fisher** wanted the committee to organize the questions. Mr. **Walth** suggested simply saying that their mission was to first identify the questions to answer, the problems to address, and identify potential steps, remedies, and resolutions. He was fine with not ordering the questions but it needed to be clear that the mission was to identify the issues. Ms. **Herkert** agreed. Ms. **Deckelmann** recapped the order of the questions with input from Fisher.

Ms. **Eakins** motioned to create a subcommittee with the charge of reviewing the PII information specifically considering the questions that the committee has directed them to consider and coming to the Sunshine Committee with a recommendation. Seconded by Mr. **Fisher**.

Mr. **Walth** added a friendly amendment so it was clear that the subcommittee's charge was to identify PII and issues and specific concerns with the current law, to make a recommendation to the whole committee. Ms. **Herkert** made a motion to amend the original motion with Mr. **Walth's** amendment. Seconded by Ms. **Deckelmann**.

After motion and second, the Committee unanimously voted appoint a subcommittee.

Ms. **Matasar** stated she would name the members of the subcommittee who had earlier announced they would volunteer. Those members were: Ms. **Eakins**, Ms. **Deckelmann**, Mr. **Smith**, Mr. **Walth** and Mr. **Fisher**. Ms. **Johnson** volunteered as an alternate member. After motion and second, the Committee unanimously voted to appoint the named members to the subcommittee. After motion and second, the Committee unanimously voted to appoint Ms. **Deckelmann** as chair of the subcommittee.

Fourth Agenda Item: Future Business

Ms. **Matasar** asked if the committee wanted to move onto the next exemptions on the schedule, still within the personal exemption category, or move forward with easier exemptions. Ms. **Herkert** motioned to go off schedule and move away from personal exemptions. Ms. **Matasar** wanted to know what exemptions should be considered next. Ms. **Deckelmann** suggested looking at outdated exemptions. Ms. **Herkert** agreed.

Ms. **Matasar** suggested Chair **Kron** and Mr. **Foltz** propose some outdated exemptions that might make sense to group together and review next. Mr. **Foltz** stated he would discuss this with Chair **Kron** and Ms. **Matasar** stated the list should be circulated well in advance of the next meeting.

The next meeting will occur at the State Archives.

Adjournment

After motion and second, the Committee unanimously voted to adjourn.

DRAFT

Oregon Sunshine Committee Meeting Minutes
March 20, 2019

Location: Oregon State Archives Building, 800 Summer Street NE, Salem, OR 97301

Sunshine Committee Members
Oregon State Senator Brian Boquist (excused) Selena Deckelmann, Director of Engineering, Mozilla Firefox Eileen Eakins, Law Office of Eileen Eakins, LLC Charlie Fisher, OSPIRG State Director Mary Beth Herkert, Oregon State Archivist Karin Johnson, Independence City Recorder Michael Kron, Special Counsel, Oregon Department of Justice Emily Matasar, Government Accountability Attorney, Governor's Office Oregon State Representative Karin Power (excused) Oregon State Senator Floyd Prozanski (excused) Adrienne Roark, Vice-President and General Manager, KPTV Fox 12 (excused) Morgan Smith, Polk County Counsel Brent Walth, Journalism Professor, University of Oregon Oregon State Representative Carl Wilson (excused) Bennett Hall, Newspaper Publishers Association
Guests
Josie [Last Name?] Nick Budnick Cameron Miles, Legislative Counsel, Committee Assistant
Agenda
AUDIO STREAM 0:00:00-1:38:29
January Minutes
Chair Kron did not post or circulate draft minutes from the January 29, 2019 meeting and will need approval at the next meeting.
First agenda item: PII Subcommittee Recommendation
Chair Kron proposed to delay voting until the next meeting to give the public and the body an opportunity to review it further. He thanked all those on the subcommittee for the work they did and invited Ms. Decklemann to go over the recommendation.
Ms. Decklemann read through the bullet points of the recommendation. When forwarding the recommendation to the body, Chair Kron did not include the email from Ms. Decklemann . In the email, she had mentioned two subjects she wanted to refer back to the larger committee and he asked her to speak to those subjects.
The first subject was the administrative burden of fulfilling public records requests. A document was sent to Chair Kron with Ms. Eakin's comments in full. The second topic was special problems around bulk data.
Mr. Hall asked if the subcommittee's recommendation was to leave ORS 192.363 as is or that

the standard should protect PII of all individual public employees, not just those covered by ORS 192.363. Chair **Kron** thought there was another provision in the statute that applied broadly to employees. The standard was incorporated in ORS 192.355(3). Chair **Kron** felt legislative counsel could review the awkward wording of the statute. Mr. **Smith** explained the information ORS 192.355(3) applies to. Mr. **Hall** asked and Mr. **Smith** confirmed that current law applied the standard to all public employee personal information.

Mr. **Hall** expressed concern about information becoming more restrictive. Mr. **Fisher** said the recommendation was for the status quo to remain. The subcommittee agreed no additional exemptions would be created and any changes would increase access to PII. Mr. **Hall** gave an example of how the statute was restrictive, i.e. requiring the name of the individual whose information is sought.

Ms. **Decklemann** reiterated the need to discuss bulk data requests. In practice, information may be provided to avoid a separate request for a list of all employees. Mr. **Fisher** pointed out that the subcommittee intentionally put “individual” public employee so it was clear that it would apply to an individual rather than bulk data, which they wanted the whole committee to discuss separately.

Ms. **Decklemann** said an important issue they suggested was making the public interest balancing test apply to all exemptions, which is not currently the case.

Ms. **Herkert** asked if any consideration was given to eliminating all individual exemptions and creating one solely for PII. Ms. **Decklemann** answered that the committee felt it was beyond their scope to get into specifics as it would require PII to be defined and the legislature needed to create that definition. Ms. **Herkert** clarified that she was talking about making one statute for all PII and provided her reasoning. Chair **Kron** felt it would be impossible or extremely difficult with the subcommittee’s recommendation that they don’t expand the scope of the application of the exemptions.

Ms. **Herkert** spoke consolidation of the exemptions into as few statutes as possible. Ms. **Eakins** reiterated the subcommittee’s intent to have the legislature come up with a universal definition to include in 192 and then, as much as possible, direct PII into that one statute. Ms. **Herkert** didn’t feel the recommendation clearly reflected the intent of the subcommittee. Chair **Kron** suggested adding to the recommendation that the exemptions be consolidated to the extent possible.

Ms. **Decklemann** explained the subcommittee worked hard to avoid restricting access to information currently available. Ms. **Herkert** replied that their recommendation would be to just eliminate where there was duplication. Mr. **Fisher** worried that creating an overarching statute for all PII would make all PII conditionally exempt. Ms. **Herkert** was not advocating for that, but the statutes are currently worded similar but with different interest groups. She would ask the legislature look at those, consolidate them into ORS 192, and reduce them as much as possible. Ms. **Eakins** agreed the statutes should be consolidated where possible.

Ms. **Matasar** suggested a recommendation for when a request is not seeking PII but PII is included in the record. The recommendation would be that the PII, regardless of whom it

belongs, may be redacted. Chair **Kron** thought this might be a training issue rather than a statutory problem.

Mr. **Hall** mentioned that in previous meetings someone had talked electronic system that would flag PII to make it easier for entities to respond to requests and automatically redact PII. He thought maybe a check list where one can indicate whether or not they want PII. Ms.

Decklemann stated such systems are not currently common. However, a request template could ask whether requesters want PII. Chair **Kron** was unsure whether it would be wise to give people the suggestion that they may be able to obtain PII from the state, as some people with no real or legitimate need for the information may seek to take advantage of that. From his perspective, the current system works well and avoids inappropriately disclosing PII.

In Ms. **Matasar's** experience, state agencies do not feel like they can redact information legally without getting it wrong. Mr. **Hall** asked if there was an exemption in the law that talked about liability. Ms. **Matasar** stated once information is released, entities are not liable, but that was different.

Ms. **Matasar** stated that she didn't feel the recommendation considered consumer privacy concerns. Ms. **Decklemann** reiterated the desire to avoid restricting information currently available. Mr. **Fisher** added the biggest potential concern with consumer PII was bulk data requests and the subcommittee felt that issue required more discussion and needed to be part of another subcommittee.

There was further discussion between Mr. **Walth** and Ms. **Matasar** regarding protections around consumer PII and the subcommittee's charge. Ms. **Eakins** asked Ms. **Matasar** if it would help to have the legislature consider what, if any, additional protections needed to be considered for consumers specifically. Ms. **Matasar** thought so and thought it would fit in number 4 of the recommendation. Mr. **Fisher** pointed out Oregon's generic personal privacy exemption and opined that it should be sufficient to address consumer information concerns. He didn't think they should start recommending additional exemptions for other types of information unless it was to clarify what personal information was for the purpose of making it easier for agencies to discern what should or should not be released.

Ms. **Decklemann** added that ORS 192.377 included personal information the committee was discussing. Mr. **Smith** stated the statute was a little ambiguous in some ways and was in regards to information provided to the public body in confidence, but it didn't clarify the meaning of confidence. He thought having confidence defined would be helpful because the meaning varies depending on who is processing the request. Ms. **Decklemann** felt they could be clearer that they are recommending consolidation but organization of the chapter needs to be clearer. Chair **Kron** stated that 192.377 and in confidence exemption all involved public interest, which would be a specific place for them to recommend more clarity.

Second agenda item: Personal Financial Information Exemptions and Public Testimony

No public testimony.

Chair **Kron** did not provide notice to discuss these exemptions. He previewed that his main

recommendation would likely be consolidation and moving items to chapter 192. He stated they could discuss the exemptions at the next meeting and hopefully reach an agreement on them as well as the person privacy ones. Ms. **Deckmann** asked if their intent was to offer suggested text for consolidation. Chair **Kron** felt they needed to be clear with the legislature about the goals of the committee, but was reluctant to draft statutory language by committee, especially as legislative counsel wouldn't necessarily consider it anyhow. Ms. **Deckmann** clarified and Chair **Kron** agreed that the artifacts of each recommendationsuggestion were the text of the recommendation along with the list of relevant exemptions.

Ms. **Herkert** stated the committee should look at exemptions they would recommend getting rid of.

Chair **Kron** brought up a letter he received from the Society of Professional Journalist that identified 3 recommendations: legislative counsel input; subcommittees; and legislative reports. He invited Mr. **Budnick** to talk about his comments. Mr. **Budnick** spoke to the group.

Chair **Kron** asked Mr. **Miles** if he had any insight in terms of what the legislature is expecting in terms of the recommendation the committee is tasked with providing. Mr. **Miles** discussed the options the committee could take when providing their recommendations and what the legislature would potentially do with the information.

Chair **Kron** also asked for an update regarding the current legislature's activities and also about keeping the committee apprised of legislative activity. Mr. **Miles** felt with the frequency of the committee's meetings, keeping the committee apprised would be difficult to accomplish and explained why. Chair **Kron** stated that his reports were helpful for keeping the members apprised as well as the public. Mr. **Miles** agreed.

Mr. **Budnick** asked that Mr. **Miles** let members know of bills that may affect their work. Mr. **Hall** asked if there was a way to potentially vote on some sort of statement they could send back to the legislature on pending bills. Ms. **Deckmann** suggested creating a subcommittee whose role would be to look at current legislative business for the larger committee to convene on so a response memo can be drafted to the legislature.

To transition, Chair **Kron** moved on to the next agenda item.

Third Agenda Item: Subcommittees

Chair **Kron** talked about creating two additional subcommittees. A subcommittee for administrative burden and information design, and a standing committee to discuss current exemptions and provide recommendations. Mr. **Smith** and Mr. **Walth** agreed to create additional subcommittees. No members objected/

Ms. **Herkert** asked for and Chair **Kron** provided clarification on what the suggested subcommittees would do. Ms. **Deckmann** asked and Chair **Kron** agreed that he was intending for the bulk data to be part of the administrative subcommittee. Chair **Kron** stated another option was to do exemption review for the foreseeable future, but other topics keep arising.

Ms. **Herkert** felt it was too early to address the administrative topic and explained why. Mr. **Fisher** agreed with focusing on the current exemptions and creating a legislative subcommittee. Chair **Kron** stated if the goal was to provide input to the legislature, they would need a subcommittee, but if it was to be informed about what the legislature was doing, they could do without one. Ms. **Decklemann** explained why it would be good to have a subcommittee and Ms. **Herkert** agreed.

Chair **Kron** asked if anyone objected to having the previous subcommittee be the standing subcommittee. Mr. **Fisher** would rather be on the legislative subcommittee. Ms. **Johnson** agreed to take Mr. **Fisher's** place for the standing committee.

Mr. **Hall** asked if they were considering as a subcommittee to deal with question of low hanging fruit. Ms. **Mataser** felt like someone needed to first identify the exemptions that qualified as low hanging fruit. Mr. **Hall** agreed. Ms. **Herkert** would be willing to identify the exemptions with some help. Ms. **Eakins** felt it could be a short term subcommittee to identify them. Ms. **Herkert**, Mr. **Hall**, and Chair **Kron** volunteered for this subcommittee. Ms. **Herkert** would chair the subcommittee.

Mr. **Fisher**, Mr. **Walth**, and Ms. **Mataser** volunteered for legislative subcommittee. Mr. **Fisher** would chair the subcommittee. There was further discussion regarding the bills being considered that have a current impact on the committee and how to deal with them.

Ms. **Eakins** clarified that the standing committee's role was to essentially do the same thing with other categories of exemptions that they did with PII: analyze them, address any public policy issues, and make recommendations. It was agreed that the standing committee would be used only when needed.

After motion and second, the Committee unanimously voted to form subcommittees on certain issues at the request of the Chair of the full committee and that the subcommittee should have a chair who will have the authority to call meetings in order to complete their work and create an agenda.

After motion and second, the Committee unanimously voted to create a standing subcommittee made up of the same members for the PII subcommittee to review identified important exemptions.

After motion and second, the Committee unanimously voted to create a subcommittee on legislative activity comprised of Mr. **Walth**, Ms. **Mataser**, and Mr. **Fisher** as the chair.

After motion and second, the Committee unanimously voted to create a subcommittee to be named later to identify unnecessary or redundant exemptions and where to consolidate them comprised of Mr. **Hall**, Chair **Kron**, and Ms. **Herkert** as the chair.

Fourth Agenda Item: Future Business

The next meeting will take place in Independence.

Adjournment

After motion and second, the Committee unanimously voted to adjourn.

DRAFT

Oregon Sunshine Committee Meeting Minutes
May 15, 2019

Location: Independence Civic Center, 555 South Main Street, Independence, OR 97351

Sunshine Committee Members
Oregon State Senator Brian Boquist (not present) Selena Deckelmann, Director of Engineering, Mozilla Firefox (not present) Eileen Eakins, Law Office of Eileen Eakins, LLC Charlie Fisher, OSPIRG State Director Mary Beth Herkert, Oregon State Archivist (by phone) Karin Johnson, Independence City Recorder Michael Kron, Special Counsel, Oregon Department of Justice Emily Matasar, Government Accountability Attorney, Governor's Office Oregon State Representative Karin Power (not present) Oregon State Senator Floyd Prozanski (not present) Adrienne Roark, Vice-President and General Manager, KPTV Fox 12 (by phone) Morgan Smith, Polk County Counsel Brent Walth, Journalism Professor, University of Oregon (by phone) Oregon State Representative Carl Wilson (not present) Bennett Hall, Newspaper Publishers Association
Guests
Josie Turner (by phone) Boaz Dillon, Freedom Foundation (by phone) Andy Foltz, DOJ Cameron Miles, Legislative Counsel Ginger McCall, Public Records Advocate Steve Suo (by phone)
Agenda
AUDIO STREAM 0:00:00-1:23:39
Welcome and Introductions
First agenda item: Approval of Draft Minutes: January and March After motion and second, the Committee unanimously voted to approve the minutes for January and March.
Second Agenda Item: Subcommittee Reports Mr. Fisher announced the change of his subcommittee's name to the Legislation Review Subcommittee and explained the reasons for the change. The subcommittee felt comfortable recommending guidance to the legislature based on the assumption that the Sunshine Committee would adopt the PII recommendations in their existing form. This limited the bills they could discuss. They also limited the discussion to moving bills implicating PII. He described HB 2016 and HB 2331 and offered the subcommittee's recommendations. Chair Kron brought up the subcommittee's recommendation that the legislature consider Sunshine Committee's work before adopting new exemptions. He thought it would be helpful to discuss whether they wanted the legislative review subcommittee to advise the full committee of

other issues with legislation in the future. Particularly in light of the subcommittee's intent to adopt guiding principles and to provide a recommendation to the legislature that creating punitive penalties for disclosure of public records would be problematic. He asked Mr. **Fisher** if those were the kinds of matters the Sunshine Committee could expect his subcommittee to look for. Mr. **Fisher** felt the ideal scenario would be for the subcommittee to review bills before the legislation session began so recommendations could be provided before momentum gathered. In a perfect scenario, they would be consulted as the bills affecting public records were being drafted. The subcommittee also briefly discussed ways to make the review process better such as standardizing the way government impact statements are written so it can be easily interpreted where the bill was in the process. Chair **Kron** thought the idea of having the Sunshine Committee consulted prior to the adoption of new exemptions could be a recommendation to the legislature.

Mr. **Fisher** suggested creating a subcommittee in the interim to develop a recommendation to the legislature regarding bulk data requests for use in future legislative discussion on how they should be handled. Chair **Kron** stated they could revisit the topic later in the meeting and opened the floor to discussion regarding the current recommendation.

Ms. **Matasar** pointed out the second bill (HB 2331) was wrong in the recommendation and it was actually HB 2051, which already passed and therefore was moot.

Mr. **Fisher** believed there was also an amendment posted on HB 2016 removing the sections they recommended removing and felt it would be helpful to formally adopt the recommendation and provide the recommendation to the legislature. Chair **Kron** suggested tabling the recommendation until the other subcommittees presented their recommendations.

Ms. **Herkert** provided an update on her subcommittee. They decided to split the exemptions from the electronic exemption catalog so each member had 204 exemptions to review and report back on to the subcommittee for final discussion with the full committee.

Ms. **Eakin's** standing subcommittee did not meet. She did suggest the larger committee discuss whether her subcommittee should be tasked with the bulk data question.

Third agenda item: Standing (PII) Subcommittee's Recommendation

Chair **Kron** separated the recommendation into two parts and made the discussed changes from the last meeting. Some of the recommendations were very specific to particular exemptions while a handful were more general in nature. He suggested either adopting the general recommendations or continue work on them as a working document to present to the legislative subcommittee as a broader, general recommendation document. He tried to make it clear in the recommendation that the exemptions be consolidated where possible and moved, to the extent they can, to Chapter 192. He also listed the exemptions to clearly provide the scope of the recommendation to the legislature.

Ms. **Matasar** felt in light of their conversation regarding the recommendation against punitive measures, it would helpful to discuss other general legislative recommendations.

Mr. **Fisher** felt Ms. **Matasar** made a good point, but thought the existing general recommendations were good as written. Chair **Kron** suggested adopting the recommendation specific to PII, adopting the general principals as currently articulated, and to treat the general recommendations as an ongoing project.

After motion and second, the Committee unanimously voted to approve the PII specific recommendations.

After motion and second, the Committee unanimously voted to approve the general recommendations with the understanding that it was a living document to be amended periodically.

It was agreed that Chair **Kron** would work on the recommendation related to the committee being more involved in the legislative process or as a stopping place for those who attempt to get new exemptions enacted by the legislature for future approval by the committee.

The committee went back to address Mr. **Fisher's** subcommittee's recommendation.

Mr. **Fisher** re-summarized the recommendations. On the discussion of the legislature not adding more exemptions until the committee has completed their charge, Mr. **Smith** stated there should be an exception if there was an emergent need for an exemption. Chair **Kron** suggested and it was agreed that they would add to the end of the paragraph addressing this, "unless absolutely necessary."

Mr. **Fisher** described what HB 2016 pertained to. Particularly, his subcommittee did not like the proposed punitive action; it expanded the definition of personal information; and it contradicted the idea of adding a public interest balancing test to all PII release. Their recommendation was to remove those pieces. There was discussion regarding the amendments to the bill that seemed to remove the issues. Mr. **Fisher** suggested endorsing the amendment or adopting it with their recommendations.

Ms. **Matasar** explained that she would abstain from the vote.

Chair **Kron** asked if they were striking the part of the recommendation about HB 2051. After some discussion, it was agreed that part would be stricken.

After motion and second, the Committee unanimously voted to strike 2b from the overview and the discussion, to add "unless absolutely necessary" to the end of the paragraph in the discussion of section 1, and to adopt the recommendation.

Third Agenda Item: Recommendation Regarding Tax and Other Personal Financial Exemptions

Chair **Kron** drafted a brief recommendation with respect to the tax and other personal financial exemptions reviewed. He described the types of exemptions in the group and gave a summary of his recommendation.

Mr. **Fisher** had questions regarding disclosure of tax returns. There was discussion about

information automatically exempt, information available to requestors, federal laws vs. state laws, and whether or not an interest balancing should be applied. Mr. **Fisher** felt there should be very few circumstances where a record was unattainable even when in the public interest. Chair **Kron** was concerned that by adding that there should be some level of public interest access for all public records, particularly in relation to tax returns, it would become necessary to litigate the public interest every single time, for little apparent benefit. Mr. **Fisher** thought that was a valid point.

After motion and second, the Committee unanimously voted to adopt the recommendation.

It was agreed that the standing subcommittee would meet to discuss the bulk data requests. Chair **Kron** suggested some stakeholders that would be interested in attending the meeting.

Steve Suo expressed his agreement with the subcommittee addressing bulk data requests.

After motion and second, the Committee unanimously voted the standing subcommittee to discuss bulk data requests.

Fourth Agenda Item: Future Business

Discussion of miscellaneous exemptions.

Chair **Kron's** shared his plan of forwarding the two adopted recommendations to the Subcommittee of the Legislative Counsel Committee with a brief memorandum.

Adjournment

After motion and second, the Committee unanimously voted to adjourn.

Oregon Sunshine Committee Meeting Minutes
July 17, 2019

Location: Mozilla, Portland Commons

Sunshine Committee Members
Oregon State Senator Brian Boquist (excused) Selena Deckelmann, Director of Engineering, Mozilla Firefox (present) Eileen Eakins, Law Office of Eileen Eakins, LLC (present) Charlie Fisher, OSPIRG State Director (present) Mary Beth Herkert, Oregon State Archivist (via phone) Karin Johnson, Independence City Recorder (via phone) Michael Kron, Special Counsel, Oregon Department of Justice (present) Emily Matasar, Government Accountability Attorney, Governor's Office (present) Oregon State Representative Karin Power (excused) Oregon State Senator Floyd Prozanski (excused) Adrienne Roark, Vice-President and General Manager, KPTV Fox 12 (excused) Morgan Smith, Polk County Counsel (via phone) Brent Walth, Journalism Professor, University of Oregon (present) Oregon State Representative Carl Wilson (excused) Bennett Hall, Newspaper Publishers Association (excused)
Guests
Cameron Miles, Legislative Counsel, Committee Assistant Ginger McCall, Oregon Public Records Advocate (via telephone)
Agenda
AUDIO STREAM 0:4:58-47:53 Break at 12:10 – 18:48 (to fix audio)
Welcome and Introductions Introductions were made including the members attending by phone, and audience members. Chair Kron did not post or circulate draft minutes from the May, 2019 meeting and will need approval at the next meeting.
First agenda item: Reports from Chairs on Subcommittees Charlie Fisher : Subcommittee will be meeting later this Summer. Agenda for that meeting: How to make the review of legislation related to Public Records changes easier. Eileen Eakins : Subcommittee met June 12, 2019 at her office. Andy Foltz, Karin Johnson (City of Independence), Morgan Smith (Polk County) and Selena Deckelmann (via phone). Guests: Steve Swuell (sp?), from The Oregonian, Boaz Dillon, from the Freedom Foundation (via phone) and Nick Budnick (via phone). Discussed analysis of bulk data requests. Recommendation of storage or record maintenance and how large data requests are processed. Possible implementation of data transfer/limited use agreements. Mary Beth Herkert subcommittee will meet in early August. Will compile everyone's input and discuss at next meeting.
Third Agenda Item: Testimony on Family Information Exemptions

No witnesses offered testimony.

Fourth Agenda Item: Future Business

Next meeting tentatively scheduled next meeting for September 25, 2019, Salem

Adjournment

After motion and second, the Committee unanimously voted to adjourn.

DRAFT

September 25, 2019

**Location: Oregon State Capitol, Hearing Room C, 900 Court St. NE, Salem, OR 97301
Sunshine Committee Members**

Michael Kron, Special Counsel, Oregon Department of Justice / Chair
Emily Matasar, Government Accountability Attorney, Governor's Office / Vice Chair
Mary Beth Herkert, Oregon Secretary of State
Karin Johnson, Independence City Recorder
Morgan Smith, Polk County Counsel
Bennett Hall, Newspaper Publishers Association
Charlie Fisher, OSPIRG State Director
Eileen Eakins, Law Office of Eileen Eakins, LLC

Guests

Nick Budnick, SBJ
Andy Foltz, Public Records Counsel, Department of Justice
Cameron Miles, Office of Legislative Counsel

Agenda

AUDIO STREAM 0:00:00-45:41

Welcome and Introductions

Chair **Kron** mentioned he did not circulate draft minutes from the May 15, 2019, meeting, announced that July's minutes are current, and both were made available on the website.

Ms. Matasar pointed out the July minutes jump from agenda item #1 to agenda item #3, excluding agenda item #2 which was the Governor's signing letter on HB 2016/request that standing subcommittee on "something but not everything" take on this issue. July minutes were not approved / revised minutes will be circulated ASAP. May minutes were approved by committee. Second Motion to Ms. Herkert.

Agenda Item #2 - Subcommittee Report: Legislative Subcommittee met in August

Mr. Fisher shared discussions surrounding:

- Being more proactive on review of Bills that have open Government Impact Statements prior to 2020 session. Anticipated hearing that list in January, Subcommittee members agreed to split up, to see how they implicate public records.
- Focus on issues that affect Sunshine Committee and not jumping ahead to make recommendations on issues that haven't been discussed yet.
- Improve open Government Impact Statement process for members of the Committee and members of the public to be more informed / understand how proposed Legislation will affect exemptions.
- Discussed ways to report better – e.g., list serve - individuals can sign up to receive information on Bills. Suggested making items more prominent on the Oregon Legislative Information System – currently they are kind of hidden away. **Chair Kron** expressed there may be difficulty in controlling the Legislative Website and recommended use of the DOJ

Sunshine Committee website for announcements. **Mr. Miles** introduced as potential point of contact for website inquires.

- Potential Action Items: whether a recommendation should be made to Legislature not to expand public records exemptions, as a general policy. **Mr. Fisher** believed this may have been a part of a previous group recommendation made. **Chair Kron** emphasized it may be worth emphasizing by itself. (2) Whether a hearing should be set up in November/January to discuss –a challenge may be that no committee has jurisdiction. (3) **Ms. Matasar** mentioned discussions were made proposing a letter to Legislatures (Caucus Offices/Speaker/Senate President or Legislative Group as a whole).
- No formal recommendations currently. Anticipated meeting in the coming months to prepare formal recommendations.

Chair Kron expressed that non-voting Legislative members of Sunshine committee are members of the subcommittee, Legislative Counsel Committee, which is setup by Statue (and is not a policy committee).

It was determined the Subcommittee should discuss what kind of recommendations should be made, then Sunshine Committee discussions can begin as to best ways to deliver.

Agenda Item #2 Cont. - Ms. Eakins and Ms. Herkert Subcommittee Report

Chair Kron mentioned delay in memo to Ms. Eakins because Law Clerk left – memo to come that week.

Ms. Eakins made attempts for her subcommittee to meet but was unsuccessful. Hoping for one more meeting to wrap up discussions around bulk data. There were some suggestions about other stakeholders to involve in this discussion as well. **Mr. Budnick** (on telephone) mentioned his group may be interested in attending these meetings.

Chair Kron mentioned the Governor’s Request for Bulk Data Proposal in December with eye to Legislation in short session. It may be that more than one meeting is needed. Representative Power put him in touch with another interested stakeholder. He hopes that since the Governor recommended this bill, that she would use one of her bills for this. If not, members ex officio of this committee may start first. If no Governor or member action, may need to re-evaluate.

Mr. Fisher asked who would be proposing that bill – since it’s short session /limited number of bills. **Mr. Miles** mentioned House Members have two Bills, Senate Members have one, Committee Bills have 3-5 (unsure of number), per committee.

Agenda Item #2 Cont. - Ms. Herkert, Mr. Hall, and Chair Kron, Subcommittee Report.

Ms. Herkert stated all assignments were turned in and a meeting was scheduled for October 14th to discuss, then could present to full committee afterward.

Agenda Item #3 - Child Custody and Support/Family Law Exemptions

Chair Kron sent an email to group to inquire what should be done with these. There was a lack of public testimony surrounding exemptions. Additionally, some issues have been

contentious, mentions story about current lawsuit brought by state against foster care plaintiffs and how records of plaintiffs could be used in litigation. **Chair Kron** mentioned conferring with **Nick Budnick** at SBJ and inquired around DOJ, and there wasn't much interest. External stakeholders were invited but he doesn't feel confident that adequate attempts to inform/collect individuals occurred. There is also difficulty finding individuals because identities are kept private. **Ms. Eakins** recommended the Family Law Bar. This suggestion received positive feedback. **Chair Kron** announces likely coming back to Family Law Exemptions

Agenda Item #3 Cont. – Exemption Discussion

Mr. Hall expressed understanding the need to be private but there are always exemptions. Wants access to Public Interest Balancing Test to manage exemptions. "The Low-Hanging Fruit Subcommittee" broke up the 600+ exemptions into thirds and his interpretation of the exemptions are that information is generally sealed from public view, without exceptions.

Mr. Fisher expressed that it is generally in favor of having most, if not all, public records available, in interest of public balancing test. **Chair Kron** expressed Public Interest Balancing Test may be a blunt instrument but perhaps they should identify specific circumstances in which disclosure may be appropriate. **Chair Kron** asked for the Committee's permission to find stakeholders and table this subject for after November to allow time to discuss the Bulk Data Project. It was decided the Committee would meet first week of November and then reserve the Third Thursday for a second meeting, if decided is needed.

Mr. Fisher expressed he believes Mon, Tues, Wed are Legislative days. **Chair Kron** asks about constraints on **Ms. Eakins'** Subcommittee with the potential of two November meetings. She expressed the possibility to meet 1-2 times in October, to propose items to the Committee in November. She named subcommittee members: Brent, Morgan, Selena, Kathy, Karen is an alternate? Charlie is interested in standing as an alternate. At least 3 members should be available for the meeting. All Subcommittee Chairs confirmed they are all scheduled to meet before next meeting.

Agenda Item #4 – Future Business

Mr. Fisher would like to discuss resignation of Ginger McCall, and the Committees place in this as well as the independence of public records advocate. **Chair Kron** shared that a conceptual statement was approved at prior meeting of the council, in that advocates should be independent the extent permitted by the Constitution. He also suggests it may not be helpful to get too specific about a recommendation – since that group is working on specifics. **Mr. Fisher** suggested following the lead of the council, but also giving a stamp of approval as a committee.

Todd Albert (Deputy Public Records Advocate) shared that PRAC was scheduled to meet Tuesday afternoon to discuss further potential suggested Legislative action e.g., revised Statute enshrining offices independence further in the law and the details of what that would like / who would appoint advocate. If it is determined that Committee action is not appropriate, **Mr. Albert** encouraged Committee members in their capacity as Bipartisan Public Records Experts to provide public testimony in an individual capacity as well. He was unsure about intention to introduce any Legislation by the Proctor in special session, or if they would wait for Short Session in February, or for the 2021 long session.

Chair Kron expresses knowledge of PRAC creating a Subcommittee to look specifically at independence of advocate and in counsel. **Mr. Albert** doesn't know stance of this because he is not on committee but does know that the agenda for Tuesday was for the entire Council to discuss future Legislative action specifically about independence. **Chair Kron** to put agenda item on to discuss PRAC.

Adjournment

November 4, 2019

**Location: Oregon State Capitol, Hearing Room C, 900 Court St. NE, Salem, OR 97301
Sunshine Committee Members**

Michael Kron, Special Counsel, Oregon Department of Justice / Chair
Emily Matasar, Government Accountability Attorney, Governor's Office / Vice Chair
Mary Beth Herkert, Oregon Secretary of State
Karin Johnson, Independence City Recorder (by phone)
Morgan Smith, Polk County Counsel
Bennett Hall, Newspaper Publishers Association
Charlie Fisher, OSPIRG State Director
Eileen Eakins, Law Office of Eileen Eakins, LLC
Kim Thatcher, PRAC non-voting member / member of Sunshine Committee? – *Chair Kron asked Mr. Foltz to update website for this*

Guests

Nick Budnick, SBJ
Andy Foltz, Public Records Counsel, Department of Justice
Cameron Miles, Office of Legislative Counsel
Adrienne Roark, Vice-President, and General Manager KPTV Fox 12
(by phone)
Alexia (last name unknown) Chief of Staff for Representative Karrin Power (by phone)
Steve Suo, The Oregonian
Courtney Graham, SEIU Local 503
Scott Winkles, League of Oregon Cities

Agenda

AUDIO STREAM 0:00 to 02:41:00

Chair Kron introduces Committee and agenda items.

Agenda Item #1 - Records Advocate Independence Proposal/ approved by PRAC

Chair Kron: Council approved proposed Legislative language in hopes to create more independence for the PR Advocate. PRAC is responsible to appoint or terminate (for cause) the advocate. The Advocate is no longer required to be chair, but it's not forbidden, Council can choose its own chair. There is now a provision that specifies Council can support or oppose Legislation relating to Public Records Law and can request one or more Legislators to introduce Legislation. The language was posted on website, which was approved by the PRAC, with one dissenting vote.

Suggestions were made to Ginger McCall about a Statutory Amendment, which was circulated to the group and pros/cons were discussed. **Mr. Fisher** asked about the beginning to end process. **Chair Kron** responded in that, its intention is being played out. *Some audience discussion took place in which was hard to hear.* **Mr. Suo** mentioned finding a funding source that is more stable and less political.

Mr. Smith shared the Advisor would still be on the board, of the body that oversees their work, which is awkward. **Chair Kron** shared Rob suggested changing the provision that makes the advocate the chair.

Mr. Fisher questions whether the Sunshine Committee should endorse this since the work aligns with the Committee. **Chair Kron** already voted for it. **Ms. Herkert** is in favor of the independence of PR Advocate, believes its awkward the Advocate oversees the board. **Mr. Hall** endorses independent PR Advocate.

Mr. Budnick mentions other Legislative ideas out there. Senator Hass has Legislation out there on this which is slightly different than what was presented by PRAC.

Meeting Attendee Introductions Made (forgot to open with this).

Agenda Item #2 - Recommendation on Bulk Data Request – Ms. Eakins’ Subcommittee

Ms. Eakins: Bulk records requests are a new phenomenon. Need a definition of “Bulk Data” there was one provided in HB 3361 (2017). However, one in ORS 192 would be appropriate. There are specific privacy concerns with data requests for PII (the type that generates the most interest). Recommendations have been made specific to PII, but these would include bulk data, which may or may not include PII.

A lot of bulk data disclosure can be addressed by different storage methods. One recommendation is that Legislature consider modifications to OR’s Public Contracting Code to establish transparency by design. So that when public entities go to purchase data storage technology, it’s with the understanding the goal will be to make it easier to redact and reply to requests.

Need Legislative guidance on publicly accessible bulk data. It’s possible to run into problems with trade secrets because data dictionaries and algorithms that go into setting up the system can be considered propriety, which can be problematic to the government, in terms of disclosure.

Suggested to create a pre-certifying option (compared to a “TSA Precheck”) for public entities, those authorized, have been approved by Government in a manner they know they can disclose without any issues. Those not named on the list would have to go through the formal request process, which would include redactions as any other request would.

Also, could set up a website so information that is not subject to disclosure, can be easily obtained, and not have to go through a public records request. If there is going to be a mandate for electronic data storage changing, just having the understanding that some local governments won’t have the funds to make those changes well. There should be some sort of “out” or need-based assistance available for support.

Perhaps, a bulk data transfer agreement – where the party requesting the data agrees not to use it for improper purposes. It should include a private right of action, so that if someone is harmed, the issues are between the requester and not the government.

Chair Kron reads email from Selena Decklemen, “I feel I got my substantive comments in, but I’m primarily concerned about ensuring that algorithmic transparency is part of the recommendation. In addition to the data dictionary, where it concerns the creation of data that impacts citizens’ access to government services”. **Chair Kron** provides an example: an applicant applying for a DHS program through a third-party system. This system collects analysis of data that the state has about the person that results in a computed value, that then lives in a field of database. **Ms. Decklemen’s** point means the public should have access to the data dictionary and the data inputted into the system to determine eligibility. **Ms. Herkert** recommends making just a summary available, instead of the algorithm because it is such a complex issue. **Ms. Eakins** confirms this item is on the subcommittee’s recommendations. **Mr. Smith** states these comments stemmed from the trade secret conversation that took place in the subcommittee. To the extent you have a data contractor who develops a database for you, if that database or software includes creating new figures based on inputted data. Ms. Decklemen would like to have that algorithm disclosed publicly. As opposed to most public contractors who are going to consider that propriety and usually don’t consent to giving up their intellectual property rights.

Agenda Item #3 – Public Comments

Mr. Steve Suo:

Shares story about OHA declining/removing people for Medicaid eligibility for psychiatric services based on judgements made by its contractor. The contractor had a 20-30 question list that determined eligibility, that questionnaire was considered propriety. It was questioned if the basis in which this work was being conducted was appropriate and if it created any harm for OHA participants.

Feedback from subcommittee’s meeting: he likes the transparency by design and believes it’s strong to have the Sunshine Committees support behind this and believes it will help cost of disclosure and security of PII.

Encourages committee to urge easy custom export of bulk data without specialized programming by public. One core item of transparency by design that City of Portland and other agencies have been encouraged to adopt. City of Portland did recently for Police.

Discusses and reads ORS 192.363(2) “the party seeking disclosure shall show by clear and convincing evidence that the public interest requires disclosure in a particular instance”. He doesn’t feel this makes sense in bulk data request and it would be difficult for the requestor to meet these needs. He recommends changing to, “the party seeking disclosure shall show by clear and convincing evidence that disclosure serves the public interest”. He believes this is a lower bar.

Mentions SEIU requested changes regarding ORS 192.363 – personally identified information can be requested and disclosed by a public body. Requester must list names of individuals whose PII has been requested. Forces requester to make two requests: 1) a list of all employees

of State of Oregon 2) submit a list of names who they want information for. Does not believe this supports privacy.

The used to proprietary software by the public bodies should not be used to impinge the public's right to inspect public records, which would include data dictionaries.

Mr. Fisher understands the bulk data transfer agreement to not change status quo, since currently they need to satisfy the public interest. He questions whether this is a current issue or if he foresees this being an issue down the road. **Mr. Suo** responded in that he has not had a denial on these grounds but believes that this statute will become a bigger part of the process since there is a focus on bulk data and if Legislature adopts data transfer agreements, this statute will become the main channel.

Mr. Suo recommends for 3(a) regarding data transfer template – it just refers to “data” right now and should explicitly say “PII” or “bulk data PII”. Additionally, adding a proposal of easy custom export of data.

Chair Kron states that ORS 192.363 pertains employees, but there are similar provisions for contracted employees providing healthcare and childcare. **Mr. Suo** confirms this is the area of his concern.

Mr. Nick Budnick

Applauds subcommittee's work to plow through this topic. Nothing in bulk data transfer agreement should impede public interest access to bulk data PII. Calls on Sunshine Committee to provide guidance to legislature, following the testimony that was given from Rob Davis, Oregonian, Tony Shick, OPB, Rachel Alexander and other folks who discussed how society benefits from public interest access last October.

Recommends adding a line in 3a “since its inception the OR Sunshine Committee has heard compelling testimony that public interest access is vital to our society, nothing in the data transfer agreement template should impede public interest access, to the information such as is currently provided for under existing law”. He believes something like this would align with SPJ's intention to avoid

He is concerned that a data transfer agreement could contain language that detours public interest access. When this concept was first broached, the concept was to balance privacy and transparency. “This language could go to Legislature without a very explicit statement that we should not restrict public interest bulk data. There's a loophole where things could go array”. Clarify bulk data transfer agreement is not intended/cannot impede public interest access to data that exists under current law.

Mr. Smith: bulk data transfer agreement outlines what you will be using the data for, which could be much less of an invasion of privacy for the individual employee, which would tip the scale for public interest test directly in your favor. That works to only assist you in the public interest balancing test for the public's interest right to have information compared to the individual's information that they have a right to privacy within that information. Without an agreement, you'd still have the access under the law, but it would be less of an invasion of

privacy for the individual. **Mr. Budnick** responded to this example by stating there are assumptions in how a situation would be played out, and without having terms in writing, there are loopholes.

Chair Kron shares about a letter from SEIU (posted on website) submitted 10/20/19, by Jared Franz, staff attorney that asks committee to consider some amendments to ORS 192.363 statute. He invited Courtney Graham to speak on behalf of SEIU regarding comments made.

Ms. Courtney Graham: Overall directive from Governor's office for Sunshine committee is to find balance between privacy and transparency.

- Proposed to committee a handful of suggestions for public interest test (ORS 192.363).to clarify that representatives of individuals must be notified within a proposed 48-hr time frame, since response time for state or local government is seven days. Specific concerns in Notice Requirements (3) *she reads from statute.*
- Proper notice is not being given consistently across state agencies. Notice has only been provided recently to individuals whose information is being requested. This isn't in compliance with the statute, it is to adhere to a contractual change the union made in bargaining with the State of Oregon.
- SEIU supports **Mr. Fisher's** recommendation that the information that is disclosed can only be used for the purpose for which it was requested.
- SEIU has concerns with transparency by design – and not relying on the database that protects information / ensuring there is some human intervention at some point. To maintain privacy.
- If there is interest in expanding criteria to be considered when PII is applied, SEIU encourages preservation of individual privacy and safety.
- SEIU generally supports having some right of action. But there is some general concern about what would constitute a misuse of data, what level of specificity would need to be included in a complaint for a private right of action, criteria for pre-certification needs to be much clearer.
- Asks to consider amendments to ORS 192.363 statute
- Comments on recommendations from subcommittee

Chair Kron replies in response to SEIU recommendation about PII including privacy and safety.

He describes the AG's office applies exemptions and analyzes two sides: 1) what interests are in that exemption and what is it trying to protect? 2) what are the public interests and disclosure of this information? He asks if the recommendation if spelling out in statute what the interests are that public bodies should be considering as reasons, they might preclude the information may not be disclosed to go alongside the public interest and disclosure arguments? The interests that favor non-disclosure can be public or private interests.

Ms. Graham responds in speculation (since she didn't write this letter) outlines a value statement in statute whether you put it in statute or forward it along to legislatures with recommendations. Making it explicit that the other side of the scale is privacy or safety.

Ms. Eakins shares a discussion in the standing subcommittee, the last recommendations made were specific to PII and asking legislature to clarify considerations for public interest balancing test. So that the recommendations become a checklist for public interest. If you have a bulk transfer Agreement, then the public doesn't have to consider any of the above. But they should be weighed together.

Chair Kron believes the recommendations coming from the subcommittee is responsive to the Governor's letter. He questions if the Committee needs to focus on the larger issue of "potential public records legislation related to requests bulk data containing personally identifiable information" not specific to one statute. Wonders if we should table discussions surrounding 192.363 to address the Governor's general question.

Mr. Hall questions what would constitute authorized/unauthorized uses of data? Why did Subcommittee feel it was necessary to specify the law should include a private right of action? **Mr. Smith:** if we are holding onto private information that gets potentially misused by a third party, it shouldn't be a risk of the public entity, the consequences should be on the requestor of the data. **Ms. Herkert** questions what happens with that data when they are done? If someone is hacked, how does that work? Is there a requirement that you return the information? Goes back to Mr. Budnick's question of does it lessen transparency v. increase it. Some of the previous laws in place around this were created before the more recent technology developments.

Ms. Eakins suggests it will be the responsibility of the requester and to enforce that if anything goes array, no liability for agency. Statutory protections are there, and if the committee is going to make an agreement, there should be language in there surrounding indemnifications and liability. That way there is no gray area of whether the statue or agreement is to uphold in conflicts. **Mr. Fisher** states the information that is being requested is not entirely confidential.

Chair Kron says there are laws that require if you're acquiring data, you must use reasonable measures to protect it. Committee should consider that into the agreement. He wonders about penalties in the agreement. You can choose not to sign the agreement, if you take the short cut, you agree to the purposes of use. **Mr. Hall** says there may be people that interpret the message as, if you don't sign the agreement, you're not going to get the data. Emphasis that signing an agreement would always be optional and is not intended to impede on access to public records. **Mr. Fisher** recommends keeping the recommendation as is, relying on other state/federal statutes for that protection. **Ms. Herkert:** SB 481 (2017) then reads bill and finishes by stating this is an example of law that needs to be updated.

Mr. Hall has concerns of private right of action and does not feel he is ready to make an informed vote today. **Ms. Herkert** agrees with the recommendation but believes there are still some gray areas. **Mr. Smith** agrees with recommendation. **Ms. Eakins** agrees but to add clarifying language. **Mr. Fisher** feels like they are close, incorporate changes, but more time.

Chair Kron shared that Selena, Morgan, Eileen, and Bennett's are members whose terms are up at end of year.

Chair Kron summarizes recommendations made. Mr. Suo's were to add requirement that easy custom export of data should be feature of transparency by design. **Chair Kron** agrees to add this as a separate bullet under section two of this recommendation. In section three, regarding releasing bulk PII, repeat qualifier PII when discussing bulk data.

Mr. Budnick's proposed adding to paragraph regarding bulk data transfer agreements – those terms cannot impede public record access. **Chair Kron** believes that would be easy to add, and important to disclose that existing avenue would not be closed off to access data. This is an alternative. Any penalties can be enforceable against requestor and not public entity.

SEIU suggested four recommendations: failing to review information before it's disclosed puts individuals at risk. Chair Kron believes it could make sense to acknowledge that technological solutions alone are not a good practice, but technology practices could be improved. To the extent, we are talking about public interest served by disclosure, also talk about counter-vailing interest that these exemptions are designed to protect. Misuse of data, be spelled out. Recommend to legislature to identify permissible uses, and any penalties would apply to impermissible uses. Clear and rigid requirements to TSA precheck method. Create a single decision maker to ensure consistently.

Mr. Miles: Deadline for members to request bills for short session to be pre-filed is November 22nd. Doesn't recall final deadline. They are in the middle of compilation and haven't completed 2019 ORS. No drafting of legislative and none will start until about December/January.

Reports from other Subcommittee Chairs

Mr. Fisher's subcommittee has not met.

Chair Kron, Ms. Herkert and Mr. Hall's Subcommittee:

Ms. Herkert: split exemptions three ways. Each of them had about 200 to review. What could be eliminated or combined with something else? She will compile exemptions that she believes we can do away with. Revised lists were going to be sent to Mr. Foltz afterward.

Adjournment

November 25, 2019

**Location: Oregon State Capitol, Hearing Rm 343, 900 Court St. NE, Salem, OR 97301
Sunshine Committee Members**

Michael Kron, Special Counsel, Oregon Department of Justice / Chair
Emily Matasar, Government Accountability Attorney, Governor's Office / Vice Chair
Mary Beth Herkert, Oregon Secretary of State
Bennett Hall, Newspaper Publishers Association
Charlie Fisher, OSPIRG State Director
Karin Johnson, Independence City Recorder (by phone)
Brent Walth, Journalism Professor, University of Oregon (by phone)
Selena Deckelmann, Director of Engineering, Mozilla Firefox (by phone)

Guests

Nick Budnick, SBJ
Cameron Miles, Office of Legislative Counsel
Karin Power, State Representative (by phone)

Agenda

AUDIO STREAM 0:00:00-01:30:00

Welcome and Introductions

Chair Kron opens with sharing about an email from 10:20am regarding feedback from Oregon Newspapers Publication Association (ONPA) and Society of Professional Journalists (SPJ) in which he forwarded to members. A second email came in with additional feedback at 1:26pm and was forwarded to any members missing.

Chair Kron expresses interest in leaving Sunshine Committee.

Agenda Item #1 - Consideration of Revised Proposal

Consideration of Revised Proposal report for Legislature regarding bulk data. **Chair Kron** posted two weeks ago. SPJ was unfavorable and OMPA's letter was brief and unclear of concerns.

Chair Kron opens for discussion among members of proposal and next steps.

Mr. Fisher shares about a discussion in subcommittee – where additional language is added into request to encourage clarity. This would require the requestor to make a contractual agreement that limits use of info, which may lead agency to then be more willing to release information and by adding security there could be recourse for inappropriate action of data. Balancing test could be more on the side of disclosure, because of harm associated with releasing that information would be minimized. He proposes language in Section 3a: in first sentence after “comments”

“Whereby the requestor agrees to use bulk data in a manner consistent with the public interest reason stated in the request”.

Ms. Herkert expresses there is a lot of liability that comes with releasing this type of information and the stronger the agreement is better to prevent any complications down the road.

Chair Kron questions whether **Mr. Fisher's** suggestion make sense or if agreement should specify purposes that are permissible. Should there be an "express lane" option where individual types of requests are grouped and processed in the same manner OR should agreement address collateral downsides of disclosure, that makes public interest easier to assess? **Ms. Herkert** suggests that both models work.

Ms. Matasar explains it may be easier to identify unauthorized uses of bulk data transfers. She questions the purpose of the not fast-tracked option.

Section 3 revised after parenthetical and end with,

"By facilitating easier and more consistent balancing of interest to see what conditional exemption applies"

"Providing a standardized data transfer agreement template, whereby the requestor agrees to use the PII data in a manner consistent with public interest purposes identified either in the request or by the legislature in the agreement template. The template may also specify unauthorized uses of data. Obtained under such commercial solicitation, transfer, or sale of data, and/or harassment. Requestors would also take reasonable steps to prevent authorized use by others. Penalties on public bodies for violations of agreement by requestors nor tasked with enforcement is unobjected too. Any penalties should be imposed on requestors who violate the agreement"

Chair Kron asked for a motion on both amendments and tabs were kept:

Ms. Johnson, Mr. Walth, Ms. Deckelmann, Ms. Herkert, Mr. Fisher, Ms. Matasar, Chair Kron voted for amendments.

Mr. Hall, Nay

Chair Kron to revise proposals and email on memo format to former legislatures on PRS committee and ex-officio members and governor.

Agenda Item #4 – Future Business

Discuss family law exemptions at next meeting. **Chair Kron** was going to check in with other attorneys on this matter. May or may not have further input on exemptions at next meeting.

Legislative session begins in January – work to avoid 13th-15th for subcommittee meeting.

Mr. Fisher believes the bills will be posted on January 17th and his subcommittee will begin reviewing then.

Adjournment

January 29, 2020

**Location: Oregon State Capitol, Hearing Rm 343, 900 Court St. NE, Salem, OR 97301
Sunshine Committee Members**

Michael Kron, Special Counsel, Oregon Department of Justice / Chair
Emily Matasar, Government Accountability Attorney, Governor's Office / Vice Chair (by phone)
Bennett Hall, Newspaper Publishers Association
Charlie Fisher, OSPIRG State Director
Morgan Smith, Polk County Counsel
Brent Walth, Journalism Professor, University of Oregon (by phone)

Guests

Andy Foltz, Public Records Counsel, Department of Justice
Cameron Miles, Office of Legislative Counsel
Leslie _____ (last name and organization?)
Todd Albert (Deputy Public Records Advocate)
Kaylee (spelling?) Klein, Attorney General's Office, Department of Justice

Agenda

AUDIO STREAM 0:00:00-01:19:43

Welcome and Introductions

Agenda Item #1 - Family Law Exemptions

Chair Kron solicited input surrounding this topic from the list of stakeholders that was generated in a previous meeting. However, to date, there's been a lack of stakeholder input. **Chair Kron** reiterates how the Committee was on the verge of a recommendation that would have mirrored some other exemptions, in that, there is not a compelling reason to change law; except it would be more efficient if exemptions were clearer, kept in the Public Records Law, and if redundancies could be eliminated/combined.

Mr. Hall expresses frustration with the way the public records interest test is interpreted by people who are custodians of records. He wonders if they need guidance from AG on how conditional exemptions should be weighed in the request of disclosure. Provides an example of a recent public records request to the medical examiner's office seeking a report from the death of county employee who was killed on the job, decedent has no privacy, and request was denied. Encourages reviewing how the public interest test plays out in the real world.

Chair Kron states that due to a lack of public participation, he has curiosity in refining the mission statement of the Sunshine Committee, questions what could be recommended to the legislature, that will help committee members stay engaged to provide good policy. **Chair Kron** inquired to policy team in AG's office about outreach to Stakeholders and ways to encourage involvement and was unsuccessful in obtaining substantive recommendations.

Chair Kron explains familiarity with complaints surrounding the public interest test: where one side says it's interpreted too narrowly, and the Government side is unclear on how it's supposed to work / doesn't necessarily support the discretion this authorizes.

Mr. Fisher says public interest test should be expanded to include more exemptions but doesn't feel it should be revised for every kind of exemption. **Chair Kron** explains this could increase volume of public comments for AG's office / transactional costs, as the resolver of these issues.

Mr. Fisher encourages some conditional exemptions within the exemptions because some topics are out of his area of expertise. Finds it difficult to make recommendations based on this and without any support from stakeholders.

Chair Kron states that attaching a public interest blanket test, could create difficulty, and he's not sure if he would support that. **Mr. Hall** expresses he would support that because it's hard to predict every scenario.

Mr. Fisher shares personal comments made on: ORS 25.2609(2) – Confidentiality of Records in Child Support Program

1. Doesn't know what goes into exceptions in this area of law.
2. Potentially should be access to redacted bulk child support record. Could be public interest in some circumstances.
3. Are there cities, counties, state agencies, more vulnerable than others?

Chair Kron to contact Child Support Division to discuss what data is available and Federal constraints that come into play, especially for confidentiality requirements.

Mr. Foltz shares he needs to review the statute for exceptions to see if this statute or another statute covers the bulk automated data.

Chair Kron to draft up written recommendations on family law exemptions to vote on at next meeting. Including, adding two specific recommendations: 1) Child Support – disidentified data should be available; 2) DHS Statute should be re-visited

Chair Kron: ORS 418.250 – gives broad authority to collect information and make it completely off-limits. How are they using this authority and what kind of worms would be uncanned if a recommendation is made that legislature re-visit this? What information is DHS collecting under this authority since certain information is confidential.

Including language that exemptions should ensure that identified aggregate data is available. As long as it's not personally identifiable, it should be available. **Chair Kron** likes idea of having more specific recommendations. The committee sees good reason to protect the privacy in children in foster care, and anything that does more than necessary to protect their privacy, should be revisited.

Mr. Fisher to put together a mock public records request.

Ms. Matasar to obtain a DHS Representative to speak to committee about powers.

Bulk data was sort of a “distraction”

Agenda Item #4 – Future Business

Member discussion for next meeting to add another item to May agenda, including one non-exemption review task. Prepping exemption review work with more active topics to keep individuals engaged.

February meeting will be based on the Legislative Subcommittee deciding if there are merits worth discussing. For March, hoping to incorporate public bodies in discussions.

Mr. Hall is looking for health record exemptions surrounding more patient care and outcomes.

Adjournment

February 10, 2020

**Location: 343 of the Oregon State Capitol, Salem
Sunshine Committee Members**

Michael Kron, Special Counsel, Oregon Department of Justice / Chair
Bennett Hall, Newspaper Publishers Association (by phone)
Charlie Fisher, OSPIRG State Director
Morgan Smith, Polk County Counsel
Brent Walth, Journalism Professor, University of Oregon
Mary Beth Herkert, Oregon Secretary of State
Karin Johnson, Independence City Recorder (by phone)

Guests

Andy Foltz, Public Records Counsel, Department of Justice
Rachel Alexander, Society of Professional Journalists

Agenda

AUDIO STREAM 0:00:00-00:25:03

Welcome and Introductions

Ms. Alexander (Guest): Apologizes for tardiness on comments. Membership urges Committee to support SB 1506 to create independence of PR Advocate and promoting transparency. **Chair Kron** states the letter from SBJ will be posted to the website ASAP.

Agenda Item #1 - Legislation Review Committee

Mr. Fisher and Mr. Walth reviewed bills with open government impact statements (15 or so). Provides an example of one government impact statement around trade secrets; since this isn't an area of expertise for members, he recommends not weighing in on topics that they won't have an impact on. With that being said, they decided to only weigh in on a couple of bills.

1505 was reviewed and recommended opposing in its current form, since there are potentially problematic issues around accessed information of settlements made my legislature. This bill didn't make it past deadline.

He feels like 1506 is important and has been discussed before in this body, which is the PRAC bill that would codify the independence of PR Advocate, given the former advocate felt she did not have the independence necessary to do her job. As a body that advocates for PR Laws, **Mr. Fisher** believes it would be important to support this bill. **Chair Kron** already voted as a member of PRAC in favor of. There are 13 voting members on PRAC.

Mr. Fisher believes they can submit testimony today and it would be on record.

Hearing for today and work session scheduled for Wednesday. **Mr. Fisher** believes the committee would just submit testimony for the public hearing. At the very least, it could be put on for the work session and it would be available then.

Mr. Smith agrees with the independence of advocate. They shouldn't have a vote on the board that supervises and selects them. **Ms. Johnson** agrees in that the PR advocate should be of its own office.

Mr. Fisher questions if the Committee agrees with the approach this subcommittee is taking, in terms of deciding what to weigh in on and what to not act on. **Chair Kron** expresses it would be nice to know about the items that concern this group but agrees it can be difficult to make a recommendation on an issue that hasn't been addressed. **Chair Kron** explains the current statute makes the advocate the chair and is not directly hired by the board. If the bill passes, **Ms. Herkert** questions if it can be revised afterward.

Mr. Smith recommended **Mr. Fisher** to be a spokesperson on behalf of the Sunshine Committee to testify in front of the Legislature on the bill.

Mr. Walth stated that Wednesday is the next work session hearing. Public hearing was that morning. Drafting and sending a letter may be the best option at this point. Language established:

“SB 1506 establishes the PR Advocate as an independent office and clarifies the accountability of the advocate to the Oregon Public Records Advisory Council. This measure proposed by the council seeks to strengthen the role of the PR Advocate.

Chair Kron recommended adding, “The Oregon Sunshine Committee at its meeting on February 20, 2020, voted to support this concept as an important improve to the Public Records Law in the State of Oregon.”

Mr. Walth, “if the committee voted to support which would strengthen the role of the pr advocate, committee believes this measure will serve the public interest to find government transparency and improving access to public records”.

Ms. Herkert moved for the letter to be sent that was drafted.

Chair heard move to adjourn.

Adjournment

September 22, 2021
Location: Via WebEx
Sunshine Committee Members

Michael Kron, Special Counsel, Oregon Department of Justice / Chair
Kevin Gleim, Governor's Office (replaced Emily Matasar)
Charlie Fisher, OSPIRG State Director
Morgan Smith, Polk County Counsel
Karin Johnson, Independence City Recorder
Eileen Eakins, Northwest Local Government Legal Advisors LLC
Brent Walth, Journalism Professor, University of Oregon
Selena Deckelmann, Director of Engineering, Mozilla Firefox

Guests

Andy Foltz, Public Records Counsel, Department of Justice
Cameron Miles, Office of Legislative Counsel
Stephanie Clark, State Archivist, previously on PRAC
Phil Donovan, OHSU
Lori Sattenspiel, OR School Board Association
Melissa Leoni, Analyst Legislative Research Policy
Nick Budnick, SPJ

Agenda

AUDIO STREAM 0:00:00-01:05:56

Welcome and Introductions

Chair Kron welcomed committee back and reviewed the action that had taken place thus far: the committee had formed subcommittees, outlined a plan to organize and review exemptions and created some recommendations for governing laws. Group was in the process of making second recommendation to Legislature. It was not put on the agenda for today's meeting to finalize. The recommendation was left in pretty good shape and should be revisited at some point.

Chair Kron forwarded letter from Nick Budnick (SPJ) which recaps work done thus far and recommends ways to move forward. **Mr. Budnick** had mentioned to **Chair Kron** that the focus for the committee may need to be on reorganizing the law to make it accessible to the people.

Mr. Albert (at PRAC) suggested to **Chair Kron** that the committee look at categorial exemptions, and refrain from line items. He also expressed some willingness to researching a model like that and bringing it to Oregon. However, he is busy during this time and might be short-staffed.

Mr. Fisher asked about meeting minutes for entirety of committee and suggested letting individual committee members offer agenda items prior to meetings and/or distribute to appropriate subcommittee (if they will be re-developed). He applauds the committees work to respond to emerging legislation. **Chair Kron** stated he will post minutes. **Mr. Smith** encourages subcommittee involvement because of its success prior to COVID.

Chair Kron shares that he has been extremely busy with his workload this last year defending the Governor's actions. He has not felt he has been able to provide adequate leadership and service to the Sunshine Committee. Prior to this meeting, he surveyed the members of the group about leadership moving forward and heard a consensus that there should be two co-chairs: one from the requestor community and one from the government community.

Mr. Fisher and **Ms. Eakins** did express they had interest in taking over leadership and expressed they would still like to have **Chair Kron** involved, since his position has the most access to stakeholders, in addition his knowledge and experience is extremely beneficial. **Ms. Eakins** and **Mr. Fisher** agreed to co-chair the committee moving forward.

Chair Kron suggested a motion for the next meeting introducing **Ms. Eakins** and **Mr. Fisher** as co-chairs. **Mr. Walth** proposed the motion and **Mr. Smith** seconded. **Chair Kron** and **Mr. Foltz** to collaborate to pass off pertinent information to new co-chairs.

Chair Kron shared how **Ms. Decklemen** inquired from him during the time of the George Floyd protests about police discipline data. He stated that if he wasn't so busy at that time, that would have been great work the committee could have focused on. – police disciplinary exemptions are broader than public employees. The Legislature may have gone in and made some changes around these exemptions. Several head nods follow in agreeance.

The Sunshine Committee is required to review exemptions by statute and make recommendations. **Ms. Eakins** shares how she read **Chair Kron's** report and agreed that new legislation continues to be implemented and does have an impact of the work the committee does. If the committee could get involved earlier in that process, it would be easier to maintain the work. Because it's been hard playing "catch up" each time after legislation gets passed. She asked for page numbers on the report.

Mr. Walth always thought the group listened to proposals and responded quickly. He wants to ensure government agencies are being heard, both government and requesting sides.

Chair Kron mentions an organizational proposal that John Kroger led indirectly a list that was being developed of categories of exemptions. Schedule those out, without a target date to be done by. **Chair Kron** to pass on subcommittee lists as well. **Ms. Eakins** asked about SB 41 (2011) and if it was adopted and was it a proposal.

Mr. Miles shares ex-officio state legislative members: Senator Kozansky, Representative Wallin, Senator Thatcher and Representative Power. That committee was not assigned for the interim so technically no standing subcommittee and unsure what that means for ex-officio members.

Committee approves third Wednesday meetings every other month just like before COVID. DOJ will continue to host meetings and providing minutes. We will just look to co-chairs for agenda. **Chair Kron** to pass on subcommittee lists as well.

Adjournment

January 19, 2022
Location: WebEx
Sunshine Committee Members

Eileen Eakins, Northwest Local Government Legal Advisors LLC / Co-chair
Charlie Fisher, OSPIRG State Director / Co-chair
Morgan Smith, Polk County Counsel
Karin Johnson, Independence City Recorder
Stephanie Clark, State Archivist
Selena Deckelmann, Director of Engineering, Mozilla Firefox

Guests

Andy Foltz, Public Records Counsel, Department of Justice
Cameron Miles, Office of Legislative Counsel
Carmen Graham, Department of Justice
Isabela Romero, Department of Justice
Lydia Loren, Lewis & Clark Law School
Mike Rogoway, The Oregonian
Sofie Parr
Phil Donovan
Bennett Minton
Dan
Garrett Andrews
Les Ruark
Josie Koehne
Daniel Maguire

Agenda

AUDIO STREAM 0:00:00-01:50:22

First Agenda Item –Administrative Business

1. December 2021 Minutes approved as presented.
2. No attendees had a membership vacancy update, so this discussion will be moved for next meeting.
3. Group decided to polish/work to submit previous 2020 Report to Legislature as is.
Chair Fisher moves to approve report and delegated himself to figure out how to make revisions, submit and circulate to appropriate parties.

Second Agenda Item – Subcommittees Update

1. *Legislative Review Committee* – **Chair Fisher on behalf of Mr. Walth:** Mr. Walth will update the group in March about Legislative Subcommittee. Group will meet in early February to review new bills with open government impact statements, that might impact public records exemptions. **Chair Eakins:** Mr. Kron had previously written an email to her containing the new laws that were passed in 2021, that impacted public record exemptions. She forwarded this email to Mr. Walth for subcommittee review.
2. *Special Projects Subcommittee* – Mr. Smith lists members (Morgan, Bennett, Selena, Karin) and shares there are no special projects at this time.

Third Agenda Item – Trade Secret Discussion

Chair Eakins: Each Chair recruited individuals to discuss Trade Secrets and Intellectual Property to Committee, following the group’s decision to discuss these topics in previous

meetings. She introduces **Professor Lydia Loren** from Lewis & Clark Law School, to present – Ms. Loren displays slideshow to discuss with group.

Introduction to trade secrets and its core elements (copyright, patent, trademark, and trade secrets). in the realm of intellectual property. Copyright and Patent Laws (generally discussing “utility patents” new and nonobvious inventions that are disclosed to the public) are exclusively Federal Laws (aka “Broad Preemptive Suite”) which means no room for states to have any copyright/patent protection in these areas. Trademarks and trade secrets have Federalism competent – federal and state law protection.

Why are there trade secret protections?

1. There are certain things that competitors should not do to one another e.g., misappropriation of a trade secret.
2. Top-level protection creates an incentive for individuals and companies to invest in the creation of valuable information/innovations.
3. The protection a patent receives is high-quality. Because the public gets disclosure of information - quid pro quo on disclosure.
4. For trade secrets, we are not disclosing it, so the public isn't getting that knowledge.

Uniform Trade Secrets Act was created in 1985, Oregon adopted this act in 1987. Each time a state adopts this act, they can make changes to wording – Oregon has done that. In both state and federal laws there is a trend line of greater protection over time. Congress adopted Defend Trade Secrets Act, which granted civil action of trade secret law in 2016. Oregon has made it easier to get trade secret protection and perhaps, protecting more information than the Uniform Act might normally protect. The Uniform Act doesn't have the public side to it – this act only applies to competitors. Federal Statue is almost identical to Uniform Act. ORS 646.461: information that has independent economic value from being not generally known from public or competitors. Its value must stem from its secrecy. **Chair Fisher:** asks about holes between state and federal law. **Ms. Loren:** the Defense Grade Secret Act is only 5 years old, so there's not a ton of litigation. This kind of scenario is probably not too likely because Federal Statue is narrow, and Oregon is broader.

Judge will evaluate if there really is a trade secret. The disclosure of the trade secret is given to the Judge, under seal for protection. The person asserting trade secret ownership must fulfill these requirements:

- a. Must identify exactly what information is alleged to be a trade secret
 - b. Prove that it is not “generally known” or “readily ascertainable”
 - c. Identify the commercial value it has by being kept secret from competitors
 - d. Demonstrate measures taken to protect information's secrecy
- 2) Trade secret owner must demonstrate misappropriation (Trade secrets are protected against “misappropriation” e.g., acquired the trade secret through improper means (hacking a computer system) or disclosing or using a trade secret when you have a duty not to disclose or use e.g., an employee with knowledge of employer's trade secret information).

Ms. Deckleman asks about incentivizing an innovation. **Ms. Loren:** trade secrets don't help advance knowledge like patents do because they require disclosure. So, there is an incentive

to have kinds of information you can exploit without disclosing it e.g., the sequence of ingredients, or the temperature at which something is developed.

Chair Fisher: Questions if a state agency disclosing information they had (and deemed to have public interest) prevail over the trade secret? Or if information was deemed not a trade secret, and later through perhaps judicial process, was determined to be a trade secret, would this qualify as misappropriation? **Ms. Loren:** explains she is not an expert in public records law and does not know the answer to the questions. Trade secrets are a protection a state decides to grant, and that state has the authority to decide how the law will be shaped.

Chair Eakins asks if someone were to sue a public entity for misappropriation of trade secret, how are damages determined? **Ms. Loren:** Uniform Act and ORS provides damage remedy for actual harm, so you'd need to prove the actual loss of value, because of the disclosure. Or if a competitor is using the information and they haven't disclosed, but they are gaining profit. Then you'd have a disgorgement of the ill-gained profits. With a public official, we wouldn't be talking about disgorgement but of acts of harm. A monetary award against the state, you'd have to bring up sovereign immunity.

Mr. Smith: If government officials release documents that are perceived as trade secrets, would a ROI that someone argues in trade secret, invalidate trade secret protections since it's publicly known? **Ms. Loren:** once information is "generally known" it no longer qualifies as not being "generally known". It will affect what type of damages you get.

Second guest speaker introduced. **Mr. Mike Rogoway**, Technology Business Reporter with the Oregonian:

The Oregonian started looking at Google's plans to expand its data centers in the Dallas, the company wanted a new package of tax breaks, and a new deal to ensure they had enough water to cool their office. He had a chat with Dave Anderson (Facilities Director of Google) and walked through the report. He forgot to discuss Google's water consumption, so he followed up to Mr. Anderson via email. His email was an exhibit in the lawsuit Google filed against him and the paper, asserting that Google's water consumption was a trade secret and were exempt from disclosure.

The Dallas collected, maintained, and owned the information as the operator of the City's Public Water Utility. The city filed the lawsuit, not Google - companies can contractually oblige their cities to enforce a company's understanding of what constitutes a trade secret. The city has a non-disclosure agreement (NDA) with Google, and it does not mention water use. The Oregonian appealed to the Wasco County DA and the DA ruled that water use did not meet the definition of a trade secret. The Dallas won on appeal and the city filed a response. The Dallas who is being represented by the Reporters Committee for Freedom of the Press, has not responded yet. This litigation began in September and is ongoing.

An argument made by The Dallas is that Google's water use in other centers is public because there's been litigation or public records finds. DA did not rule on this either.

It did not occur to him this could be a trade secret; he mentions he's worked with many other cities who have previously responded to public records requests about this kind of information. Willamette Week published this last year their list of residential customers with largest water use in Portland. Our current process allows companies to intervene and delay disclosure.

Chair Fisher: wonders if there has been conversation about the public interest or if it has solely been litigation on if this is a trade secret. The public balancing test seems easier to conduct rather than examine for a trade secret. Questions if the government folks have had a lot of experience determining something is a trade secret, but there's public interest, so you must disclose it. or is it mostly just competitors trying to get an advantage. **Mr. Rogoway:** The Dallas made the argument that it doesn't constitute a trade secret and that there is public interest. The DA did not rule on whether there is a public interest in disclosure, he said there is no reason to rule on that question, because this is not a trade secret. **Chair Fisher** adds that it would be in the private interest not to have it disclosed. There's no public interest in trade secrets being secret. **Chair Eakins:** expresses disagreement since Ms. Loren explained there may be a public interest in promoting competition and enabling certain companies to keep information private. There could be public interest in the confidentiality side of things.

Mr. Rogoway: files very little public records requests, it's not what he focuses on. **Mr. Foltz:** there are qualified immunity provisions both in PR law and Oregon's UTSA and both have a good faith requirement. It would not be a good faith disclosure under the UTSA, to disclose something that does meet the definition of misappropriation. So how does that work when you have a trade secret public records exemption, that says regardless of if it's a trade secret, it's a public interest and requires disclosure. The PRR's that he sees most often are those that have been appealed involving state agencies.

Mr. Smith: usually this comes up with vendors, and their competitors, making PRR's for what that vendor is currently contracted in. A competitor made a PRR trying to seek information of the pricing of commissary of food in jail. The contract with the vendor, outlined certain portions of the contract are confidential. It would be better to find some way to get the government out from being the middleman in these. The Dallas are like clients he's represented in that they don't have a ton of resources to defend themselves against these big companies, like Google. Question about conditional disclosure if its disclosed, then it's no longer a trade secret. Feels odd organizationally to have a trade secret as a conditional disclosure - the very nature of a trade secret is that it's in the public interest to not be disclosed. He argues it's an incongruity within the law.

Mr. Foltz: states he put together the primer (as a non-committee member he is not acting on behalf of the AG). There was 1 unreported case, trial decision, in Chevron. One of the most recent cases where the AG did not decide on if the information was in fact a trade secret, she stated that regardless of it was a trade secret or not, the public interest required disclosure. The information that the AG ordered the agency to disclose, was obtained under some assurance that confidentiality would be maintained. The Trial Judge overruled the AG on that stating the information did qualify as trade secret because it was obtained with the assurance of confidentiality, therefore citing misappropriation. There is some ambiguity between trade

secrets exemption and Oregon's UTSA. Confirms that public agencies have a tough time and lack expertise needed to evaluate trade secrets.

Mr. Smith contributes the immunity mentioned is all tort-based immunity and his concern is the contractual responsibilities with vendor to not disclose. **Chair Fisher:** if public bodies are entering into a contract that potentially requires them to conflict with another statute, that feels wrong. **Mr. Foltz:** clarifies they didn't contract their way out of information that would otherwise be exempt.

Another caveat to PR law is that there are some agencies that question whether to disclose otherwise exempt information. An agency can contract with a third party agreeing not to exercise its discretion, the law permits that. One of the ways you can reconcile the UTSA with the trade secrets law but there are some holes. **Mr. Smith:** if you did eliminate the ability to have contractual requirements, then an argument could be made that the third-party entity didn't take the appropriate measures to keep your trade secret, secret. So, they could lose their protection regardless.

Chair Fisher asks Mr. Foltz on the cases he handles, what's the general length of time it takes to adjudicate. **Mr. Foltz:** mixed timeline every time. There are the normal response timeframes in statute that the custodian of records must comply with, which is considered the 15-day rule, so the agency should either complete its response or provide a reasonable completion date during that timeframe. After that, there's no statutory statute of limitations on the requestor filing an appeal if they don't like the results. Appeals have been seen two years later. Once an appeal is received, DOJ only has 7 calendar days to respond. There's usually a lot to do in that timeframe and DOJ will usually request an extension, which is usually first step. The agencies are not equipped to make this decision, but PR law leaves them with the burden to do so. He observes the difficulty in understanding what constitutes a public record.

Fourth Agenda Item – Future Business

Chair Eakins: mentions the work of Mr. Foltz in preparing summary of law on trade secrets and public records law. Mr. Kron will discuss case law on this matter next meeting. Applauds discussions had from all sides thus far. Question based off the issues that have been raised, is it an appropriate next step to delegate this issue to the special projects subcommittee to evaluate some potential recommendations for legislature? **Mr. Smith** of the subcommittee confirms they will review and will have an update for next meeting in March.

Mr. Foltz mentions 30 some exemptions the committee already reviewed. However, it was pre-covid, so no action or recommendation was taken.

Next Sunshine Committee meeting date: 3/16/22 at 1:30pm

The special projects subcommittee will meet on 2/16 at 1:30 -3:30pm

Adjournment

Oregon Sunshine Committee

Special Projects Subcommittee

February 16, 2022, 1:30pm – 3:30pm

DRAFT MINUTES

1. Review of pending legislation

The subcommittee conducted a general discussion of SB 1567, HB 4092 and SB 1576. There was noted concern that SB 1576 had language that the DEQ would not disclose confidential or proprietary information, but provide no clear definition of that that would be and no reference to a specific exemption under the public records. In regard to HB 4092, the proposed bill added another exemption to the PRR under ORS 192.355(45), which the subcommittee was not in favor of. The language of SB 1567 largely adopted exemptions for trade secrets existing within the PRR and there was not a large concern over this language.

By consensus, the subcommittee agreed that a statement from the subcommittee would be helpful regarding a strong desire to not add new exemptions to the PRR as proposed by HB 4092, and instead any new legislation that is proposing information be confidential should refer back to existing public records exemptions rather than create newer, more narrow definitions.

2. Discussion of recommendations

The subcommittee discussed a re-cap of the previous Sunshine Committee presentation regarding trade secrets. Members discussed the confusion of two different exemptions being applicable to trade secrets, with one being a conditional exemption and the other being non-conditional. The subcommittee questioned whether a conditional or non-conditional exemption was the better approach to address potential trade secret information requests. Mr. Fisher believed a conditional exemption was the better route, as it allowed the possibility of a public policy argument for the public's interest in the disclosure. Mr. Smith preferred non-conditional exemptions, as it was an easier decision for the local body to make when they have limited information available to them to make public interest decisions.

Overall, the subcommittee expressed a desire to see an improvement to this status quo. Suggestions included requiring individuals or entities submitting what it considered trade secrets to clearly mark the materials as such, and potentially include an attestation from that individual or entity outlining why such materials were considered trade secrets. It was believed that such information provided from the outset would streamline requests for that information, and seemed to be in line with the requirement that holders of a trade secret make reasonable efforts to protect that information and keep it a secret. The subcommittee also wished to harmonize the Uniform Trade Secrets Act with the exemptions within the PRR, allowing one path to clearly determine whether something was a protected trade secret and thus exempt from public disclosure or not.

DRAFT

March 16, 2022
Location: WebEx
Sunshine Committee Members

Eileen Eakins, Northwest Local Government Legal Advisors LLC / Co-chair
Charlie Fisher, OSPIRG State Director / Co-chair
Michael Kron, Department of Justice
Morgan Smith, Polk County Counsel
Karin Johnson, Independence City Recorder
Stephanie Clark, State Archivist
Selena Deckelmann, Director of Engineering, Mozilla Firefox

Guests

Andy Foltz, Public Records Counsel, Department of Justice
Cameron Miles, Office of Legislative Counsel
Michael Ritchey, Assistant Attorney General, Department of Justice
Kate Cooper Richardson, Director of Oregon Child Support Program, Department of Justice
Carmen Brady-Wright, Attorney-In-Charge, Department of Justice
Shannon Dennison, Attorney-In-Charge, Department of Justice
Amity Girt, Civil Attorney
Sofie Parra
Melissa Leoni
Exm

Agenda

AUDIO STREAM 0:00:00-02:50:48

First Agenda Item – Call to Order

1. January minutes approved

Second Agenda Item – Old Business

1. Status of July 2020 draft report to PR Subcommittee: **Chair Fisher** to polish report and finalize on behalf of the legislative review subcommittee through Mr. Miles.
2. Update on membership of Committee: Currently there are 2, maybe 3, positions available on committee. Mr. Kron/AG's office to fill membership seats. Mr. Walth is considering stepping down. Committee will try to contact Bennett using an updated email address to inquire his membership status.
3. Update on membership of subcommittees: A more detailed update to be discussed at next meeting following membership status of current members and after vacancies are filled.

Third Agenda Item – New business

Following the Legislative short session, **Mr. Kron** forwarded Chair Eakins' email regarding legislative subcommittee onto AG's Legislative Leadership Director. Discussion surrounding most efficient process to make recommendations to Legislature. **Mr. Smith** suggests delegating authority to subcommittee to make recommendations directly to Legislature, instead of needing to convene with full committee. **Chair Fisher** wonders if committee can get access to bills once they are filed, for reviewing purposes. **Mr. Miles** states he must review 1600 bills for open government impact statements then forwards to committee as soon as he can, earliest can be done.

Both chairs suggest having a subcommittee of 4 individuals – two government individuals and two journalist individuals. **Ms. Deckelmann** suggests making calendar appts ahead of time, so group does not have to rush to review and meet together.

Fourth Agenda Item – Special Projects Subcommittee Update

Mr. Smith:

1. Trade secret exemptions are complicated, with a lot of conditional and non-conditional exemptions (only applicable if releasing trade secret considered to be appropriation)
 2. Concerns with private entities that submit information to the public, and name it a trade secret, might be overclassifying things as trade secret.
 3. A public entity holding something that's been designated by a third party as a trade secret, can't operate based on that initial assumption and then withhold it. As a public entity, you have to make your own determination whether that is valid or not.
- Recommendations: find a way to change the uniform act on trade secrets, so misappropriation of a trade secret, would not be considered an "other law" that would prevent disclosure. Therefore, there would only be one exemption that would apply for trade secrets, ORS 192.345.
 - Trade secret laws require individuals to request information from public entities that hold trade secrets. Folks wanting a public entity to hold a trade secret, and want it withheld from public, need to provide an attestation on the front end outlining why this is a trade secret. This happens already but on the back end, but up front could limit over classification problem.
 - For an appeal of a denial of records based on a trade secret, make the third party that's claiming a trade secret, be responsible for defending. Since they can appeal to DOJ or DA's office that would remove the public entity as middleman in the difficult position.
 - Also are processes under law for personal information. If there is a request for that, public entity has to notify individual, then wait 7 days before releasing. A similar process could be done for trade secrets. Making the entity claiming the exemption, work to assert that privacy exemption themselves, rather than putting the responsibility on the government, seems to align more with the law itself. Which states that it is the holder of the trade secret that has the obligation to keep information secret.

Mr. Kron moves to adopt subcommittee recommendations. Approved and adopted by group.

Fifth Agenda Item – Family Law Exemptions

The committee has a breakdown of exemptions as they relate to child custody and support. Only one exemption come out of ORS 192 (PR law) the rest are scattered throughout statutes.

Ms. Kate Cooper Richardson, Director of Oregon Child Support Program (administered by the OR DOJ). **Mr. Michael Ritchey**, AAG in this division, will co-present.

Ms. Cooper Richardson: the Oregon Child Support Program is a federal program ("Child IV-D") of Social Security Act (also SNAP, TANIF, Self-sufficiency, Child Welfare).

Division works to establish paternity and child support orders and ensuring compliance of those orders through the administrative and judicial law processes. DOJ has powerful tools to find individuals and find assets. They work with federal tax information and are audited by IRS often. The exemptions the committee are seeing are regarding the codification of federal regulations on the child support program regarding data that is stored, and what they can/cannot do with it. They work with a lot of limitations, including data security , work on double secure platforms. This division has access to an astonishing amount of information, and some can't even be shared with the courts (there is a code language).

The information Division of Child Support receives can only be made available to other state agencies, doing federally mandated work. Rules are required for protection of information leaving and entering DOJ. This division processes a million and a half dollars/day through systems. There are financial regulations as well.

A lot of the exemptions listed are protections that information will not be shared outside of the necessary scope. Any child support information is confidential and can only be shared as necessary for administration of the child support program.

Mr. Ritchey discusses exemptions: information can be shared with elected officials that have some basic overview of the program. As long as it doesn't interfere with the ability to complete child support work, information can be shared with other state agencies that are funded with IV-D work (typically foster care and child welfare). There are systems that are working constantly to maintain security/provide software updates. Federal statute, regulations and federal law make it exempt from disclosure. Federal law also says that states need to adopt laws that make it equally confidential, ORS 25.260. In his belief, the most important exclusion is 192.355(a), federal law that prohibits from disclosure.

Mr. Kron asks, what kinds of information is publicly available? **Ms. Cooper Richardson:** federal reports in federal office of child support (they report quarterly and annually on this), federal performance measures, outstanding collections are published publicly. Two for 1 matching program, there are specific measures in which that money can be spent. The reports about people and their personal information stay within DOJ. **Mr. Ritchey** clarifies reports that are published, are run outside of their main database system, so that you can analyze aggregate data. If DOJ discloses personal information, they have to self-report (within certain time frames) to IRS and OCIC? (*hard to hear*)

Chair Fisher, what kind of information is in a child support record? **Ms. Cooper Richardson:** Federal statutes require that states share with child support agencies the following types of information:

- Vital statistic, state/local tax, real property, occupational and professional licensing holders, public assistance, corrections records, DMV records, SSN's, DOB's, ACH numbers, federal tax refund amounts, the locations of parties, medical conditions and insurance, criminal records, substance abuse, employment history.

Chair Eakins asks if an individual in question can request from DOJ a copy of their own record the agency has collected. **Mr. Ritchey** responds yes. There is a sophisticated process in which that is handled; including all personally identifying information is scrubbed about the other party. Most parties in these cases are self-represented, but some do have attorneys.

Ms. Cooper Richardson describes there are very intricate formulas that go into weighing the financial capabilities of parties. **Chair Fisher:** questions to what extent is this information disclosed? **Ms. Cooper Richardson** explains that aggregate data does not have confidentiality concerns. However, the information may not be retained and/or access may be lost. Exemptions are not the roadblocks in this case.

Mr. Ritchey: clarifies distinction between confidential information retained and aggregate data that can be released. On the face of the statute, there are not exemptions to go into the system and anonymize data and release it. Federal funds need to be used for administration of the program only. **Mr. Kron:** wonders if our statute could be re-written to better incorporate law about anonymized data.

Mr. Smith: ORS 192.355(8) automatically exempts from disclosure items considered confidential by federal law. Questions if there is a duplication of efforts between federal confidentiality laws and statutory protections. **Mr. Ritchey:** explains that the agency is required to protect information under other agency laws. **Ms. Cooper Richardson** does believe the duplication is important because don't want public to think it' omitted.

Ms. Amity Girt, Esq in civil law firm explains how while working with the City Prosecutor's office, and representing a child victim, if there was a PR request for police requests, she could not release that. However, if the victim was an adult, that information could be released. When she gets a new referral and is collecting documents to help investigate a claim, she would file PRR's and get back almost nothing. Since the holder of most docs is DHS, she could primarily only receive a copy of the report from Cares NW (the county's child abuse assessment center). She has learned the only way to support a claim is to file a lawsuit, so you file document request and get a protective order.

Ms. Carmen Brady-Wright, AIC (attorney in charge) in the Child Advocacy Section (ChaS) of DOJ introduces herself. CHaS attorneys represent DHS. States there are manners to obtain records e.g., in the matter of a juvenile dependency case, where a child is represented by an attorney. Perhaps this child has a potential tort claim with a foster care agency, because of something they experienced in foster care. That attorney will seek permission from the juvenile court to share the records with an opposing attorney, to determine is there a claim there, to better understand the case. A lot of what the Child Support AAGs explained regarding applicable laws and exemptions, apply to child welfare as well.

Ms. Shannon Dennison introduces herself as another AIC in ChaS and affirmed Ms. Brady-Wright's example, stating she worked as a defense attorney in juvenile dependency cases. There is an abundance of laws (state/federally) that protect child records. Drug/alcohol treatment records will be analyzed differently than someone's parenting service. DHS receives PRR's nonstop, generally under criminal and domestic relations cases. Encourages folks to take a look at the juvenile court's policy statements contained in 419.090. Juvenile dependency cases discuss child safety and healing families. Reunification is always the goal. **Mr. Kron** questions how we can ensure these programs are working efficiently, given the societal interest in certain types of confidential information. Especially when there are a

population of people, such as the victims Ms. Girt represents, who can't get access to information that pertains directly to them. **Ms. Dennison** explains that she disagrees with this view and that there are avenues victims can obtain access to this information. Perhaps there is a fundamental misunderstanding of manners to access information. **Ms. Girt** responds the documents that are produced following requests, usually are not too substantive to prepare for legal representation. As a civil attorney, she's had cases where she has tried to obtain records and the dependency matter might be closed. 419B.003(5) pertains to reports/records that are compiled when DHS receives a report of abuse. The laws around this have their own exceptions, one of which being, the discretion of disclosure.

Chair Fisher: can a requester ask for aggregate data? **Ms. Dennison:** DHS publishes a data report yearly that contains items like demographic info and foster care, based by county. She shares her screen to demonstrate the reports on child welfare data book. **Mr. Kron:** asks what kinds of metrics are most commonly used to measure the statistics recorded. **Ms. Dennison:** number of children in foster care, number of children placed in relative care v. non-relative foster care, timelines of jurisdiction, timeliness of permanency hearing. Recommends looking at the juvenile court improvement page on OJD's website. You can look at a single county or compare multiple counties information.

Ms. Deckelmann: explains the purpose of the committee is to increase the public's access to information the state holds. Questions the "how" process requirement and wonders how can the committee simplify or improve exemption review? **Mr. Kron:** wonders if he should discuss with Legislative Director about status of legislation in this area. Historically victim requests have come through as public records requests, and perhaps that's not the answer anymore. **Ms. Dennison:** she and Ms. Brady-Wright assist AAGs in processing PRR's. There are many steps before department can produce and a lot of times if all steps aren't handled, they can't produce the records.

Mr. Kron: victim access to records is likely to come in next legislative session. Are child contexts handled differently as opposed to other types? **Ms. Brady-Wright:** it could depend on type of records in question. One of the exemptions does allow the attorney for a child in a juvenile delinquency case to have those records. Another provision is permissive that allows DHS to have the authority to disclose those records, but they'd have to find that disclosure is necessary. Subsection 3 is viewed broadly, and a lot of disclosures are made.

Mr. Smith: encourages greater statutory authority for victim access to records then we wouldn't have to resort to public records law at all. Recommends a separate process to obtain victim access that could be streamlined.

Chair Fisher to what extent can the public assess what is disclosed at the discretion of an agency? From exemption list, mentions ORS 418.642 (confidentially about person who maintains foster homes) and if data was desired about foster care homes surrounding pollution plants, how could that information be obtained? **Ms. Dennison:** foster care home addresses cannot be disclosed for safety reasons. **Ms. Brady-Wright:** perhaps there is a way to disclose the data in a secure way, so not disclosing addresses per say, but disclosing there are x number

of homes in the city of Salem around pollution plants. **Ms. Dennison** wonders if there are different ways that requestors can frame, their requests so data can be provided.

Chair Eakins asks Ms. Girt if this conversation has been helpful to her or if she still believes there are concerns with accessing records in her job. **Ms. Girt:** responds that information can be requested, but substantive responses may always not be provided, and that can be frustrating. Wonders if it's a problem with the exemptions or DHS PRR review side of things. **Chair Eakins** agrees with Mr. Smith's point there could be a different process for victim access to their records. **Ms. Deckelmann** states she would like a deeper discussion on this topic. **Mr. Kron** believes he should touch base with legislative leadership about her understanding on status of legislation on this topic. He sent her an email and will report updates to Mr. Smith for subcommittee meeting.

Chair Fisher: recommends the subcommittee could continue to review this topic. He personally recommends law be enacted regarding aggregate anonymized be available. **Chair Eakins** agrees and adds that it's implied the agency has discretion to decide that.

Mr. Ritchey: 25.260 is based on a federal law (45CFR303.21) this includes a paragraph that the statute does not. He believes it's still binding, but you'd have to look at the federal law in order to understand how to apply to state statute. Perhaps this could be reason to put it into statute. Confidential information is defined as that is either about specific people or could be used to identify specific people. So, once you've aggregated this type of data, those two things are no longer possible, which would make it non-confidential.

Mr. Smith agrees it's worth the subcommittee gathering to discuss if further steps should be taken and will return to full committee with answer.

Chair Fisher: Review list of exemptions from Mr. Kron for next agenda items. Mr. Kron said health and mental health is the next item on the exemption list. Next meeting is June 15th since both chairs will be on vacation for meeting date in May.

Adjournment

June 15, 2022
Location: WebEx
Sunshine Committee Members

Eileen Eakins, Northwest Local Government Legal Advisors LLC / Co-chair
Charlie Fisher, OSPIRG State Director / Co-chair
Morgan Smith, Polk County Counsel (Brief Appearance)
Karin Johnson, Independence City Recorder
Stephanie Clark, State Archivist
Emily Cureton Cook, Editor/Reporter at OPB (Bend) – New member
Bennett Hall, Newspaper Publishers Association

Guests

Andy Foltz, Public Records Counsel, Department of Justice
Cameron Miles, Office of Legislative Counsel
Michael Ritchey, Assistant Attorney General, Department of Justice
Jacob Bell
Rebecca Gladstone
Tim Lewis
Cynthia Domingo-Foraste

Agenda

AUDIO STREAM 0:00-01:14:33

First Agenda Item – Call to Order / Introductions

Enough members for a quorum – Mr. Smith to leave early.

Self-introduction of committee members including new member, Emily Cureton Cook. She will represent broadcast media.

Second Agenda Item - Approve Minutes from March 16 Meeting

Chair Eakins: reminder to approve minutes at each meeting moving forward. Minutes approved for March 16th meeting.

Third Agenda Item – Correspondence to Committee

Chair Eakins states the committee has received a letter from a citizen. Encourages conversation to implement an incoming mail process for the committee, proposes that both chairs process mail and decide what should be forwarded to full committee, or forwarded to outside agencies, if necessary. **Mr. Foltz** shared that DOJ manages a sunshine committee email. He will continue to forward items related to the committee, to co-chairs to process. **Chair Eakins** reminds group all correspondences are public record. **Chair Fisher** specifies there should be a record kept of all incoming mail, that can be made available to members of the committee and the public. Motion for incoming correspondences to be filtered through chairs was approved.

Fourth Agenda Item – Old Business

- 1) Committee Membership: Brent Walth continues to be on the committee on behalf of print journalism. It’s possible he may be replaced, more information to come. Few other member spots to fill as well.

- 2) Legislative Review: Chair Fisher - more exemptions keep getting added to the already long list of exemptions and as the committee has discussed, it's hard to keep up. He's having conversations with elected officials on how bill drafting can be improved. Spoke with Kimberly McCullough, Legislative Director at DOJ, on how committee can have these conversations with various leadership figures in the legislature. One meeting with Staff of the Speaker of the House discussing how the sunshine committee could be a stakeholder in drafted bills regarding public records. By having conversations with members, plans to inform about the committee and its role, then make the ask to the extent possible, consult with the sunshine committee when drafting bills. It will be an ongoing process. Encourages members to contact himself or Chair Eakins if they'd like to participate in these discussions. When some member seats in the sunshine committee are filled again, he hopes to create a legislative subcommittee to take the lead on these conversations. **Chair Eakins** encourages membership in this subcommittee once the chair position has been filled. **Mr. Hall** thanks Chair Fisher for his involvement to advocate a seat at the table for the committee.
- 3) Special Projects Subcommittee Update Mr. Smith (Chair) reports: group met to discuss exemptions regarding family law issues following last full committee meeting (including adoption records, child custody, child support, child welfare, and other misc. exemptions). Child support is largely a creature of federal law – not much flexibility in state law for change. In the last committee meeting, there was some discussion about the difficulty victims can experience to obtain their own records. Mr. Smith met with stakeholders to discuss victim access to records. It was determined that victim access to records is outside the scope of this committee. However, perhaps the committee could encourage legislature to work with stakeholders to enact a process for victim access to records.

Regarding adoption records: group agreed there are probably good policy reasons why records are exempt from disclosure. **Mr. Hall** encourages conditional exemptions so a public benefit could go into it too. Subcommittee supports moving adoption records into conditional exemptions with burden of proof on requester, to demonstrate public interest in disclosure. **Chair Fisher** asks if Mr. Hall has any examples of a situation where the balance would tip towards disclosure. **Mr. Hall** responds with a hypothetical example and believes that it is not possible to foresee all reasons why there might be legit public interest, in making confidential records public. That is why he advocates to have a public interest balancing test applied to every record. **Chair Fisher** states this sounds like a good recommendation. Report of subcommittee approved.

Fifth Agenda Item – New business / Health Information Exemptions:

Chair Eakins introduces health information exemption review. Following the approval of the report from the subcommittee on special projects, DOJ organized a list of these exemptions to review. Expresses there could be some limitations due to federal confidentiality laws, as the committee ran into with review of the family law exemptions. In which case, there won't be much room for improvement unless it's at the state level. Acknowledges list of recommendations, "Index of Public Records Exemptions" all exemptions DOJ could identify as relatable. "PR Summaries for Jan 2020 SC Meeting" 14 statutory exemptions listed

regarding personal health information. Maybe committee breaks this down in categories and review subcategories.

Mr. Hall expresses difficulty determining which exemptions contain federal code and is disappointed by the notion the committee has their hands tied by federal law. **Mr. Foltz** states there is no implication of state law containing a federal requirement in the list he created. It comes down to doing the legislative history review. He and his team do not have the capacity to do this research, as most history dates to the 70's. In the past with child support examples, it was a matter of reaching out to stakeholders to obtain information.

Chair Fisher prompts two questions, 1) thoughts or recommendations on examining these exemptions and 2) Perhaps group reviews one section and collaborates on how to break out exemptions.

Ms. Cureton Cook: There is an expectation that health information should be private but did notice about 5 exemptions from the list that she would be interested in exploring if a public balancing test is needed. Recommends outreach to health reporters who specialize in publishing public health, for the public. Offers to reach out to a health journalist list serve, forwarding the list of exemptions and asking if anyone has reported on areas, and if so, would they be interested in speaking to the committee?

Chair Eakins encourages group to contact her and/or Chair Fisher with exemptions to review. **Mr. Hall** shares his interest in reviewing ongoing investigations used by law enforcement, he will send an email to the chairs. **Ms. Cureton Cook** expresses interest in disciplinary records of law enforcement, only high level of punishment matters gets published. **Chair Eakins** points out Chapter 192 (in PR law) that relates to investigations (law enforcement, OSHA, Workers Compensation) and there is a default that those records are exempt from PR disclosure. At least, until there is a resolution within that agency. If the group begins to examine one agency's investigation method, it might make sense to follow with reviewing other agency's rules as well. **Ms. Clark** would like to help state agencies and government employees understand the changes that are made, and how to apply them.

Group decided to move forward with health care exemption review. At the next meeting, the group will have reviewed the list of exemptions. **Ms. Cureton Cook** will attempt to contact her list serve and get some names of interested folks to the chairs prior to her maternity leave. **Chair Fisher** notices live birth records are public except for those who originally had unknown parentage. **Mr. Hall** acknowledges the disclosure from inmate accounts exemption, gives an example of a prison inmate that makes a claim of inadequate care. What this exemption doesn't account for is bureaucratic timelines and holding periods, what if the inmate died in the interim, who would records be released to? **Chair Eakins** it would make sense to have everything be conditional, but from a PR standpoint, it can be tricky to apply that.

No public comments. The next meeting Wednesday, August 24th at 1:00pm.

Adjournment

August 24, 2022
Location: WebEx
Sunshine Committee Members

Eileen Eakins, Northwest Local Government Legal Advisors LLC / Co-chair
Charlie Fisher, OSPIRG State Director / Co-chair
Morgan Smith, Polk County Counsel
Karin Johnson, Independence City Recorder
Stephanie Clark, State Archivist
Michael Kron, Department of Justice
Bennett Hall, Newspaper Publishers Association

Guests

Cameron Miles, Office of Legislative Counsel
Isabela Romero, Department of Justice
Sofie Parra
Phil Donovan
Michael Ritchey
Les Ruark

Agenda

AUDIO STREAM 0:00:00-01:40:33

First Agenda Item –Administrative Business

1. July 2022 Minutes approved as presented.
 - a. **Mr. Kron** 1st motion to approve.
 - b. **Chair Hall** 2nd motion to approve.
 - c. **All member's** agreed to approve.
2. Membership update:
 - a. **Mr. Kron** confirmed all memberships are currently full. Chair Brent Walth will continue to serve in committee, has informed he is looking to step down from serving. Chair Walth will serve until a replacement is found. Working with SPJ (Society of Professional Journalism) to appoint someone to keep the best interest of the journalist community.
 - b. **Mr. Kron** another update, Ex-officio member Kim Wallen was replaced Karr Wilson. Unclear who the ex-officio legislative members of committee will be. Will depend on elections and committee assignments. More updates to come.
 - c. **Chair Fisher** if anyone is interested in volunteering for chair for Sub Legislative Review Committee, to let him know.

Second Agenda Item – Subcommittees Update

1. *Legislative Review Committee* – **Mr. Kron** stated there were e-mails out for the upcoming session. **Chair Miles** confirmed that was for the 2022 session. **Chair Fisher** would like to have someone chairing this sub-committee by the time the next session comes around and ready to review the upcoming bills. Hoping to have someone replace Chair Walth by the next meeting. **Mr. Smith** proposed to think about the figuring out what is needed for full committee approval of recommendations to come out since timelines are so short and meeting quarterly and not effective to get anything back to legislature. **Mr. Kron** considering possibly chairing this committee. Will be checking with AG but feels he relates more to journalistic side instead of the government side. **Chair Fisher** would be happy to be a member but not interested in chairing this committee.
2. *Special Projects Subcommittee* – Mr. Smith lists members (Morgan, Bennett, Selena, Karin) and shares there are no special projects at this time.

Third Agenda Item – 2022 Report to PR Discussion

Chair Fisher: Report was not done and accidentally neglected submitting the report to the legislature. **Mr. Kron** recalled Chair Fisher would be reviewing the 2020 report and polishing that up for submission as there was not enough work done during COVID. **Mr. Smith** agreed and concurred with Mr. Kron. **Chair Fisher** will be completing the report by the next meeting and recalls doing any updates that seem out of date and to submit without committee approval? **Mr. Kron** pulled previous minutes to see what was previously agreed at the last meeting. **Ms. Romero** found minutes and confirmed what Mr. Kron stated, that Chair Fisher was to polish up and finalize the 2020 Report to PR and submit to Mr. Miles. **Mr. Kron** 1st motion for Chair Fisher to make updates as he deems appropriate to the 2020 Report to be submitted as the 2022 Report. **Mr. Smith** 2nd motion for approval. **All members** agreed.

Fourth Agenda Item – Health Exemptions Review & Journalist Survey

Chair Fisher: The question in hand was to what extent did these overlap with Federal HIPAA protections and other federal privacy protections that would prevent committee from making meaningful recommendations on state level exemptions? **Mr. Smith** Reviewed statutes. Works with HIPAA daily but is not an expert. Attempted to have a colleague who is an expert in HIPAA attend last meeting and this meeting but was not available. Quick overview of how HIPAA works, only applicable to “covered entities” meaning insurance carriers, health database clearinghouses, and medical practitioners. Protects all identifiable information for an individual. Anyone outside of these “covered entities it’s more of a gray area. There is a long list of exemption for times you can share information with people with or without consent. One big exemption is health activities, you can share information to state or local entity who is responsible for gathering health oversight activities, they are allowed to disseminate otherwise protected information to an oversight entity which are the bulk of what the statutes are. What level of the privacy rule is applicable once the information is in the hands of the health oversight entity? It’s a gray area. His understanding is it’s outside of the circle of trust for HIPAA and those protection no longer apply. Other question; Is OHA a covered entity under the protection of HIPAA? OHA is a hybrid entity, meaning parts of them are covered and other parts are not. More of the related protected part of OHA would be through OHP as the covered entity relating to direct patient care, payments etc. **Mr. Kron** added, State Hospital is also a direct provider that is ran through OHA. Agrees with Mr. Smith’s statements in terms of the hybrid status for OHA. There is another exception that allows disclosures that are required by state law. State appellate courts and Supreme Court have resolved by saying if the state law doesn’t have an exemption then the federal law would allow the disclosure. Something to keep in mind as why there will be an overlap. **Mr. Smith,** Unsure how much more he can offer to the conversation. If everyone is operating from a standpoint that everyone agrees that personal health information and individually identifiable health information is something that is protected by federal law and probably shouldn’t be in the public domain, then there isn’t too much to go over, unless it needs to be broken down more. Almost all of the statutes discuss personal identifiable health information that you receive as part of the program is confidential and cannot be release. He saw the same language over and over again in the statutes. Very similar statutory language with HIPAA. Overall, not much is protected by federal law when it comes to information that oversight entities such as OHA, DCBS, or mandatory reporting information is received. Mr. Smith did receive a question on whether disability rights Oregon was a public entity for the purposes of public records law? In the end, the large majority is state gathering statistical information that has people’s names attached that came from a protected source and should it still be protected?

Chair Fisher: Main question would be to determine it was worth or us having an opinion mattered? To determine whether HIPAA is the law and if all these things were covered then what point is there in the committee looking at them because no matter the committee’s opinion, it wouldn’t be overturning HIPAA. Based on what Mr. Smith’s statements, it seems committee does have room to make

recommendations if needed that wouldn't counter federal law. Committee should proceed in making a determination on what would be the right view from the public records perspective. **Mr. Kron** agrees with Chair Fisher. There are some examples from the survey that Emily conducted among her peers. One being a breadth of information that the public health law allows OHA to decide they're not going to share. Would really like to particularly focus where areas public interest have been identified. **Chair Fisher** agrees with Mr. Kron. Going to review the journalist survey. Chair Fisher did invite the journalists who filled out the survey to come talk today. Doesn't appear a journalist is present at this time. Invited public to comment on exemptions prior to reviewing survey. No comments from public. Christian (inaudible last name) commented on survey about an outbreak of an infectious disease (exemption), there are a number of blanket exemptions as in anything related to that program is confidential. Seems overly broad.

Mr. Smith stated a lot of them did allow release of information in aggregate format or otherwise the identified format, which is analogous to federal privacy laws like HIPAA and FERPA. Believes less objection will come if it's not every piece of data you have it's going to be anything have that might relate back to an individual as long as you don't start finding out health or private information tied back to an individual it would be less heartburn about releasing that information.

Mr. Kron the pandemic is an interesting example. There was a lot of public interest in the matter. Would be cautious about pandemic response team occupied addressing public records request rather than addressing the state of emergency. Ultimately how these are handled should not affect the ability of the public health infrastructure to manage the pandemic first. **Mr. Smith** agrees with Mr. Kron. The confidentiality provisions in the communicable disease outbreaks pre-COVID made more sense. With COVID there was more of a push to get a little more information about the individuals that can potentially disclose more information to potentially be targeted. **Mr. Kron** stated that his point was more on the administrative side so the data that is being requested is more manageable while trying to provide the information requested. **Chair Fisher** open for a rule to define the ability of responding to the requests while still trying to manage the state of the emergency. **Chair Hall** in the context of OHA, how many PIO's do they have? If a PIO is tied up tracking up to 7 different requests for journalist and such, is that really hindering OHA ability to handle the pandemic? The journalist survey, one of the respondents Bryce Dohl, he was looking at the Department of Corrections, his concern might had been related to when he was still part of the Eastern Oregonian in Pendleton. He was looking at the response during the pandemic whether adequate care was provided to inmates. Chair Hall is frustrated with DOC practice limiting information about inmates who died of COVID. The practice previously has been announcing the death of an inmate but now with COVID they will not mention the inmates name whom they are reporting. They will report other people's death by name.

Chair Fisher anything further on the journalist survey? Or would like to add before moving onto a mor in depth re exemptions? No comments from committee or public. **Mr. Smith** proposed for the list of exemptions to be sent out to the committee for more time to review over the next week and have a discussion about the highlighted or more concerning exemptions with the Special Project Committee make a recommendation on that. **Chair Fisher** not opposed to doing that or can do it now? **Mr. Kron** agrees with Mr. Smith so he can be more prepared at a later time. **Chair Fisher** has noted some exemptions that are along the same lines about 6 or 7 of them that seem similar and are too broad of an exemption.

Chair Fisher suggested to invite OAH to next meeting or Special Projects Sub-Committee meetings to discuss in more detail. **Mr. Smith** who is chair of the Special Projects Sub-Committee agreed with Chair Fisher to invite OAH and make recommendations at that time for those reviews. **Chair Hall** would like

to also put together a list for the balancing test for the sub-committee. Would like to also pursue discussion on how to come up with a process to simplify the process or exemptions reviews and cut down the time of all the reviews possibly. **Chair Fisher** is in between and is difficult to come up with a broad process or apply balancing tests. **Mr. Smith** requested for committee to send him a list of questions for his sub-committee to review during their meeting time. Everyone agreed they would e-mail him questions.

Chair Fisher briefly went over what questions will be delegated to Special Projects Sub-Committee:

1. Looking at the blankets exemption to see if there is an aggregate data general statement to make.
2. Mr. Hall will be looking at to see if public interest balancing tests can be made.
3. Looking at tort claims related to these cases.

Fifth Agenda Item –Future Business

To possibly look over review law enforcement related exemptions.

Mr. Hall is interested in looking over the ongoing investigation exemption as its broad on what can't be released. **Mr. Kron** added there is more investigatory exemptions that can be reviewed, depending on how broad or narrow the material would review.

Next Sunshine Committee meeting date: October 19, 2022

Mr. Smith will be looking to schedule next sub-committee meeting.

Adjournment

October 19, 2022

Location: WebEx

Sunshine Committee Members

Eileen Eakins, Northwest Local Government Legal Advisors LLC / Co-chair
Charlie Fisher, OSPIRG State Director / Co-chair
Morgan Smith, Polk County Counsel
Karin Johnson, Independence City Recorder
Stephanie Clark, State Archivist
Selena Deckelmann, Director of Engineering, Mozilla Firefox

Guests

Andy Foltz, Public Records Counsel, Department of Justice
Tim Lewis
Phil Donovan
Alec
Michael Kron – Attorney General Representative.
Charlie Fisher OSPIRG??State Director – a Statewide Public Interest Group
Emily Cureton Cook – Reporter with Oregon Public Broadcasting
Stephanie Clark – Oregon State Archivist for the Secretary of State
Kevin Gleim – Governor Brown’s Public Records and Special Projects Attorney
Karin Johnson – City Recorder for the City of Independence, President of the Oregon Association of Municipal Recorders
Elliot Njus – Business Editor at the Oregonian
Bennett Hall – Editor of the Blue Mountain Eagle Newspaper in John Day
Morgan Smith – Polk County Attorney

Agenda

AUDIO STREAM 0:00:00-01:22:06

First Agenda Item –Updates on Membership

1. **Chair Fisher** Eileen Eakins resigned since last meeting.
2. Need to recruit someone to be the co-chair with Charlie Fisher
3. New Member **Elliot Njus** is the Business Editor at the Oregonian Newspaper has been at the paper for over a decade having covered housing and transportation as a reporter and prior covered community news in Washington State.
4. **Michael Kron** is in communication with the Special Districts Association about Eileen Eakin’s position replacement. By statute this seat was one that was to represent the interests of Special Districts an important stakeholder group. Mark Landauer who is the contact at Special Districts is open to suggestions as to who from their organization might be a good replacement, but they are working on finding a replacement. Elliot Njus is taking over for Brent Walth who stepped down.
5. Introduction of current members.
6. **Chair Fisher** Request for nominations from the group for the Co-Chair Position. It is a good process to have a co-chair to gather agenda items and to do outreach and be able to help facilitate meetings. **Morgan Smith** would nominate self but is afraid it would be too much between co-chair and special projects so depending on where the greater need is he is willing to do either. Would have to figure out workload for sub-committees and stuff like that. **Michael Kron** agrees regarding the workload but believes Morgan and Charlie would make a good team. **Chair Fisher** if Morgan steps

up to be the Co-Chair is there anyone who would then takeover the Special Projects Committee. The Special Projects Committee is the Committee we delegate the authority to do more in depth discussion or research on the issues we discuss as a full committee and come back with recommendations. **Morgan Smith** Time commitment depends approximately 10 hours between meetings to take the information gathered and prepare a report for the committee. Bennett Hall, Karin Johnson, Morgan Smith and Selena (absent at this meeting) are the committee members. **Michael Kron** suggested that Selena would be an excellent chair. **Bennett Hall** stated that he would not be able to devote the time needed for that committee. **Karin Johnson** stated with her new role she would also not be able to devote the time needed for that committee. **Michael Kron** suggested that maybe it makes sense to nominate Morgan Smith and install Morgan as the Co-Chair and then try not to assign any work to that sub committee in this meeting pending what the leadership structure will ultimately look like. **Chair Fisher** Provisionally say that Morgan is the Co-Chair to be but given it makes more sense for the sub-committee to do some work in the interim. Let people reflect on whether they might have the bandwidth to take on that responsibility and then Morgan could just be the temporary chair for the next few months. Michael would also make a good sub-committee chair. **Michael Kron** Is willing to offer being on the sub-committee if Morgan wants off. **Morgan Smith** is okay with this suggestion. **Michael Kron** is willing to take-over the sub-committee Chair position.

7. **Chair Fisher** calls for a Motion to appoint Morgan Smith to co-chair full committee and move Michael Kron to replace Morgan as sub-committee chair. Motion carried unanimously. No discussion.

Second Agenda Item – Health Care Exemption Conversation- update from Subcommittee

1. **Chair Fisher** Bennett Smith prepared a memo that the committee will discuss the memo.
2. **Morgan Smith** gave update on the committee work on this memo regarding OHA related exemptions and how much duplication there was of federal laws. A more depth review is needed. Morgan consulted with DOJ attorney Shannon O’Fallon to help the committee understand how exemptions affect what records are retained.
3. **Chair Fisher** The committee needs to send the sub committee the specific exemptions that need more discussion. These exemptions seem to be blanket exemptions without the ability to get aggregated data and a public interest balancing test. Have someone with expertise in this area come in to do a presentation to the board.
4. **Michael Kron** to have a meeting with Morgan and reach out to members of full committee to remind them in writing the things they would like the committee to consider. Schedule a meeting once he has the information.

Third Agenda Item – Review and Discuss Law Enforcement and Civil and Regulatory Investigation Exemptions

1. **Chair Fisher** Need to review comments from OPB. How should these comments be reviewed? How should they solicit comments? Suggested that the committee bring in someone to provide input and insight on their prospective for the next meeting. Asked for suggestions as to how to tackle these items.

2. **Morgan Smith** Internal Investigations are covered by separate exemptions rather than criminal and investigatory exemptions. Those are more covered under personnel discipline exemptions, although some internal investigations are criminal investigations. Does not think that they need to be covered here today. Just stick to criminal and investigatory exemptions to keep conversation streamlined.
3. **Michael Kron** There is a statute that is specifically about law enforcement personnel and disciplinary investigation records in 181A not sure the exact number. Are you Charlie suggesting this would be one of the things discussed today?
4. **Chair Fisher** Had noted this was noted as one thing the committee members has an interest in discussing.
5. **Michael Kron** Could be discussed more broadly in the context of criminal justice system more broadly or in the context of public employee disciplinary records more broadly. The Officer disciplinary record is more protective of officers than the general exemption for public employee discipline.
6. **Emily Cureton Cook** Agrees that investigation and disciplinary discussion should be kept separate to avoid confusion and they are both super important.
7. **Chair Fisher** The law enforcement and investigative information is what we want to focus on? Is there anything missing from there that we want to add? Just looking at the law enforcement ones?
8. **Michael Kron** Civil type investigations, law enforcement and personnel are all big categories. All three should be separated for discussion.
9. **Morgan Smith** Law enforcement Investigative is 192.345(3) and 192.345(40) pertains to body cam footage which has its own separate exemption, these would be the criminal exemptions for discussion.
10. **Michael Kron** the main exemption for investigatory information compiled for criminal law purposes and then law enforcement body cam recordings which is a recent exemption. Have people review the list and flag those exemptions they interested in discussing.
11. Index of Public Records Exemptions Law Enforcement and Investigative Information List shown on the screen discussion as to what people highlighted for discussion. Decision is made to start the investigatory exemption discussion with 192.345 (3)
12. **Bennett Hall** agrees that 192.345(3) could use clarification. There is discussion of pros and cons of releasing information prior to the conclusion of criminal investigation based on prosecution or no prosecution. Concerns over releasing the information too early and concerns that not enough information gets released early enough. Would like to know some examples of requests that were denied. Need to consider public interest balance what can and should be withheld.

Fourth Agenda Item – Plan for Next Meeting

1. **Chair Fisher** Suggestions of who should be invited to our next meeting. **Michael Kron** will try to find some prosecutors to attend. Asked for clarification as to whether this would be for the large committee and not the sub-committee or smaller meeting. **Morgan Smith** suggested Brian Powell from Clackamas County DA's office and was who Eileen had suggested. From the requestor side people from Newspapers such as the Oregonian. **Chair Fisher** if we have prosecutor from the Clackamas County D.A., the Oregonian and OPB that is an even balance. **Michael Kron** Jeb Bladine? who runs the News-Register in McMinnville it might be useful to hear from him. **Jon Bial**

recommended Adam Gibbs at Multnomah County, D.A. and Ellen at reporters committee for Freedom the Press. Also, city of Portland attorneys. Discussion on narrowing down the list a little. How do we want to structure the next meeting? Put a panel together for the next meeting.

2. **Chair Fisher** Opened the floor to the committee for any other areas of conversation.

Michael Kron we have identified three categories, law enforcement, civil enforcement and personnel records. Andy Foltz was asked to start working on the personnel records for a future meeting. Andy asked the committee to prioritize the sections within personnel records to discuss.

3. **Michael Kron** moved for adjournment, seconded, and passed unanimously.

Adjournment

DRAFT

January 18, 2023
Location: WebEx
Sunshine Committee Members

Eileen Eakins, Northwest Local Government Legal Advisors LLC / Co-chair
Charlie Fisher, OSPIRG State Director / Co-chair
Michael Kron, Department of Justice
Morgan Smith, Polk County Counsel
Karin Johnson, Independence City Recorder
Stephanie Clark, State Archivist
Selena Deckelmann, Director of Engineering, Mozilla Firefox
Elliot Njus, Business Editor-The Oregonian
Bennett Hall, Blue Mountain Eagle-Editor

Guests

Andy Foltz, Public Records Counsel, Department of Justice
Rich Austria, DOJ/CJ
Cameron Miles, Office of Legislative Counsel
Anna Lyall, OPB
Sofia McDonald, OPB
Adam Gibs, MCDA
Katia Alcantar, OPB
Les Ruark
Chris Bristol, Daily Courier Newspaper
Jon Bial, OPB
Morgan Smith

Agenda

AUDIO STREAM 0:00:00-02:50:48

First Agenda Item – Call to Order

1. Introduction of current and new members.
2. - Legislative subcommittee discussion - Report back from standing subcommittee on health exemptions - Presentations and discussion on law enforcement investigatory exemption (ORS 192.345(3))

Second Agenda Item – Old Business

1. **Chair Fisher** talks about presentations and discussion on law enforcement investigatory exemption (ORS 192.345(3)).
2. Legislative subcommittee discussion - Report back from standing subcommittee on health exemptions.
3. Discuss the reconstitution of the legislative subcommittee. Mr. Fisher does not feel able to chair this subcommittee. Mr. Kron says they did meet and got some answers but still had some questions. No presentation is ready yet.

Third Agenda Item – New business

Presentations and discussion on law enforcement investigatory exemption (ORS 192.345(3)) by **Mr. Gibbs**. Discussion begins with the prosecutorial views of public record conditionally exempt from disclosure and the importance of keeping investigative information that has been compiled for criminal law purposes confidential prior to trial. Discussion of integrity of on-going information prior to filing of formal documents with the court. Adjudication takes time and has increased from prior years.

Mr. Bennet ask what information the public is entitled to have when an arrest has occurred?

Mr. Gibbs states that there is legal obligation to produce information and then there are areas of the prosecutorial standpoint there are additional complications that prohibit them outside the public records law from releasing factual information that's not in the court record about an active prosecution. The same rules don't apply to the local law enforcement.

Mr. Kron expresses his administrative concerns concerning public record disclosures in large high profile criminal cases.

Discussion of sealed records which are exempt from public records request. Reasons are filing affidavits under seal because the person of interest isn't aware of being investigated or a co-defendant has not been apprehended.

Discussion of custodian of records, who is the custodian and who releases records.

Mr. Gibbs states that the district attorney is the adjudicator and ultimately has the last word in releasing information concerning a prosecution case.

Mr. Bristol discusses challenges and issues concerning records request, primarily police reports. Also the history of probable cause affidavits. And the inability to get police reports prior to the case being adjudicated.

Mr. Gibbs explains probable cause affidavits and its history. Either a prosecutor or a police officer drafts a probable cause affidavit before or after the arrest of a defendant to support the arrest. There is no standardization in the State of Oregon and across counties in Oregon.

Mr. Austria discusses protecting witnesses and the release of premature information that is misleading and incorrect and its impact on prosecution's case.

Mr. Bial who is an OPB reporter, speaks of their frustration in public discloser and the lack of their ability to get general information from prosecution and law enforcement. They feel that ORS 192.345(3) is used as a blanket investigatory exemption to not release information pre-adjudication. They feel it violates statute 192.33(A) and feel that the public body's need to do the redactions and selection so the documents can be released to the media. Those in the media feel that once the case has been fully adjudicated and then documents are available to the media, the story is no longer of interest to the public. **Mr. Bial** wishes for a review of the investigative exemption at all three phases of a case. Once a case is over, there is no difficulty in getting materials, however, while is ongoing, the investigative stage needs changes for letting the media know what is happening.

Mr. Miles discusses bills, it's process as it goes through legislation. The bills that the OSC can discuss. Most members discussed how they don't have time to be a member of a new sub-committee.

A sub-committee created with **Mr. Njus**, **Mr. Fisher**, and **Mr. Morgan** will collectively split up fifty bills and flag the ones that seem to be problematic and in-line with something that has already been recommended.

Mr. Kron moves to create the subcommittee just proposed and be given the powers **Mr. Fisher** proposed.

Mr. Smith seconds **Mr. Kron's** move.

A vote is taken of committee members and the new sub-committee passes.

Fourth Agenda Item – Special Projects Subcommittee Update

Mr. Fisher discusses the points to be discussed that the subcommittee recommends resolving the issues with ORS 192.345(3).

1. What will streamline things, recommendations to the legislature. Ways to look at mechanical processes of the law that will make it easier to increase disclosure.
2. Find ways to make it easier for requestor and public body that hold the documents to process these requests.
3. Having one point of contact for where the request should go, to the prosecution or the police department.

Mr. Kron will send out his notes on this subject to subcommittee members.

Adjournment

DRAFT

March 15, 2023
Location: WebEx
Sunshine Committee Members

Eileen Eakins, Northwest Local Government Legal Advisors LLC / Co-chair
Charlie Fisher, OSPIRG State Director / Co-chair
Michael Kron, Department of Justice
Morgan Smith, Polk County Counsel
Karin Johnson, Independence City Recorder
Stephanie Clark, State Archivist
Selena Deckelmann, Director of Engineering, Mozilla Firefox
Mark Landauer

Guests

Andy Foltz, Public Records Counsel, Department of Justice
Cameron Miles, Office of Legislative Counsel
Elliot Njus
Jon Bial, OPB
Les Ruark
Sofia McDonald, OPB
Anna Lyll, OPB
Emily Cureton Cook

Agenda

AUDIO STREAM 0:00:00-02:50:48

First Agenda Item – Call to Order

1. January minutes approved.

Second Agenda Item – Old Business

1. Report from Subcommittee: **Mr. Kron** says that the sub-committee was able to get together a couple of times and gives report on law enforcement investigatory exemption. They invited members of the press and police officers. The subcommittee also discussed what to do about the fact that investigating agencies and prosecuting agencies may have joint custody of criminal investigatory records. Finally, the subcommittee was asked to identify philosophical differences of opinion that may impede progress toward consensus and has attempted to do so. Consider a statutory template for a record that would meet these requirements. Clarify that, absent clear need to delay disclosure in a particular case, the information specified in paragraphs (a) through (f), plus the explanation just described, must be disclosed if that information (1) exists in the particular case; (2) is known to the police agency; and if (3) the agency is the sole or the lead agency handling the matter. Also require police agencies to provide (unless there is a clear need to delay disclosure during a specific investigation) a general explanation of what led to the agency's involvement.
2. Exemptions for health information: Several health-related exemptions from disclosure are written broadly in a way that suggests they either (a) wholly prohibit disclosure of information (regardless of whether it is individually identifiable), or (b) leave disclosures of aggregated, disidentified information entirely to the discretion of the public body. The legislature should specifically allow disclosure of aggregate and

disidentified health information when disclosure is in the public interest. Agencies should retain some discretion to decide what data they will produce, particularly while time-sensitive investigations are ongoing. But that discretion should be guided and constrained by the legislature.

3. Update on membership of subcommittees: A more detailed update to be discussed at next meeting following membership status of current members and after vacancies are filled.
4. **Ms. Cook** asks the chair if she can make a motion, **Chair Fisher** says sure. **Ms. Cook** makes a motion that the committee make a vote approving the first three recommendations for law enforcement investigatory exemptions, ending with the template bullet point.
5. **Chair Fisher**: I would second that motion.
6. All in favor say "I".
7. Six "I" and none opposed.

Third Agenda Item – New business

Mr. Kron discusses the sub-committee's recommendations on exemptions for health information. Agencies should retain some discretion to decide what data they will produce but that discretion should be guided and constrained.

One way to accomplish this would be through an oversight body consisting of community stakeholders, responsible for establishing the types of health data that health agencies are required to make publicly available.

Mr. Kron talks about changing social norms from decades past. He gives an example of when OHA exercised its discretion to withhold data showing a disparate impact of COVID 19 on Oregonians of color. The subcommittee does not believe agency discretion should extend so far.

A suggestion to create a data oversight body, that exist to decide what aggregated data our state agencies will make available when it comes to the data/health systems they are overseeing.

The goal of this is to create guidelines on how agencies exercise discretion to disclose disidentified and aggregate data. And we discussed the possibility that if you wanted a dataset that is not currently available under the guidelines, you could be empowered to make that request to the oversight body which would then make the decision if the request made sense.

Committee members discuss their opinions on the subcommittee's recommendations for changes to exemptions for health information.

Chair Fisher moves to make a motion to accept the recommendations; first bullet point on the subcommittee's narrative which is:

Prohibiting the disclosure of aggregated or disidentified health information is unnecessary to the extent that the information cannot be linked to an individual. The legislature should eliminate unnecessary prohibitions against disclosure, and should specifically allow disclosure of aggregate and actually disidentified health information when disclosure is in the public interest.

Mr. Kron seconds the motion.

All in favor say “I”
Mr. Landauer abstained.
Approved and adopted by group.

Fourth Agenda Item –Government Impact Bills

Chair Fisher reviews the open government impact statements by the legislative subcommittee. Discusses that there are not a lot of impact bills left to be reviewed and are in their purview.

Fifth Agenda Item – List of regulated professions not related to health care.

Chair Fisher states there are about 25 exemptions. Should they go through them now or send to a subcommittee that can make suggestions. Mr. Kron says they should go through one or two.

No one had initial thoughts about these exemptions. Chair Fisher discusses if a teacher has a sexual offense but is not disclosed. Chair Fisher recommends removing the first exemption related to OHSU records regarding candidates for the position of president which is non-disclosure.

Mr. Landauer feels that some protection to candidates needs to be in place due to if one candidate is interviewing for multiple jobs.

Discussion continues concerning OHSU exemption.

Mr. Smith ask about meeting in person and when that may occur. Mr. Kron concurs with Mr. Smith on meeting in person. A July meeting is discussed due to availability of other members of the committee.

Adjournment

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 it 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 the 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 substantiates 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

September 13, 2023
Location: DOJ Portland Office and WebEx
Sunshine Committee Members

Michael Kron, Department of Justice
Morgan Smith, Polk County Counsel
Karin Johnson, Independence City Recorder
Selena Deckelmann, Director of Engineering, Mozilla Firefox
Mark Landauer, Special Districts Associations of Oregon
P.K. Runkles-Pearson, Chief Legal Counsel, Secretary of State
Emily Cureton Cook, OPB
Elliot Njus, Oregonian

Guests

Cameron Miles, Office of Legislative Counsel, Governor's Office

Agenda

AUDIO STREAM 0:00:00-1:21:09

First Agenda Item – Public Comment

1. No public comments.

Second Agenda Item – Subcommittee recommendations on regulated professions

Chair Smith – Largely supportive of the recommendations from the bar hadn't been included in the board packet. **Mr. Miles** expressed concern as there aren't many protections and victims may be afraid to file complaints that may be legitimate.

Discussion paused for a moment to introduce new committee member P.K. Runkles-Pearson, Chief Counsel with Oregon Secretary of State who is replacing Stephanie Clark, State Archivist.

Discussion resumed. **Mr. Miles** believes there cannot be a blanket recommendation on this and needs to be reviewed case by case basis. Group discussed the exemption that is needing a recommendation is on educators that was left from the group list of four: Law Enforcement, Educators, Miscellaneous and Miscategorized Exemptions.

Mr. Kron moved to accept the recommendations on the Law Enforcement and Miscellaneous exemptions. **Mr. Miles** objects with moving forward with the recommendation on the Law Enforcement category and agrees with the Miscellaneous exemptions. **Mr. Kron** agrees that he can work on re-finishing the Law Enforcement exemption with the sub-committee.

Mr. Landauer asked for clarification on why do we want to apply the Oregon State Bars standards to these professions? **Mr. Smith** explained is to increase transparency in the number of exemptions available to the public. **Mr. Kron** added the transparency is a helpful reassurance to the public that they're taking urban complaints about people in these professions seriously and get fairly heard.

Mr. Kron moved to recommend that the complaint and disciplinary process for Nursery Stock Growers and Dealers, Landscape Architects, Landscape Contractors Board and Board of Accountancy Information; should be transparent in the way that aligns with the practices of the

Oregon State Bar applies to its licensing investigations (ORS 670.317) and that the exemptions for these entities should be combined and made consistent in the ORS. **2nd motion made by Mr. Miles.**

All in favor. Motion passed unanimously.

Mr. Kron made a 2nd motion, same as above to apply to the exemptions relating to Law Enforcement misconduct complaints and investigations. **Mr. Landauer** expressed his concern aligning with Mr. Miles objection for this exemption. Mr. Landauer would like to understand better the consequences of applying the Oregon State Bar standards through a law enforcement context. Unable to support the motion at this time. **Ms. Runkles-Pearson**, supported in terms of wanting to know more and supporting the committee's recommendation for greater transparency in law enforcement exemptions but not supportive at this time of applying the Oregon State Bar's process as a whole until it's further looked into. **Chair Smith**, clarified that this only affects as part of a disciplinary process. Are there other exemptions that preclude the release of undercover police officers? **Mr. Miles** commented that the exemption needs to be narrowly tailored to that profession and have more stakeholders that this committee has such as police officers, police unions, victims, other people involved before the committee can make any kind of recommendations on this.

Motion did not pass.

Discussion on not addressing a lot of transparency from DPSST in recent legislation. **Ms. Runkles-Pearson** would like the committee to weigh in on and make a recommendation as it is an issue for a lot of people. **Mr. Kron** moved that the Committee adopt the following recommendation: "The Sunshine Committee would like to see greater transparency in the professional oversight of law enforcement officers starting at the agency level in order to increase public confidence in the regulation of law enforcement."

Mr. Smith 2nd motion to this recommendation.

All in favor. Motion passed unanimously.

Third Agenda Item – Regulated healthcare exemptions

Discussion about there is a lot of exemption rules for regulated healthcare. **Mr. Kron** pointed out that this may be something to go more in depth in the sub-committee meeting where details can be picked or possibly sort out a resolution in the investigatory process for a recommendation. **Mr. Smith** added that reports are redacted to keep confidentiality intact when complaints are released to the public. He provided some examples of the investigatory process.

Mr. Landauer commented for the sub-committee to potential discuss the consolidation and standardization with the intent to promote transparency would be for sub-committee to dive into.

All voted and agreed to have the sub-committee discuss and research before making a recommendation.

Fourth Agenda Item –Recommendations on next topic(s) to address

1. Regulated medical exemptions (sub-committee)

No other recommendations on topics. If anyone has recommendations, please send to Chair Smith.

Adjournment

November 8, 2023
Location: WebEx
Sunshine Committee Members

Charlie Fisher, OSPIRG State Director / Co-chair
Morgan Smith, Polk County Counsel / Co-chair
Michael Kron, Department of Justice
Cameron Miles, Governor's Office
Karin Johnson, Independence City Recorder
Bennett Hall, Blue Mountain Eagle-Editor
Eliot Njus, The Oregonian

Guests

Andy Foltz, Public Records Counsel, Department of Justice

Agenda

AUDIO STREAM 0:00:00-0:50:59

First Agenda Item – Call to Order

1. No public comments.

Second Agenda Item – Special Subcommittee Update

Mr. Kron, started with subcommittee updates. Subcommittee met on Friday 11/3/2023, and had Ashley Korslein, who is a reporter at KGW, put out a long form documentary piece to get information from medical professional who have been disciplined in Oregon and have gone to other states and continued their practice. Assistant Attorney General Kate Desal and John Tierney from KGW also was at the meeting. It was more of an information meeting as the subcommittee is not coming back with a recommendation at this time. Mr. Kron will be doing some comparisons with some of the material that Ahsley sent to him. The big takeaway from the meeting was that is it more difficult to get information because the process is harder to navigate and more expensive and because the available information is not the same. If anyone is interested in viewing the documentary, it can be found on the KGW website and is called "Sick Medicine" and is about 30 mins long. **Mr. Smith**, added something that he hadn't considered before is complaints about medical professional from other medical employees, such nurses. As potential healthcare consumers, we would want that information.

Mr. Kron, should be able to have a recommendation to the group by the next meeting in January.

Chair Fisher, asked what extent not getting information is a result of bad exemptions or misapplication of the law? Should they have gotten the information but the entity that was supposed to give it out didn't follow what they were supposed to do? **Mr. Kron**, one of the doctors tried to get the information, they submitted the request to the medical board, and it was denied. The denial was appealed to the Attorney General's office, we issued a decision saying the information we thought should be made available to them, ordering the medical board to disclose some information, just not the bulk of the investigatory stuff. The medical board has taken KGW to court to get an order that they're not required to disclose any of the information, that is currently pending in litigation. The standards are not all uniform but there seems to be a fair amount of these boards that their laws funnel into this one sort of overarching law is what Kate had explained to Mr. Kron.

Mr. Kron, added that he is aware they still need a recommendation on the education stuff. **Mr. Foltz**, indicated he has done some basic research will have something written up for January's meeting. Research has been done on various states, if there are additional states needing to be surveyed, to let him know. Based on his initial review, one of the issues that was being discussed is what if any information about non-substantiated complaints against teachers is available in other states? General this information is not available in Oregon. There is one other state that he has found so far and, in most states, unsubstantiated allegations are not reportable. States being surveyed are: California, Washington, Texas, Florida, Arizona, Pennsylvania and Colorado. Mr. Foltz selected these states because they are neighboring states that in some cases Oregon has modeled its own exemption statutes on.

Third Agenda Item – Legislative Subcommittee Structure

Chair Fisher, last year, there was a deputized subcommittee that was able to make recommendations without getting the input or approval from the full committee to make recommendations based on the exemptions that are proposed to be created in new legislation and then with that subset make recommendation that are informed by any current or previous recommendations from the full committee and give those to legislature without having to convene the committee. Chair Fisher is proposing to continue with that process. Bills will be available approximately mid-January. Subcommittee should meet at the end of January before session starts, to look and make recommendations and give those to relevant committee before they meet so they have opportunity to have input.

Mr. Kron, asked Mr. Miles if he knows who has taken over his role at legislative counsel, but Mr. Miles is not quite sure. Mr. Kron will be reaching out to find out to make that connection.

Fourth Agenda Item – Next Set of Exemptions to Consider

Chair Fisher, thinking about the March meeting, as the committee has a few things coming up for the January meeting. Mr. Foltz, has sent out a spreadsheet with the exemptions listed. Is there a particular order that the committee wants to review them in? **Mr. Smith**, thinks it's a bit premature to figure out what they want to talk about once they discuss what they are working. Mr. Smith, proposed that over the next months to go over that spreadsheet and if there is any specific subsections or topical area of exemptions that they would like to look at. **Mr. Foltz**, explained the spreadsheet to the committee. Exemptions are grouped by tabs and subcategories within the sheet.

Chair Fisher, would like to see a compilation of all the committee's recommendations in one place. Mr. Foltz, is assigned for that task. **Mr. Kron**, reminded the committee that since next year is an even number year, a report is due either in June or July. **Mr. Smith**, volunteered to write the report this year. **Chair Fisher**, added the report seems like a good place for all the historic committee recommendations to go on. He asked Mr. Smith to work with Mr. Foltz on that. Requested a draft of this by May for the committee to review. **Mr. Miles**, confirmed that the report is due on July 1st.

Committee discussed what next exemption they should review next from the spreadsheet. **Mr. Kron and Mr. Smith** will be going through the spreadsheet to see what should be next unless

any members of the committee have anything in particular. He doesn't want to take meeting time for this.

Chair Fisher, went over the upcoming items. January, review the healthcare exemptions and education report from Mr. Foltz. March, revisit law enforcement exemptions. May, will discuss the report.

Fourth Agenda Item – Location for Future Meeting

Next meeting will be held, in Portland on January 17, 2024 at 1:30pm and via Webex.

Legislative subcommittee will meet on January 24, 2024 at 1:30pm via Webex.

Adjournment

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 again 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

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

May 22, 2024
Location: WebEx
Sunshine Committee Members

Charlie Fisher, OSPIRG State Director / Co-chair
Morgan Smith, Polk County Counsel / Co-chair
Cameron Miles, Government Accountability Attorney, Governor’s Office
Elliot Njus, Editor, The Oregonian
Selena Deckelmann, Chief Product and Technology Officer, Wikimedia Foundation
P.K. Runkles-Pearson, Chief Legal and Risk Counsel, Office of Secretary of State LaVonne Griffin-Valade
Michael Kron, Special Counsel, Office of Attorney General Ellen Rosenblum
Mark Landauer, Lobbyist, Special Districts Association of Oregon

Guests

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

Agenda

AUDIO STREAM 0:00:00-0.5

First Agenda Item – Minutes for March 20, 2024 meeting

Committee went over last meeting minutes. **Mr. Landauer** moved to approve minutes, **Chair Fisher** 2nd that motion to approve minutes. Committee approved March 20, 2024, meeting minutes.

Second Agenda Item –Review and Discuss Law Enforcement Misconduct Transparency Legislation

Mr. Foltz presented a summary of legislation that was passed during the 2020-2021 time frame, for which he had also prepared as a written summary for the meeting materials, relating to transparency around law enforcement misconduct in response to the Black Lives Matter movement. He indicated that the legislation that he reviewed does not address scenarios where allegations of law enforcement misconduct are either never investigated or are not substantiated. First, he discussed ORS 181A.681, which applies to law enforcement agencies, and defines terms such as law enforcement officials and misconduct. The term “misconduct” is defined broadly, as unjustified or excessive use of force, unlawful discrimination based on race or protected class, sexual harassment or sexual misconduct or the commission of any kind of crime. **Mr. Foltz** said he could come up with examples of questionable behavior that would not qualify as misconduct for the purposes of investigation reporting.

The statute requires local and state law enforcement agencies to investigate and report to DPSST certain types of misconduct by law enforcement officers and violations of minimum standards for physical, emotional and moral fitness. It makes law enforcement officials mandatory reporters of misconduct, and it mandates that the employer investigate the allegations and report to DPSST the results of certain investigations. It only requires them to report substantiated investigations of misconduct, and they are not required to report unsubstantiated allegations.

Second, ORS 181A.684 directs DPSST to maintain an online database of suspensions and revocations of DPSST certifications, as well as discipline against law enforcement officers that

involve economic sanctions. There are about 1,000 entries in the current online database. DPSST is not required to post misconduct that does not result in economic sanctions. Third, ORS 181A.689 requires law enforcement agencies to adopt policies that set standards for speech and expression by officers in and outside the course and scope of their employment. **Mr. Foltz** highlighted those three major statutes but there were others outlined in his written summary.

Chair Fisher asked whether the committee was of the mind to make recommendations around the reporting of unsubstantiated investigations.

Mr. Foltz repeated the previous recommendation on the record, “The Sunshine Committee would like to see greater transparency in the professional oversight of law enforcement officers starting at the agency level in order to increase public confidence in the regulation of law enforcement.”

Mr. Njus questioned what exemptions were in place regarding investigatory materials.

Mr. Kron brought up a concern about investigations getting buried in the process if they got resolved before getting to DPSST.

Mr. Foltz indicated that new legislation that required law enforcement officers to be mandatory reporters provided one way of addressing that issue. He also said in response to Mr. Njus’s question, that the applicable exemptions would be the general exemption for disciplinary actions of state workers, which has its own public interest balancing test, and law enforcement has an additional exemption for any personal investigative information that does not result in discipline. The broad employee exemption is ORS 192.345(11) and the specific law enforcement exemption is ORS 181A.830.

Mr. Kron said that he would like to know if a law enforcement officer has been the subject of a pattern of similar complaints over time, as what happens with other professionals like in the medical field.

Co-Chair Smith said he was comfortable with the level of transparency provided by DPSST and didn’t see a big return on investment for the committee to look at the issue.

Ms. Runkles-Pearson shared Mr. Kron’s concerns regarding transparency of patterns of complaints.

Chair Fisher said there could be a limited investigation into the issue of to what extent the public can review current law to find out if there are officers that have been subject to multiple investigations for whatever reasons. But since subcommittee members couldn’t come to a consensus for majority support for a recommendation, he wanted to know if it was worth it for the committee to dig into that topic.

Mr. Landauer suggested adding a statement to the recommendation, expressing the concern that a pattern of complaints that do not meet the misconduct definition ought to be addressed by the appropriate groups.

After some limited discussion regarding how various professions handled unsubstantiated complaints, **Chair Fisher** asked if there could be information reported about how various agencies responded to requests for unsubstantiated investigations in the past.

Mr. Njus said that reporting by Oregonian reporter Maxine Bernstein has provided at least two cases that were investigated and didn’t result in substantiation. He said they were good examples of how the public interest test plays out and would send links to the group.

Ms. Runkles-Pearson said that on the TSPC side of things, there is a general concern among the community of elementary educators that there might be “bad apples” that cannot be easily identified who have continually skipped scrutiny.

Mr. Kron said that there is a similar concern with several professions, people we entrust with power and who are doing public service among our communities. He wondered if the chairs of the committee could write a letter to the sheriff's association or the association of chiefs of police, to get an answer from the official side.

Mr. Landauer said that the public records legislative subcommittee could make this request of LPRO.

Mr. Foltz said that in theory district attorneys are sending their public records orders to DOJ, but that DOJ has not really receive any orders relating to requests for records about law enforcement misconduct. He said they could focus on district attorneys that have a higher volume of cases, such as Multnomah County.

Chair Fisher said that it sounded like a problem across several agencies and not just law enforcement, and maybe the committee could make their recommendation more general.

Mr. Kron said it's more of a problem in specific areas like law enforcement and TSPC and it's just in those few areas where there's also an exemption where it could be a potential problem.

Chair Fisher suggested leaving it as is and moving on, or adding a statement that the committee sees it as a potential problem.

Mr. Kron suggested that the chairs work on the verbiage for that sentence and bring it back to the committee for a vote. Committee members agreed.

Third Agenda Item – Discuss Special Projects Subcommittee Recommendations

Mr. Kron said the special projects committee met and heard from stakeholders on the question of teacher exemptions and the discussion unfolded in a way that surprised him, in terms of the agreement between the teacher and reporter communities on this issue. They heard from reporter Rachel Alexander, who is active in SPJ and an education reporter, and Louis De Sitter, who was speaking on behalf of the Oregon Education Association. They both had a lot more agreement over the dangers of too much transparency in this area not just for teacher reputation but also for school communities and privacy issues for teachers than Mr. Kron expected. Mr. Kron is also a parent and some of their concerns resonated with him. In light of the information from stakeholders, the subcommittee looked further at its previous recommendation. The subcommittee didn't change it much from the original recommendation drafted by Bennett Hall, who is no longer with the subcommittee and committee. Mr. Hall had suggested the Colorado model, which basically requires disclosure of information in unsubstantiated cases if the public interest requires disclosure.

There was also some support for something similar to what the subcommittee recommended in the context of physicians, where the information would be available statistically but not in regard to specific patients, so that you had X doctor had X number of complaints over a specific time period.

After hearing from the stakeholders, the committee felt there should be a third option, to require a more heightened standard for the public interest test. The group felt that might be overly complicated for its purview but more in keeping with the wishes of the teacher and reporter communities as expressed in their testimony.

Mr. Kron said the heightened public interest test would be something like the clear and convincing evidence standard.

Ms. Runkles-Pearson said she worried that the heightened public interest test would be difficult for people to apply in specific instances, though it sounded like a laudable goal.

Mr. Njus agreed with Ms. Runkles-Pearson and said that adding a heightened analysis for a public interest test is just going to lead to less transparency because it will lead to paralysis by analysis. He supported shifting the burden of proving the public interest to the requestor.

Mr. Miles supported the idea of a heightened standard but thought that this could be added on as a sentence after the original recommendation.

Chair Fisher suggested that a pro-transparency direction that still takes into account the privacy interests of teachers would be using the clear and convincing evidence standard with the burden put on the requestor to demonstrate that fact.

Mr. Miles urged caution in redacting information when it came to children, since children could be more easily identified in certain circumstances.

Ms. Runkles-Pearson supported the idea of shifting the burden to the requestor.

Mr. Kron offered an amendment to the motion to add the burden-shifting piece to the recommendation explicitly.

Mr. Njus seconded the motion.

Chair Fisher asked about whether the committee wanted to include the recommendation that aggregated information should be available. He offered an amendment to the motion on the table in which the burden is on the requestor to demonstrate that it is in the public interest for that information to be disclosed, with the addition that the committee thinks that aggregate information should be available.

Mr. Njus seconded the motion.

Mr. Kron clarified that the recommendation on the table is recommendation two with the addition of only the sentence about burden-shifting to the requestor. He said the aggregate information part of the recommendation needs further work.

Chair Fisher reiterated that the recommendation on the table is recommendation number two, with the addition that the burden is on the requestor to demonstrate that the investigation requires disclosure.

Mr. Kron seconded the motion.

The committee unanimously approved the motion.

They next discussed revising the sentence regarding aggregate information.

Ms. Deckelmann said the subcommittee was concerned about the oversight of the conduct of the agencies, and not whether unfounded complaints were disclosed immediately.

Chair Fisher suggested verbiage that the committee wants the aggregate information to be readily available to the public on a regular basis and easily accessible, and if the agency doesn't do that then the legislature should require that.

Mr. Kron suggested framing it as a recommendation to the legislature to make sure aggregate information is freely and readily available.

Ms. Deckelmann made the motion to add the sentence suggested by **Mr. Kron** as a second amendment to the recommendation.

Mr. Njus seconded.

The committee unanimously passed the amendment.

Fourth Agenda Item – Review and discuss biannual report to the legislature

Co-Chair Smith said the report was available in the meeting materials and asked whether it needed to be submitted by this fiscal year.

Mr. Kron proposed that the report ought to be directed to a more substantive committee given all the committee's work on it.

Mr. Miles suggested including a statement requesting that it be directed to the rules committee during a regular legislative session day.

Mr. Kron motioned that one of the committee's two co-chairs add a short paragraph respectfully requesting that the committee's recommendation go to the rules committee in connection with a regular legislative session.

Mr. Landauer seconded the motion.

The committee unanimously voted in favor of the motion.

Chair Fisher added that committee members can provide non-substantive changes that will be accepted at the discretion of the co-chairs.

Mr. Kron made the motion to amend the motion to indicate that.

Mr. Njus seconded the amendment.

The committee voted unanimously in favor of the amendment.

Fifth Agenda Item – Unfinished business and/or future agenda items

Mr. Foltz said that the next exemption in their list that could be readily summarized by the next meeting was regarding background check information.

Mr. Kron asked whether there was some procedure they could implement to expedite the process of reviewing exemptions.

Mr. Kron said that he will have an announcement at the next meeting regarding the new member who will replace Bennett Hall, who is no longer on the committee.

No other issues were raised prior to adjournment.

Adjournment

July 17, 2024
Location: DOJ Portland Office and WebEx
Sunshine Committee Members

Charlie Fisher, OSPIRG State Director / Co-chair
Morgan Smith, Polk County Counsel / Co-chair
Cameron Miles, Government Accountability Attorney, Governor’s Office
Elliot Njus, Editor, The Oregonian
Michael Kron, Special Counsel, Office of Attorney General Ellen Rosenblum
Mark Landauer, Lobbyist, Special Districts Association of Oregon
Cherrill Crosby, Executive Editor, Statesman Journal and Register Guard
Emily Cureton Cook, OPB Bend Bureau Chief

Guests

Andy Foltz, Public Records Counsel, Department of Justice

Agenda

AUDIO STREAM 0:00:00-0.5

Preliminary Matter – Introduction of New Member

Mr. Kron introduced the newest member of the committee, Cherrill Crosby, who replaces Bennett Hall, who stepped down after many years of service. Crosby is the executive editor of the Statesman Journal, and also oversees the Register-Guard. She has been a journalist for many decades and as a reporter and editor has frequently worked with public records requests. She has also covered changes to public records laws and serves on the Oregon Newspaper Publishers Association Board. Committee members introduced themselves.

First Agenda Item - Minutes for May 22, 2024 meeting

Committee went over last meeting minutes. **Mr. Landauer** moved to approve minutes, **Mr. Smith** 2nd that motion to approve minutes. Committee approved May 22, 2024, meeting minutes.

Second Agenda Item –Discuss Exemptions Relating to Background Check Information

Chair Fisher said that eight exemptions relating to background checks were distributed previously to members of the committee and opened the floor for discussion. **Mr. Kron** posed a question of whether the levels of requirements for confidentiality have a basis in federal law as a component for or requirement of accessing federal criminal offender databases.
Co-Chair Smith thought that was correct and said there is a convoluted scheme of privacy laws concerning criminal databases such as CJIS. He said as he has access to that information, and he is happy to look into that and provide a report at the committee’s next meeting.
Mr. Kron wanted to know whether CJIS requires some degree of confidentiality in exchange for access and whether the state laws go beyond that for additional confidentiality beyond what federal law would allow.
Co-Chair Smith said he believes the impetus behind the exemptions the committee is looking at today is that they’re about when a law enforcement agency disseminates information to another group for another purpose. He said the requestor would need to go to the local law enforcement agency or the courts and not some other group or agency such as DOJ.
Chair Fisher inquired whether the journalists in the group had ever dealt with any issues in trying to request these records and whether they have run into barriers in accessing this information.

Ms. Cureton Cook relayed a story from her experience as a reporter in getting a tip that sheriffs in Oregon weren't enforcing the prohibition on domestic violence offenders obtaining concealed handgun licenses. She investigated this question by looking at particular background checks that should have been run by that office. She could not even uncover whether law enforcement agencies run internal audits of such information. She started with a records request of people she had reason to believe still possessed guns but shouldn't.

Mr. Kron said he feels as if these exemptions only apply to the results of the check and shouldn't cover the fact that the background check was requested. Although, he noted, a new exemption was enacted to cover that type of information after a controversial Court of Appeals decision that found that such information about concealed carry licensees should be public.

Co-Chair Smith agreed that the way he reads the exemption is that the information received from the background checks is confidential but not the fact that the background check was made. He suggested that the laws are confusing getting around the confidentiality requirements of CJIS and suggested it could have been a misapplication of the law because of the convoluted way the laws are written.

Chair Fisher suggested Mr. Smith prepare a summary for the next meeting of what federal and state law requires.

Ms. Cureton Cook agreed with Chair Fisher regarding the heart of the question, whether the existence of a background check associated with an individual's name is a public record without the results or the name of the person being made public.

Mr. Kron said his concern was how to audit whether the required background checks were actually happening. He said it should at least be possible to verify that a background check has been requested and mentioned that point of sale firearms background checks are different than CHL background checks, and require a higher degree of confidentiality under federal law.

Chair Fisher agreed that Mr. Smith will do research around this issue and the committee will discuss recommendations at their next meeting.

Ms. Cureton Cook asked what status quo is now regarding the accountability of whether background checks are being conducted.

Mr. Smith said the issue is that it's all done through the LEDS database unless it comes from the federal level, which has strict confidentiality requirements. He said he would look into how many laws are mimicking federal law versus going beyond it, as well as separating out the confidentiality requirements of whether a check occurred versus the results of the check.

Third Agenda Item – Discuss Biennial Report and preparations for next report

Co-Chair Smith said he put together the last biennial report and it went smoothly, but expressed a concern that there was no central repository for the committee's recommendations. He thinks there should be a standalone document that compiles all recommendations to allow for better recordkeeping.

Mr. Kron said that this could be incorporated into the minute making process, in that a recommendation can be quoted verbatim and this can be pulled from the minutes for the report.

Mr. Njus suggested that it would be nice to have the recommendations and the exemptions side by side as an easy reference for legislators.

Mr. Landauer asked about the timeline for reporting requirements.

Mr. Kron said that the AG's current legislative director may be interested in helping the committee with this effort, but the AG has announced that she isn't running again. He said the committee has some assets of its own who could help with legislative action and this relates to the next agenda item.

Fourth Agenda Item – Possible Legislative Changes for the Sunshine Committee

Co-Chair Smith said the committee will need some potential legislative changes because they're running into a timeline issue of only being in existence for 10 years. They will need additional time statutorily to continue to exist and review more exemptions. He said they have all expressed frustrations as to their reporting structure that goes to a committee that doesn't have a whole lot to do with policy decisions.

Mr. Kron proposed that the committee's report goes to the Rules Committee instead of a subcommittee of the legislative counsel committee, which does not meet during session. He expressed concern that the reports and recommendations seem to be going into a black hole. He discussed taking a look at their workflow with other committee members and come up with a better plan to go through more exemptions, but it doesn't address the bigger structural or morale problems.

Co-Chair Smith suggested forming a small subcommittee of people with legislative experience to look into this issue.

Mr. Landauer said that he was concerned that the legislature was not aware enough of the existence and work of the committee. He wanted to see the committee impact policy more than it already does. He said it was frightening to him that committee members could only think of one example when anything has changed as a result of the work of the group. He wanted to see their recommendations be reported to the House and Senate Rules Committee or the Judiciary committees, so that there was more urgency behind the committee continuing their work.

Chair Fisher suggested putting that item on the agenda for the next meeting. He also discussed the possibility of allocating more resources to support the work of the committee.

Mr. Landauer said he thought this should be a discussion at the full committee level of whether the material they are producing gets reviewed by people who actually make policy decisions.

Mr. Kron said he could add DOJ's legislative director to this conversation at the next meeting.

Committee members discussed including ex officio members more in the group, but they were already invited to join. Committee members then suggested meeting with ex officio members in person to bring more awareness to the work of the committee and possibly working with them on introducing legislation.

Chair Fisher said that will be a good topic to present at the next meeting and asked about the committee's authority to introduce legislation.

Mr. Landauer said working with the ex officio members to make legislative recommendations may be the committee's best option.

Fifth Agenda Item – Discuss Next Exemptions for Review

Chair Fisher said the group has more research to do regarding background check exemptions and the conversation about recommendations to the legislature will probably take up most of their time at the next meeting.

Mr. Landauer agreed and thought it might be helpful for the authorizing language of the Sunshine Committee to be distributed to members in preparation for the next meeting.

Sixth Agenda Item – Future Meeting Locations and Dates

Chair Fisher asked whether members would like to meet virtually for the rest of the year given the technical audio issues experienced in the current meeting, and committee members agreed that they would test out the audio of some other conference rooms first. Chair Fisher also suggested an in-person meeting once a year and the rest of the meetings to be held virtually. Committee members will first attempt to find a conference room that has better audio.

Adjournment

September 18, 2024
Location: WebEx
Sunshine Committee Members

Charlie Fisher, OSPIRG State Director / Co-chair
Morgan Smith, Polk County Counsel / Co-chair
Cameron Miles, Government Accountability Attorney, Governor’s Office
Elliot Njus, Editor, The Oregonian
Michael Kron, Special Counsel, Office of Attorney General Ellen Rosenblum
Mark Landauer, Lobbyist, Special Districts Association of Oregon
Cherrill Crosby, Executive Editor, Statesman Journal and Register Guard
Emily Cureton Cook, OPB Central Oregon Bureau Chief
Selena Deckelmann, Chief Product and Technology Officer, Wikimedia Foundation
PK Runkles, Chief Legal and Risk Counsel, Office of Secretary of State LaVonne Griffin-Valade
Karin Johnson, City Recorder for Independence

Guests

Andy Foltz, Public Records Counsel, Department of Justice
Kimberly McCullough, Legislative Director (former), Department of Justice

Agenda

AUDIO STREAM 0:00:00-0.5

First Agenda Item: Review/Approve Minutes

Mr. Landauer moved to approve the minutes of the July 17 Sunshine Committee meeting.
Co-chair Smith seconded the motion. The motion passed unanimously.

Second Agenda Item: Follow-up discussion on Background Check exemptions

While the committee was waiting for **Ms. McCullough** to join, Co-Chair Smith started on the discussion about background check exemptions. **Co-Chair Smith** said he had volunteered himself to do a deep dive into CJIS in light of **Ms. Cureton Cook’s** experience with a public records request into whether a background check was conducted, which the committee had discussed at the last meeting. **Co-Chair Smith** said the actual exemption cited was ORS181A.220, which is a very broad statute that basically says that any time fingerprints are taken in conjunction with a criminal investigation, and it gets inventoried in a database, those records are going to be exempt.

Third Agenda Item – Review Committee’s authorizing legislation and follow-up discussion on possible legislative changes

Ms. McCullough joined the call, so the committee switched gears to discussion on the committee’s authorizing legislation. **Ms. McCullough** introduced herself as the legislative director at the DOJ (she is now at the Oregon Judicial Department). She has been doing legislative advocacy in a variety of different capacities for the last 10 years.
Chair Fisher framed the conversation by saying that the overarching concern is that the committee’s work is not having the intended impact in changing public records law. **Chair Fisher** summarized that the committee was concerned that the reports they send in don’t really go anywhere and go to a public records subcommittee of the legislative committee, which doesn’t meet. He suggested changing the committee to which the Sunshine Committee reports; perhaps the Rules Committee. There was also a proposal to change the reporting date. **Chair**

Fisher noted that in the committee’s authorizing statute, “Our reports are supposed to make recommendations to amend or repeal exemptions from disclosure reviewed by the committee.” There are also new exemptions created every session, putting the committee’s work further behind. **Chair Fisher** discussed the desire of having greater staff capacity in support of the committee’s work.

Mr. Landauer gave more context. He said the committee should discuss the utility of continuing the committee if certain changes weren’t made. He liked the reporting date for September because legislators are required to pre-session file bills by the end of September. He felt the fundamental problem was getting legislators to review their reports. He also suggested the Judiciary committee as a possible outlet to send reports to.

Ms. McCullough suggested changing the reporting deadline to May or June. She also suggested asking for an informational hearing to be held on the report in both chambers to spread the word about the work of the committee. She suggested the Rules or Judiciary committees, with the Judiciary committee as a preference because there is a greater chance of the committee hearing the report because the committee is watched by more people. Along those lines she also suggested the committee needed to find itself a legislative champion, perhaps an ex-officio member.

Mr. Kron said ex-officio members do not come to the meetings. He said they are struggling to make an impact making themselves more visible to legislators. He agreed that the committee needed to identify a legislative champion.

Mr. Miles said that there are legislative days in May and if the committee were to move the report date back to May 1 they could be heard during that time. He said the current reporting structure is ineffective.

Ms. McCullough discussed the idea of having some staff support and thought that would make it easier to set up an informational hearing. She also suggested hosting a training for legislators as a way to publicize the work of the committee. That way the committee could gain a culture of awareness.

Mr. Miles said that he wrote government impact statements for years and the way that the amendment process works, it would be inefficient, and making them consult with the committee in the middle of that process would change the amendment process for a lot of bills.

Mr. Kron said the committee couldn’t make consultation a legal requirement but he said he’d like to see something different than what was currently going on.

Chair Fisher said it made sense to introduce some type of legislation that is relevant to the committee.

Mr. Landauer shared that legislative concepts are due to be submitted to legislative counsel a week from this Friday so they would have to act quickly.

Chair Fisher suggested the committee could work with an ex-officio member to propose a placeholder bill.

Mr. Landauer suggested that the bill be confined to the Sunshine Committee rather than a broader, relating to public records clause.

Committee members discussed which ex-officio members to approach to champion the bill.

Mr. Miles argued in favor of not doing a placeholder. He suggested having it say a bill related to the Oregon Sunshine Committee, to extend the deadline, and any other matters the committee wants to include.

Mr. Landauer supported **Ms. McCullough’s** suggestion of reporting to the Judiciary Committees of both the House and the Senate.

Mr. Kron made a motion to “empower our co-chairs, one or both, to propose such a bill to various legislators and that it would include those three things” – (1) sending the report to the Judiciary Committees of the House and Senate, (2) changing the reporting date to May 1, and (3) extending the deadline for the committee’s work, keeping the existing language of “they may accept, reject or modify our reports.”

Mr. Landauer amended the motion to change the relevant committee to Judiciary.

Chair Fisher proposed extending the deadline for the work of the committee to 2031.

Mr. Kron discussed the option of including staff support in the bill. **Mr. Landauer** said that including a fiscal impact would kill the bill.

Ms. Crosby asked how many exemptions have been reviewed so far, as she was a new member. **Mr. Foltz** said that about 120-150 exemptions out of 600 have been reviewed.

Mr. Kron brought forth the amended motion to “empower our chairs to approach legislators about getting a bill introduced that would (1) extend our deadline for exemption review by 5 years, (2) change the submission date of our report to May 1 of even-numbered years and (3) change the committee to which we report to the Judiciary committees of both chambers.”

Mr. Landauer seconded the motion.

All were in favor. Motion passed unanimously.

Committee members discussed educating legislators about the existence of the committee and a cultural rather than statutory change in legislative awareness about the work of the committee.

Co-Chair Fisher said they would report back on their conversations with legislators at the next meeting. Committee members also discussed talking with legislators about getting rid of the existing committee that the Sunshine Committee reports to.

Mr. Njus suggested that there should be a way to better catalogue the progress they’ve made and the recommendations.

Ms. Deckelmann said this was a project she could work on depending on the format of the documents.

Mr. Foltz said the basic idea would be to add another tab to the website that shows the committee work product and the status of exemption reviews. He will work with **Ms.**

Deckelmann on this project.

Fourth Agenda Item – Continue discussion on Background Check exemptions

Co-Chair Smith continued his discussion about CJIS and **Ms. Cureton-Cook’s** public records request. He said that the state police relied on a state statute, not CJIS, ORS 181A.220, to make its determination. CJIS protects criminal justice information until it’s released through some other public means like the courts. It provides for guidance and security protocols. It started in the late 1990s and dovetails into a lot of the background check requirements for gun ownership and similar topics. The question **Co-Chair Smith** had was regarding the confidentiality provisions cited by OSP about whether or not background checks have been conducted. It basically just says that any public records related to the fingerprints, photographs, records and reports for any fingerprinting related to an arrest is confidential unless authorized by law enforcement or court ordered. The main issue with the state statute cited by OSP, he said, is that it’s not worded very clearly and a broad view could be taken of the statute.

Mr. Kron asked whether the apparent interpretation of the statute by state police would apply to the fact of a background check being conducted or not has ever been the subject of a public records order.

Mr. Foltz said not to his knowledge.

Mr. Kron said the goal of getting the report from **Co-Chair Smith** is to figure out whether there might be room for state law improvements that might actually move the needle given the CJIS overlay. He said his subcommittee is a good place to review the options.

Co-Chair Smith said that the state police are taking the position that any report compiled after the fingerprinting for an arrest is confidential. He thinks there should be better language around whether the fingerprinting documents are confidential. Whether or not a background check was conducted, without revealing the contents of the report, is a different matter. He said it seems to include a very broad umbrella of confidentiality and he isn't seeing a lot of policy reasons for that.

Mr. Kron said that in his view CJIS laws should not affect the question of whether OSP conducted a background check that was supposed to have been conducted.

Ms. Cureton Cook asked whether the exemption itself leaves the door open for this question to be unanswerable or whether the OSP was misinterpreting the question to shut down requests from journalists.

Mr. Kron said his subcommittee will take a look at the issue. **Ms. Cureton Cook** volunteered to fill the vacancy on the subcommittee; **Ms. Deckelmann** asked to rotate off, and **Co-Chair Smith** volunteered to replace her.

Mr. Kron made a motion to appoint **Ms. Cureton Cook** and **Co-Chair Smith** as new members of the committee. **Mr. Landauer** seconded the motion. The committee voted unanimously in favor of the motion. The motion passed.

Fifth agenda item – Discuss next exemptions for review

Mr. Foltz said the next batch of exemptions was related to disability information. After that was juvenile records, close to 20 of those. Committee members said they would tackle both subjects and **Mr. Foltz** will send out summaries.

Sixth Agenda Item – Next Meeting Date and Location

Chair Fisher said the next meeting will be virtual and take place on November 20. There were no further agenda items.

Adjournment

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

First Agenda Item: Review/Approve Minutes

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.

Second Agenda Item: Report from the Subcommittee

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.

January 15, 2025
Location: WebEx
Sunshine Committee Members

Charlie Fisher, OSPIRG State Director / Co-chair
Morgan Smith, Polk County Counsel / Co-chair
Cameron Miles, Government Accountability Attorney, Governor’s Office
Emily Cureton Cook, OPB Central Oregon Bureau Chief
Mark Landauer, Lobbyist, Special Districts Association of Oregon
Stephanie Clark, State Archivist
Cherrill Crosby, Executive Editor, Statesman Journal

Guests

Andy Foltz, Outgoing Public Records Counsel, Department of Justice
David Pitcher, Incoming Public Records Counsel, Department of Justice
Rachel Mortimer, Executive Director of Commission on Judicial Fitness and Disability
Sam Dupree, Senior Assistant General Counsel, Oregon Judicial Department

Agenda

AUDIO STREAM 0:00:00-0.5

First Agenda Item: Review/Approve Minutes

Co-Chair Smith moved to approve the minutes of the November 20, 2024 meeting. **Mr. Landauer** seconded the motion. **Co-Chair Fisher** abstained due to his absence from the meeting. **Mr. Miles, Ms. Cureton Cook, Ms. Clark and Ms. Crosby** voted for the motion.

Second Agenda Item: Discussion with Ms. Mortimer and judicial fitness and misconduct records

Co-Chair Smith introduced the committee’s guest expert, Rachel Mortimer, Executive Director of the Commission on Judicial Fitness and Disability. He said the committee was reviewing some summaries of exemptions related to disability type information and embedded in that list of exemptions were two statutes that involved judicial conduct and disability. The committee wanted information related to these kinds of investigations and what was available to the public, so he invited Ms. Mortimer to speak today.

Ms. Mortimer introduced herself as the Executive Director of the Commission on Judicial Fitness and Disability, and the only part-time employee of what she said was probably the smallest state agency. She said the mandate of the commission is to take complaints about Oregon judges. They cover about 400 judges, ranging from circuit court, appellate and justices of the peace, but they do not cover municipal or administrative law judges. The commission takes complaints from the public, judges, lawyers, or any member of the public if they submit a complaint about a judge that they have official jurisdiction over. Their complaints have risen significantly in the last couple years, from 100-150 in an average year to 367 for 2024. When complaints come in, the commission opens a complaint and may gather records. They may then conduct investigations and will sometimes hire attorneys or private investigators for more extensive investigations. Most of their cases resolve at the initial review. In the instances when it looks like the conduct is rising to the level where suspension, public censure or termination looks likely, then the commission can go to a public hearing. Up until then, for either disability or conduct cases, cases are considered fully confidential. She said there are different courses and definitions for conduct and disability cases. For a pure conduct case, once those go to hearing, any evidence at trial is public and that

recommendation is then made to the Oregon Supreme Court, which is also a public record. There are three possible forms of discipline – public censure, suspension or termination.

Co-chair Fisher asked whether it could be made public regarding such details like that the fact of an investigation is occurring or the number of investigations that have occurred.

Ms. Mortimer said the fact of an individual investigation would remain confidential. Up until last year the commission did not have a database or any way to aggregate that information but that is a project that she is now implementing for statistics such as the number of pro se complainants. One of her goals as executive director is greater transparency but they also have staffing issues because her role is only a part-time position.

Co-chair Smith asked whether unfounded investigations are confidential as well. **Ms. Mortimer** said those are confidential as well.

Ms. Mortimer said that there has only been one case ever in terms of a disability case that has gone through the entire process. **Ms. Mortimer** said that findings of wrongdoing or disability can be stipulated and the stipulation would be public because that's at the Supreme Court level, unless they resign in lieu of a case going to censure, termination or suspension, since those would have to be imposed by a public action by the Supreme Court. She said that could be motivational for judges to reach a settlement and resign.

Co-chair Fisher said he could see both sides, where a resignation could be a carrot but also someone could resign if they were engaging in behaviors that were inappropriate and the public should know about that.

Ms. Mortimer said the information would stay confidential because if the judge resigned before it reached a public hearing, the commission would lose jurisdiction over the judge and they wouldn't get the retirement benefits of serving as a senior judge or able to be a judge again in Oregon.

Mr. Miles asked if the judge is found to have engaged in actual misconduct would it likely be accompanied by a bar complaint. **Ms. Mortimer** said only if the judge was also acting as a lawyer during the course of the misconduct. **Ms. Mortimer** said the commission can only recommend censure, suspension or termination, not licensing actions.

Co-chair Fisher asked which kinds of cases would be considered misconduct and **Ms. Mortimer** said there weren't recent examples of cases that were made public.

Ms. Crosby had a concern about the lack of transparency if the conduct wasn't criminal and how the public would know about the checks and balances of the commission.

Ms. Mortimer said this was frustrating to the commission as well, but that by statute that information is not something they can share until it reaches the public hearing process.

Co-chair Fisher talked of the balance between the need for privacy and public accountability and asked if Ms. Mortimer could envision a different way of doing things.

Ms. Mortimer said she doesn't have a specific recommendation but said that the public records piece does work as an incentive for judges who don't want their information to be public. She said for more changes than that she would have to sit down with stakeholders and have more discussions, as well as needed more staff resources to implement any changes.

Commission members then talked of the public interest balancing test for similar records for public employees. **Ms. Crosby** expressed concern for different standards for teachers and police officers versus judges, who were also public employees, if elected or appointed.

Co-chair Smith said the distinction would be the high level of authority that the judge has with a lot of public scrutiny.

Ms. Mortimer also described the makeup of the commission; it has nine members, three judges appointed by the chief justice, three attorneys appointed by the Oregon State Bar and three community members who are appointed by the governor and confirmed by the Senate.

Ms. Cureton Cook said she found it concerning to hear that the threat of public exposure of records is a tool to weed out judges from misconduct.

Co-Chair Smith agreed, and also recognized the utility of that tool as a bargaining chip. Commission members then talked about hypothetical situations in which it would be useful to know about a judge's misconduct.

Co-Chair Fisher agreed that he thought a recommendation for greater transparency was a good idea and called for a subcommittee to look at the issue.

Members agreed to have a smaller group look at the issue. **Co-chair Smith** agreed to chair the subcommittee and **Ms. Cureton Cook** agreed to be a member. In need of a third member for the subcommittee, committee members decided to wait until the AG's appointment to fill the vacancy left by Michael Kron.

They agreed to table issue to the following meeting's agenda.

Third Agenda Item – Committee Vacancies

Mr. Folz said there is a vacancy left by **Mr. Kron** and also one for a representative from small local government vacated by Ms. Johnson. **Mr. Folz** asked committee members to give him suggestions for the future. **Ms. Clark** said she'd reach out to her contacts within the association of municipal recorders.

Mr. Folz then introduced his replacement, **David Pitcher**, who has had 11 years of experience as a criminal prosecutor and also handled public records for the Washington County DA's office for the last five years.

Fourth Agenda Item – Process during legislative session

Co-chair Fisher said he would be willing to chair a legislative review subcommittee to review the bills coming up that include government impact statements. **Mr. Landauer** said as he is also the chair of the public records advisory council, he didn't think it was a good idea for him to participate in that process. **Ms. Cureton Cook** asked if there was a way to streamline the process. **Co-Chair Fisher** said that they just reviewed most bills that had government impact statements, as that indicated they dealt with public records law. **Ms. Cureton Cook** agreed to be part of the legislative review subcommittee, as did **Co-Chair Smith**.

Co-chair Fisher said the motion on the table was that the legislative review subcommittee "is empowered to make recommendations on its own on behalf of the Oregon Sunshine Committee as long as those recommendations are based on previous recommendations of the full committee." **Mr. Landauer** so moved. **Ms. Cureton Cook** seconded the motion. Co-Chair Fisher, Co-Chair Smith, Ms. Crosby, Mr. Miles, and Ms. Clark voted in favor. The motion passed unanimously.

Fifth Agenda Item – Senate Bill 890 discussion

Co-Chair Fisher gave an update on the bill submitted for them by Senator Thatcher. It's not public yet because it wasn't pre-session filed but it has been filed as of now and they have a bill number, Senate Bill 890. It changes the committee that the Sunshine Committee reports to as to the Judiciary Committee, changes the due date of the report to May 1, and extends the date by which they need to finish their work.

Sixth Agenda Item – Next meeting date and future topics

Mr. Miles suggested that the minutes should name who voted for motions instead of saying they unanimously passed in the event of members not all being present for a vote. **Co-Chair Smith** said the next topic on the list of exemptions touches on education records.

Adjournment

May 21, 2025
Location: WebEx
Sunshine Committee Members

Charlie Fisher, OSPIRG State Director / Co-chair
Morgan Smith, Polk County Counsel / Co-chair
Cameron Miles, Government Accountability Attorney, Governor’s Office
Elliot Njus, Editor, The Oregonian
Cherrill Crosby, Executive Editor, Statesman Journal and Register Guard
Emily Cureton Cook, OPB Bend Bureau Chief
Cherrill Crosby, Executive Editor, Statesman Journal
Stephanie Clark, State Archivist
Leslie Wu, Policy Advisor to Oregon Attorney General
Alex Downing, City Recorder, City of Corvallis

Guests

Daivd Pitcher, Public Records Counsel, Department of Justice
Erin Jansen, Deputy Legislative Counsel
Sam Dupree, Senior Assistant General Counsel, Oregon Judicial Department

Agenda

AUDIO STREAM 0:00:00-0.5

First Agenda Item: Introduction of New Members

Members introduced themselves. New members include Leslie Wu, Oregon Attorney General Dan Rayfield’s Policy Director, and Alex Downing, city recorder for the City of Corvallis, who is also a member of the Oregon Association of Municipal Recorders.

Second Agenda Item: Review/Approve Minutes

Co-Chair Smith moved to approve the minutes. **Ms. Clark** seconded. Motion passed unanimously 10-0.

Third Agenda Item – Nomination of Members for Special Projects Subcommittee

Co-Chair Fisher said that during the January meeting the group had talked about exemptions relating to judicial fitness and decided that they were going to send those to the special projects subcommittee to review, but they didn’t have a full subcommittee due to some vacancies in the full committee. He opened the floor for people interested in joining the subcommittee.

Co-Chair Smith explained that the purpose of the subcommittee was to have more in-depth policy discussions, which could be unwieldy with the whole group. Current members are himself and Ms. Cureton-Cook.

Ms. Wu asked about the time commitment and scope of work.

Co-Chair Smith said it’s a standing subcommittee that meets one to two times between committee meetings.

Ms. Wu said that she would volunteer with the caveat that she may not be able to attend all meetings potentially, due to child care.

Ms. Downing volunteered to serve as an alternate.

Ms. Cureton-Cook said she liked the idea of having alternates, especially given reporting deadlines.

Mr. Njus volunteered to serve as an alternate for the media representative.

Co-Chair Smith moved to appoint three members, with Ms. Wu serving as the regular member and Mr. Njus and Ms. Downing as alternates.

Ms. Downing seconded the motion.

10-0 in favor; motion passed unanimously.

Fourth Agenda Item – Update on Legislative Subcommittee and Senate Bill 890

Co-Chair Fisher provided an update on the legislative subcommittee's work, as well as a bill related to the full committee, SB 890. At the January meeting, the full committee empowered the legislative subcommittee to make recommendations to the legislature on current bills being introduced. The legislative subcommittee met in February to review bills that had public records impact statements. House Bill 2069 is currently in Ways and Means. Several of the bills are not moving forward. Senate Bill 870 has passed.

Regarding Senate Bill 890, **Co-Chair Fisher** said Senator Thatcher introduced it on their behalf. He said it's a technical fix bill that changes the committee to which they report to the House and Senate Judiciary Committees; it changes the timing of their report, ahead of legislative days in even numbered years so that the relevant committees can potentially consider their recommendations; and it pushes out the sunset for the full committee so they can continue their work. It passed unanimously through the Senate and just last week passed unanimously in the House Judiciary Committee and will likely be taken up in the House soon.

Co-Chair Smith asked about 3628, which **Co-Chair Fisher** said is not moving forward.

Fifth agenda item – Education Records Discussion

Co-Chair Fisher opened discussion on the six exemptions related to education records.

Co-Chair Smith said there is not a lot for the committee to do on these exemptions. For a lot of them, they are more or less state law equivalents of exemptions already covered under federal law, specifically FERPA, the Family Educational Rights and Privacy Act. Regarding ORS 40.245, he saw that as an admissibility issue in civil litigation and didn't see much relationship to public records law.

Mr. Miles said that ORS 192.355(9) includes anything confidential or privileged, which is how we pull in attorney client privilege and would also pull this in as a privilege. He said this makes anything that goes along with this privilege exempt from disclosure with no balancing test.

Co-Chair Smith said that anything that's contained in 40-245 would also be covered by FERPA as an educational record and would still be confidential as far as release to the general public.

Co-Chair Fisher said that his take on this issue is that he tries to come up with a public interest reason why this should be made public or accessible, and he said it was hard to come up with a good reason why private communication from a student would need to be made public.

Ms. Cureton-Cook said that she tries to frame it as assuming things are public and whether there is a reason why they should be exempt or private. She said she couldn't see that this was much of an interest for journalists. She was curious about the issue raised by Mr. Miles in which this might establish a privilege between people when it's not an attorney. She also said

it was strange to have a provision regarding a disclosure that could damage or discriminate against the student or family and wondered how that assessment would be made.

Mr. Miles said a judge makes that call as to privilege in a court. He thought it would be a difficult fight to ask the legislature for any change to privileges. He said there are several different kinds of privileges.

Co-Chair Smith said the committee should stay within the scope of the public records piece.

Ms. Cureton Cook asked if privileges have public balancing tests. **Mr. Miles** said they do not since the judge made that call.

Ms. Cureton-Cook could see a scenario where a kid brings a gun to school and communication between the family and the school would be useful for accountability. But she said if this is a boulder that can't be rolled uphill, it sounded discouraging. She would suggest a balancing test.

Co-Chair Fisher said that in their recommendations they shouldn't consider the political reality or viability of what they are recommending, they should be making recommendations on what they think is ideal policy. He said generally he thought that the affairs of a student should be kept private, but perhaps the communications between the school staff and the parent about something that is very important and highlights structural problems could be useful, with a balancing test.

Ms. Cureton-Cook said that if this is establishing a privilege in a civil action, it seems like a redundant exemption.

Co-Chair Smith agreed that it was redundant, especially because of federal law.

Co-Chair Fisher suggested getting an opinion from DOJ on regarding this issue.

Co-Chair Smith said the bulk of these records are exempt from disclosure under federal law anyway, so there's not a lot at the state level that they could do.

Ms. Cureton-Cook said the goal of the committee was to advise against unneeded exemptions in the law. She suggested recommending that it not go forward, especially if it's protected in some other way.

Mr. Pitcher said he is not sure he could provide the AG's opinion on the issue, but he would be happy to do more research on the topic.

Co-Chair Fisher said he wanted to know to what extent information contained in these records also falls under federal law and would not be accessible.

Committee members discussed getting outside expertise from the General Counsel for Department of Education and other education-related stakeholders.

Committee members also brought up that they may have reviewed similar records related to university and K-12 personnel.

Ms. Wu and **Mr. Pitcher** said they would work together to invite some stakeholders and a DOJ attorney who represents the Department of Education to talk to them at the next meeting.

Committee members decided to review the rest of the exemptions at the next meeting, where they would also hear from special guests.

Sixth Agenda Item – In Person Meeting Discussion

Chair Fisher opened discussion on an annual in-person meeting, likely in Salem at the state capitol building. Committee members said they would like to hold it in September. **Mr. Njus** suggested, since he would not be at the July meeting, that the September in-person meeting be a longer session in which they tackle more issues. Committee members agreed that July would also be a planning meeting for September agenda items.

Adjournment

July 16, 2025
Location: WebEx
Sunshine Committee Members

Charlie Fisher, OSPIRG State Director / Co-chair
Morgan Smith, Polk County Counsel / Co-chair
Cameron Miles, Government Accountability Attorney, Governor’s Office
Mark Landauer, Lobbyist, Special Districts Association of Oregon
Cherrill Crosby, Executive Editor, Statesman Journal and Register Guard
Stephanie Clark, State Archivist
Leslie Wu, Policy Advisor to Oregon Attorney General
Alex Downing, City Recorder, City of Corvallis

Guests

Daivd Pitcher, Public Records Counsel, Department of Justice
Spencer Lewis, Director of Policy Services, Oregon School Boards Association
Stacy Michaelson, Government Affairs Administrator at Multnomah Education Service District
Lori Woltring, Policy Analyst, DOJ Division of Child Support
Mike Ritchey, Senior Assistant Attorney General, DOJ Division of Civil Enforcement

Agenda

AUDIO STREAM 0:00:00-0.10

First Agenda Item: Review/Approve Minutes

Ms. Wu moved to approve the minutes from the last meeting. **Ms. Crosby** seconded. Motion passed unanimously 8-0.

Second Agenda Item: Education records discussion and FERPA

Mr. Pitcher provided a high-level summary of FERPA and the records that it protects. **Co-Chair Fisher** introduced **Mr. Lewis**, a guest available to talk about public records from the perspective of the Oregon School Boards Association.

Mr. Lewis said he advises school boards on what to disclose and what not to disclose, and he would love for it to be more clear because there is a lot of overlapping with federal law, specifically the privileged information issue. He supported everything that was shared at the last meeting.

Mr. Lewis said FERPA defines education records very broadly. Basically, if the district has it and it relates to a student, it’s probably going to be an education record. Those records are generally not disclosable unless they’re listed in directory information, which is limited. He said ORS 329.471 refers to personally identifiable information that can only be disclosed with parental consent, with some exemptions. He said ORS 326.565 basically restates FERPA and there is no movement to change any of the definitions under FERPA. He said if a request comes into a district with anything that has student information in it then it is going to be denied and very rarely would they cite 326.565. They would cite FERPA. Referring to ORS 329.471, regarding personally identifiable information regarding performance based assessments, he said it is so we can pool the data and figure out which groups of students are performing, and which are not. If you break student report card data down enough then you might identify the student. For ORS 332.061, that allows the board to vote in executive session on an expulsion. He said there is also a section within 332.061 that talks about all of

those records shall not be made public, which is likely duplicative of FERPA. He talked about a provision around executive session minutes in ORS 192.640 or 650 that says the minutes of an executive session aren't disclosable generally. He said if he ever got a request for a student's expulsion record, he would cite ORS 332.061. Another exception provides personally identifiable information for third party vendors for software and there's probably some overlap with FERPA. He said ORS 341.290 deals with community college employees and there's a comparable statute for school district employees, ORS 342.850(8). ORS 342.850 seems to give school boards the authority over the personnel file but it gets confusing around discipline. There would be public interest if a public employee, especially one that works with students, has done something wrong, especially in front of minors or impacting minors. He said some clarity there would be helpful. There would have to be a public interest balancing test, for example a superintendent evaluation would have public interest.

Mr. Miles said he thought they had different understandings of how FERPA worked. His understanding is that FERPA does not prohibit the disclosure of any records, it only prohibits schools or institutions from receiving federal funds if they disclose records.

Mr. Lewis said he didn't know of any court cases in Oregon, but there was one in Ohio that evaluated that question, as to whether FERPA was like a condition on a grant.

Co-Chair Smith said that his understanding was somewhere in between, that it is a condition to receive federal funds, but in addition to the federal administrative rules within the Department of Education, FERPA allowed for states as well to create their own administrative rules to further flesh out details related to FERPA.

Mr. Lewis said that the state board did just that. Directory information cannot include birth, birthday, prior school and some other pieces. They can include more specificity than FERPA.

Mr. Pitcher said there is a very substantial overlap between FERPA protections and state law protections. He said the AG has opinions where they have said that FERPA creates a federal prohibition and have upheld a state level public body's decision to withhold records on that basis. It covers a broad array of student records.

Mr. Lewis said public records requests depend on context; for example they won't just give out any student's report card. But they can release information if student information is redacted and not easily identifiable.

Mr. Pitcher said there are quite a few exceptions to FERPA but generally for other educators.

Mr. Lewis said health and safety is an exception.

Co-Chair Fisher asked about the school employees student privilege. If it was the subject of a civil action committee wouldn't a public record be created?

Mr. Lewis said that any records created that fall under the school employee privilege would be protected from a public records request. It works a little differently than attorney-client privilege because it's different than testifying in a court proceeding. There is an exception for the security or safety office.

Co-Chair Fisher noted a provision that protected students and families from anything that would damage or incriminate them. He could see some oversight being useful on that issue.

Mr. Lewis said that looks different in Portland and Dufur. Some of those districts have 15 kids. Also, all school employees are mandatory reporters and there are requirements for that. A public records request could come in after the fact. FERPA and/or state records laws would apply.

Co-Chair Fisher asked about ORS 341.290 relating to faculty records. The committee has previously recommended there should be a public interest balancing test for disciplinary records for educators.

Mr. Lewis said clarity is the most important piece there. He said he didn't know of any reason why it should be any different from other public employees. He also didn't know why there were different standards for community college employees.

Ms. Crosby asked if there was an investigation at the school conducted by the school or school board related to the conduct of faculty toward students and an investigative report was produced, who decides whether that is exempt.

Mr. Lewis said it depends on the level of detail of how much student information is actually in there. In that type of situation you probably could redact student identities since the primary purpose of the investigation was looking at the conduct of the employee.

Co-Chair Smith asked why community college records are different from personnel records.

Mr. Lewis said it's written as extra protections, but he's looked at the legislative history and doesn't know what the original purpose was.

Co-Chair Fisher said this could be referred to the subcommittee or the committee could talk about any recommendations they wish to make. He said he feels as if most of these exemptions are reasonable because the law treats minors differently. He said he thought the committee should recommend that exemptions for community college faculty align with recommendations for other educators.

Ms. Wu suggested that all faculty exemptions align.

Co-Chair Smith said that the bulk of educational records is largely duplicative of federal law and it seems like a fool's errand to create nuanced recommendations, with the exception of ORS 341.290 relating to community colleges and having it fall in line with other records of public employees.

Mr. Landauer made a motion to adopt the recommendations the committee made for other educator records for community college faculty. **Co-Chair Smith** seconded.

Mr. Landauer asked if they needed to ask community colleges why they are treated differently.

Ms. Wu said the phrasing of "aligning" was helpful because then they're not trying to separate out community college employees.

All were in favor. Motion passed unanimously 8-0.

Third Agenda Item – Judicial Fitness Special Projects Subcommittee Report Back

Co-Chair Smith said the subcommittee did not have time to meet yet so didn't have a report. They made plans for their next meeting.

Fourth Agenda Item – Agenda for September in-person meeting

Co-Chair Fisher asked after meeting location. **Ms. Wu** said the DOJ Salem Justice building has conference rooms for use. **Co-Chair Smith** and **Mr. Miles** both wanted to meet in Salem. **Co-Chair Fisher** said there would likely be 15 attendees and any other guests from the public. **Co-Chair Fisher** said he thought they should choose an especially meaty topic and have lots of things to go through. They could also talk about how to better coordinate with the legislature. They could also have a retrospective of everything they have accomplished to date. He hoped to invite some of the legislative members to attend.

Mr. Landauer said he thought it would be helpful as a relatively new person to the committee to see a compilation of the committee's previous reports. He said policy makers still need to be reminded that this committee still exists and has put in seven full years of work.

Mr. Miles said he thinks the work of the committee has informed testimony before the legislature on other bills.

Co-Chair Fisher agreed that they should start preparing a compilation.

The meeting will last from 1:30-4:30. There will also be a report from the judicial fitness special projects subcommittee. **Co-Chair Fisher** said he and **Co-Chair Smith** would go over the next set of exemptions to decide which ones to look at so that they can have a robust conversation.

Adjournment

September 17, 2025
Location: Department of Justice
Sunshine Committee Members

Charlie Fisher, OSPIRG State Director, Committee Co-Chair
Morgan Smith, Polk County Counsel / Co-chair
Cameron Miles, Government Accountability Attorney, Governor’s Office
Emily Cureton, OPB Central Oregon Bureau Chief
Alex Downing, City Recorder for Corvallis
Leslie Wu, Policy Advisor, Office of Attorney General Dan Rayfield
Stephanie Clark, State Archivist
Elliot Njus, Editor, The Oregonian
Mark Landauer, Lobbyist, Special Districts Association of Oregon

Guests

David Pitcher, Public Records Counsel, Department of Justice
Kate Wilkinson
Sam Dupree, Senior Assistant General Counsel, Oregon Judicial Department

Agenda

AUDIO STREAM 0:00:00-0.5

First Agenda Item – Call to order, welcome, introductions

Committee members introduced themselves for the in-person meeting.

Second Agenda Item: Review/Approve Minutes

Mr. Landauer moved to approve minutes. **Ms. Wu** seconded the motion. All were in favor. Motion passed 9-0.

Third Agenda Item: Report from the Special Project Subcommittee

Co-Chair Smith reported that **Mr. Njus**, **Ms. Downing** and **Mr. Miles** were present. **Co-Chair Smith** said they failed at coming together with a cohesive recommendation. They discussed the judicial fitness and judicial conduct exemptions. He said he didn’t think there was any incentive to change the physical disability exemptions, but most of it was related to judicial misconduct. They were joined by the executive director of the Commission for Judicial Fitness, who was very helpful. The subcommittee developed two options, no change, or all investigatory materials gathered as part of the inquiry into judicial misconduct would become public, based on whether the complaint was founded. A third path would be similar to what the bar association does.

Co-Chair Smith said that the subcommittee recognized that it is a tough balance. The commission gets a large number of complaints, largely from self-represented litigants in family law proceedings, for very little merit. He said one full-time staff person reviews complaints. For more significant complaints, they hire outside counsel. He said they also discussed the public access to the actual complaints themselves and the names of the complainants. The complainants were a mixed bag of individuals. There was a strong suggestion from Ms. Mortimer with the Commission for Judicial Fitness that complainants wouldn’t want their information made public, so that was why the subcommittee couldn’t come to a consensus.

Ms. Cureton said that she would argue that the status quo is pretty concerning, as you have some of the most powerful people in government about whom complaints are funneled

through one staff member, who by their own admission is fielding 300 complaints a year. But there is no transparency around those complaints, which doesn't give the public a chance to understand if the release system is working, she said. She said she hears the concerns about a chilling effect, but she said she didn't understand why judges should be held to a different standard than attorneys. **Ms. Cureton** said she thought it was a big problem that judges facing investigation will resign or retire rather than face a hearing of some kind that would bring the issue to light.

Co-Chair Smith said Ms. Mortimer was a one-employee state agency.

Ms. Wu said that elected officials should have a thick skin, but she was concerned about the chilling effect on the complainant versus the public interest, as in the case of sexual assault allegations.

Co-Chair Smith also had concerns that people wouldn't complain because of their desire for privacy or fear of retaliation if their identities were made public.

Ms. Cureton said the process seems very different than even for police officers or attorneys, positions with less power who aren't elected but who have less power and are in similar fields where this information is available. She wanted to know why judges would merit greater protection.

Co-Chair Smith said that putting aside the complaint of privacy, everything else could be made public.

Ms. Clark said that the committee is looking at this from an accessibility standpoint, but they should also look at what is actually feasible or practical. If they were to recommend changes, would there also be resources for the one-person state agency to respond to those?

Mr. Landauer said he didn't know if he was in agreement that all complaints needed to be made public. He said there are clearly a majority of complaints that are non-meritorious, and he didn't know what the public interest was in those. But if a judge has violated a code of ethics, he said he had no problem making those public. He felt judges should be treated similarly to police officers in the disciplinary process. He said he would be interested in having more discussion about those instances where a judge resigns before an investigation goes to hearing. He said he would like to see that be more consistent with how police officers are dealt with.

Ms. Cureton said that's why there would be a public interest balancing test.

Co-Chair Fisher said that the public would want to know about non-meritorious complaints just to know if the process is working.

Ms. Wu said that it brings up an interesting situation where she was imagining a judge running for re-election and there was a person lodging non-meritorious complaints over and over, which could be used to affect the outcome of the election.

Mr. Landauer said that if a public employee gets into trouble and that person's behavior merited some type of employer action, those are the complaints that are made available to the public. If there was no disciplinary action, then the complaint wouldn't be made public.

Mr. Miles said that he had another concern beyond an election. If a judge was seen as tough on crime, people could file non-meritorious complaints against him and defense attorneys could use that as a reason for the judge to be recused from cases. He didn't like the idea that people could use the process to target judges they don't like. His concern was also protecting whistleblowers.

Ms. Wu said one thing she is hearing from the group is that it was problematic for judges to resign to get out of public accountability.

Ms. Cureton said she wanted to stress that the decision about what is and is not meritorious being made by one staff person was an inhuman standard.

Co-Chair Fisher said he thought the group was in agreement that the situation where a judge steps down to prevent information being made public should change. Second is when discipline wasn't deemed necessary, how should those be dealt with?

Mr. Miles said he would be careful about the language they are using. Non-meritorious and unproven are different and should be treated differently, he said. He again reiterated that whistleblowers, such as court staff or defense attorneys, should be confidential.

Co-Chair Fisher said that the complainant should be allowed to indicate that they want to remain confidential.

Mr. Landauer said that he could support the release of non-meritorious records as long as they protected the complainant.

Co-Chair Smith said the recommendation should read, "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 allowed to do so."

Mr. Njus made a motion to pass the recommendation as stated. **Ms. Cureton** seconded the motion. All were in favor; the motion passed 9-0.

Mr. Landauer questioned whether it was the committee's intent to open records to past judges and not just judges under investigation. **Co-Chair Smith** said that it was a good compromise to allow for an audit of the efficacy of the system. **Mr. Miles** said that if there's not smoke, then no one will ask for their records.

Fourth Agenda Item – Discussion on future processes and results

Co-Chair Fisher said he wanted to have a larger conversation about their effectiveness as a committee and how they can be more effective at getting their recommendations considered by the legislature. He provided an update that their bill passed where they changed the reporting timeline and the committee they report to. He said that's a good step, but he wanted to discuss how they could have more legislative buy-in and input.

Ms. Wu said that the conversations held by the committee are nice because they don't have the same time pressure as the legislature does. As a newer member of the committee, she has been struck by how thoughtful the discussions have been. She said she has also been struck by the broad coalition of backgrounds of people on the committee who have been able to come to a consensus. She suggested reaching out to legislative members of the committee on how the committee can be more helpful.

Mr. Pitcher said they get the invitations to the committee meetings.

Ms. Wu said she is happy to volunteer because she talks to them about other things and she could talk to them more about the committee's work or possibly ask their staff to sit in on committee meetings.

Co-Chair Fisher said he was struck by how substantial the recommendations are, and that they are specific enough to be easy to be turned into statutory language.

Mr. Landauer said that being the lobbyist amongst the group, he said it would make sense for the committee to ask the chairs of the judiciary committees to give the Sunshine Committee time to speak to them, such as 15 minutes during legislative days, to get their face before the

committee. He said his experience in the legislature is that they're not going to take something up unless they have a personal commitment to it or there's a squeaky wheel.

Co-Chairs Fisher and Smith said they were willing to be presenters at such a session.

Mr. Njus suggested drafting a letter that they could submit into the record. **Co-Chair Fisher** agreed that a letter that consists of a set of principles would be helpful.

Co-Chair Fisher said he thought the committee comes up with better recommendations because they have input from the subcultures involved.

Co-Chair Fisher said he would like to see himself and **Co-Chair Smith** present at the next legislative days judiciary committee meetings, and would follow up with some ex officio members or their staff. **Ms. Wu** said she could follow up with them prior to the next meeting.

Ms. Cureton agreed that the committee was a great resource and they should focus on how they can engage legislators more.

Fifth agenda item – Non-listed items

Committee members agreed to look at the next sets of exemptions at the next meeting, tabling the mental health and counseling exemptions until then.

Adjournment

December 17, 2025
Location: WebEx
Sunshine Committee Members

Charlie Fisher, OSPIRG State Director / Co-chair
Morgan Smith, Polk County Counsel / Co-chair
Cameron Miles, Government Accountability Attorney, Governor’s Office
Elliot Njus, Editor, The Oregonian
Emily Cureton Cook, OPB Bend Bureau Chief
Stephanie Clark, State Archivist
Alex Downing, City Recorder, City of Corvallis
Representative Kim Wallan (ex officio)

Guests

Daivd Pitcher, Public Records Counsel, Department of Justice
Patricia Pascone, Legislative Policy and Research Office

Agenda

AUDIO STREAM 0:00:00-0.9

First Agenda Item: Approve Minutes

Co-Chair Smith moved to approve the minutes from the last meeting. **Mr. Njus** seconded. Motion passed unanimously with 7-0 in favor.

Second Agenda Item: Legislative Update

Chair Fisher provided an update regarding the presentations he and **Co-Chair Smith** made to the Senate and House judiciary committees. He said there wasn’t much of substance to report. They gave a history of the committee, why they exist and what they’ve done so far, and discussed plans for the future, specifically to bring forward a bill in the long session to adopt some of their recommendations. They made a plea not to add more exemptions when not needed. They talked to Representative Wallan afterwards, who is an ex officio member. He said he thought it was good they did it because most of them didn’t know the committee existed.

Co-Chair Smith said that the big benefit to it that he saw was in explaining who the committee was, the makeup of the committee and that their recommendations came from a variety of different perspectives from the requestor and media side. If a recommendation comes out of the committee then just about every stakeholder on the issue has come to a consensus, and that was helpful.

Third Agenda Item – Membership Update

Co-Chair Smith said that they have had some members depart and handed it over to **Mr. Pitcher**. **Mr. Pitcher** said they were still trying to fill the vacancy related to publisher as well as a statutory spot for someone with information technology expertise. He said they have 9 of 11 spots filled now.

Fourth Agenda Item – Discussion of form letter for legislature

Chair Fisher discussed their plan to have a form letter that they submit to every bill that has an open government impact statement discussing a boilerplate perspective from the committee about what kinds of things they could consider when thinking about whether to pass a bill that is going to create a new exemption.

Co-Chair Smith said that the number one thing they talked about was whether the legislature can confirm that a new exemption isn't one already covered by an existing exemption.

Chair Fisher said if it is a new exemption is it absolutely necessary?

Mr. Njus said that he would like to have language that talks about the value of transparency and transparent government. He also suggested that a public interest balancing test should be included for all exemptions.

Chair Fisher said he would like to add a link back to a list of existing exemptions. **Co-Chair Smith** said DOJ has a helpful searchable database of exemptions.

Mr. Pitcher said that he could include a hyperlink more prominently displayed on the website to the last three reports of the committee.

Mr. Miles said he would not assume that the Legislative Counsel knows about public records exemptions as they have one public records attorney. There are 20 attorneys who are drafting bills, and the public records exemptions would be attached to other bills. He said if they want this to get used, they should make it less like a letter and more like a one-pager where you have a bold heading with a main statement and maybe a small descriptive paragraph. He said they need something they can look at with a glance. He said anything other than that would be a difficult task for an overworked attorney on a short timeline who is drafting hundreds of bills.

Chair Fisher agreed that it should be succinct and easy to understand as opposed to a wordy letter. He and **Co-Chair Smith** will draft a form document for review at the next meeting.

Fifth agenda item – Mental health and counseling records

Ms. Cureton Cook wanted to talk about ORS 675.583, duty to report evidence of impairment or unprofessional or prohibited conduct. She thought it was strange that those two were lumped together. She said the public has a right to know if social workers are engaging in unprofessional conduct and that should be separate from health information related to impairment.

Co-Chair Smith said that there were a couple of these that veered into categories the committee looked at previously that were related to disciplinary proceedings from licensing agencies. He said they might carve some of those out as disciplinary proceedings to be treated differently than the rest.

Mr. Pitcher said he thought this part is creating a professional obligation for social workers to report misconduct to the board, which becomes confidential.

Mr. Miles said that there's a balance between protection of whistleblowers and to encourage social workers to report. He strongly believes in protecting whistleblowers but not at the expense of allowing bad conduct to continue.

Ms. Cureton Cook said her concern is also in the exemption for reports coming into the state lawyers assistance committee, where it lumps in a mental health issue with other conduct.

Co-Chair Smith said that the state lawyers assistance committee is a referral program for lawyers who have mental health or substance use issues that are impacting their practice. He

said that the misconduct is rooted in the behavioral health or substance use issues that the practitioner is experiencing.

Chair Fisher said his question is if there is a separate piece where disciplinary action is done that would be made public. So a mandatory report is confidential, but that triggers an investigation and when the investigation is complete it is subject to different public records access.

Co-Chair Smith said this would be a good item for a subcommittee to do a deep dive into.

Mr. Miles said he thought there was a big difference in a person who has been drinking too much and coming to work drunk versus someone pursuing sexual relations with their clients, which is misconduct as opposed to impairment. He agreed that the two concepts should be treated differently.

Chair Fisher brought up ORS 426.160, the information related to commitment proceedings, and ORS 426.370, withholding information obtained in certain commitment investigations. He said the way that records can be released in each circumstance seems contradictory.

Co-Chair Smith said that ORS 426.370 seems to be related to information that is not submitted to the court but obtained in the investigation. It would be confidential because it's part of a mental health assessment. ORS 426.160 covers anything used in court but anything that the county mental health official obtains but is not submitted to the court is confidential.

Chair Fisher said in that case it didn't seem contradictory. He also said that since many of them seem duplicative, he wanted to know if they could be combined into a broader exemption related to health professional and client privilege.

Mr. Pitcher said it was a weird area of law because ORS 192.359A is the catchall exemption that deals with privileged information. They all have a certain meaning in a legal context.

Mr. Miles said that this was talking about redoing the statutory scheme and there are tradeoffs involved. He said he did want to see the language standardized.

Co-Chair Smith's subcommittee will look into the issue.

Sixth Agenda Item – Planning for next report to the legislature

Chair Fisher said they could have a draft ready to review at the March meeting unless they want to make changes and would need an April meeting.

Mr. Miles said he was in favor of getting a general direction in January and having an additional meeting in April if there are substantive changes. The committee will work on a plan at the January meeting.

Sixth Agenda Item – Any future business

Chair Fisher asked how the committee would like to review future exemptions. **Ms. Cureton Cook** suggested that they should be emailed out. **Chair Fisher** suggested that people should talk to the co-chairs a week in advance of the meeting with any proposed agenda items.

Adjournment

January 21, 2026
Location: WebEx
Sunshine Committee Members

Charlie Fisher, OSPIRG State Director / Co-chair
Morgan Smith, Polk County Counsel / Co-chair
Cameron Miles, Government Accountability Attorney, Governor’s Office
Elliot Njus, Editor, The Oregonian
Emily Cureton Cook, OPB Bend Bureau Chief
Stephanie Clark, State Archivist
Leslie Wu, Policy Advisor, Office of Attorney General Dan Rayfield
Alex Downing, City Recorder, City of Corvallis
Mark Landauer, Lobbyist, Special Districts Association of Oregon
Representative Kim Wallan (ex officio)

Guests

Daivd Pitcher, Public Records Counsel, Department of Justice
Sam Dupree, Oregon Judicial Department
Glenda Scherer
Richard Coe

Agenda

AUDIO STREAM 0:00:00-0.7

First Agenda Item: Special Projects Subcommittee Update

Co-Chair Smith said the subcommittee was not able to meet. He will send out a Google scheduling poll for availability and urged members to check their spam folders so they didn’t miss it and could attend. **Chair Fisher** said that the efficient functioning of this committee depends on the work of subcommittees so if you are on one try to participate as much as possible.

Second Agenda Item: Draft Letter for Legislature

Chair Fisher said that they wanted to be able to submit a draft letter or as **Mr. Miles** had rightly suggested, a one pager that they can submit to all bills that have an open government impact statement because many legislators don’t even know what exists. This would also provide the committee’s general perspective on bills that have public records exemptions and would provide a boilerplate on what to consider. **Co-Chair Smith** and himself had put together a rough draft. **Chair Fisher** opened the floor for feedback.

Mr. Landauer said he quickly perused the letter and was curious who was responsible for issuing this every time a public records exemption gets hidden in a 45-page bill. Timelines will be extremely short in the upcoming short session. Once a bill is heard, there are only 24 hours to get the testimony submitted onto the record.

Chair Fisher said it would be a matter of what are the bills that have an open government impact statement and submitting the form letter as testimony on the record.

Mr. Pitcher said it would be a lot to have a system to track bills to happen in a short timeline but it was doable and he would look into it.

Chair Fisher said he is happy to work with him to set up a system.

Mr. Landauer said that typically they get a bill stack of around 300 bills in a session. Then they are all formally introduced, sent to the president, then the house speaker's desk, then referred to committee. He said Tuesday would be the first real live day for hearings.

Ms. Downing suggested that they move the last paragraph about existing exemptions under the first bolded heading. She thinks it's more likely to be read higher up in the material.

Mr. Miles said that the term "Oregon Laws" under the "please consider" paragraph may have been an inadvertent inclusion.

Mr. Landauer asked whether there was any utility in adding to the letter a paragraph suggesting that any future exemptions be put into ORS 192 rather than burying it elsewhere in the statute. It seemed to him that 750 exemptions are scattered across the statute and it would be good to have them more understandable and accessible.

Mr. Miles said that there are two sides to that. There is a public records perspective and the legislative perspective. If it's not confidential, then he agreed that it should be compiled. He said there were pluses and minuses on both sides. **Mr. Miles** said he didn't think it was workable to catalogue exemptions in 192. You always have to worry about cross references when drafting and there could be hundreds of different sections that apply to public records.

Chair Fisher said he understood the perspective of being cumbersome for the drafter but asked whether there was any other reason why it would be a bad idea.

Mr. Miles said that section would be modified by every bill and any time there was a renumbering it would be huge. The workaround was they required DOJ to keep a list of exemptions. There's a place to modify it without changing statutes.

Mr. Landauer said he didn't feel there was enough public awareness about the DOJ database of exemptions and asked about including a link on the committee website.

Mr. Pitcher said it was on those sites.

Mr. Miles said that if records are required to be confidential, the exemption needs to be in the statute, but if it's simply a protection from public records requests then it can be in the public records section.

Representative Wallan said that they could direct Legislative Counsel to issue that letter to anyone who needs to have a bill drafted. She said it might have a different flavor if it was coming from lawyers rather than the committee.

Mr. Landauer said it would seem that the legislature would have to take some proactive stance in order for this to be effectuated.

Since the committee only had technical suggestions, **Chair Fisher** suggested giving the letter to **Mr. Pitcher** to submit.

Third Agenda Item – Discussion of bi-annual report process

Chair Fisher said the report is due May 1. They have one meeting to go before the deadline so they need to have a close to final draft to review at the final meeting in March. Co-Chair Smith volunteered to write the report.

Fourth Agenda Item – Public Comment

Ms. Scherer provided public comment. She also spoke at the July 26, 2023 meeting. She asked the committee to consider how public records in Oregon's 197 public schools are handled and what remedies are available to the public when a request is denied, ignored or has a high cost attached to it. She said the public needs to have the same ability to access public records in public schools as they do in state agencies. She recommended that schools and cities too are moved under the public records advocate jurisdiction. She submitted a public

records request to the Gladstone School District at the beginning of January for a list of their employees, wages and benefits, and received a reply saying it would cost \$120, which she said seemed high. Community members pooled together and paid it. A friend in another school district submitted another request and has not received a response. She urged the committee to take steps to bring Oregon public schools and cities under the jurisdiction of the Oregon Public Records Advocate.

Fourth Agenda Item – Discussion of process for new bills in short session

Chair Fisher said that in the past they have had a smaller subcommittee review the bills that had open government impact statements, identified the ones that had public records related to topics they already made recommendations on, and within that smaller subset, they selected which bills they wanted to provide more substantive feedback on. Then they provided it as testimony on behalf of the full committee with signoff from the subcommittee. He said the limiting factor is capacity.

Co-Chair Smith said it would be hard to do it in the short session when the turnaround is so fast. The form letter is a good first step and they can go from there into a longer session.

Chair Fisher said the compromise is the form letter that has a link to all of their recommendations. Committee members agreed to use the letter instead of the other process.

Fifth agenda item – Discussion of Correctional Institution Exemptions

Co-Chair Smith said he doesn't have any issue with the pre-sentence reports. It seems to him that the sole purpose is to inform the courts on sentencing parameters and they are not used often now that the bulk of sentencing is done on grid block formats. They're sometimes used by local community corrections. The sole purpose is to inform the court and he didn't think that was something that there's a lot of public interest in. Regarding the interstate compact statute, he didn't think there was much that Oregon had any say in.

Chair Fisher said his question is when it says information that would adversely affect personal privacy rights or proprietary interests, what does that mean?

Co-Chair Smith said it might mean something to another state. It relates to the portability of folks under supervision to move from one state to another.

Chair Fisher said it would be hard to make a recommendation if they don't know what the actual rules are that the interstate commission has.

Mr. Miles said that if someone is on probation who has moved to another state, we don't have authority over them. A lot of the information is about the individual and how they're being supervised. A lot of times it is for the protection of the individual because they're going to have to share a lot of private information to get that transfer.

Co-Chair Smith said the next exemption to cover was ORS 192.355(5). He doesn't see a big policy concern with that exemption because it has a public interest balancing test.

Chair Fisher said some of them seem to overlap.

Mr. Miles said they're separate because they're separate departments.

The committee did not make any recommendations on those four exemptions.

Adjournment

March 18, 2026
Location: WebEx
Sunshine Committee Members

Charlie Fisher, OSPIRG State Director / Co-chair
Morgan Smith, Polk County Counsel / Co-chair
Cameron Miles, Government Accountability Attorney, Governor’s Office
Elliot Njus, Editor, The Oregonian
Leslie Wu, Policy Advisor, Office of Attorney General Dan Rayfield
Mark Landauer, Lobbyist, Special Districts Association of Oregon

Guests

Daivd Pitcher, Public Records Counsel, Department of Justice

Agenda

AUDIO STREAM 0:00:00-0.8

First Agenda Item: Approve Minutes

Ms. Wu moved to approve the minutes from the December 21 and January 21 meetings. **Co-Chair Smith** seconded. All were in favor 6-0.

Second Agenda Item: Special Projects Subcommittee Update

Co-Chair Smith said the subcommittee was not able to meet despite attempts to schedule a meeting via a Doodle poll. The subcommittee still has some mental health and substance abuse records to go over.

Third Agenda Item – Update on Letter to Legislature

Chair Fisher said the letter has been finalized and as far as he knows, submitted as testimony to every bill that had an open government impact statement. He has not had the time to go back and look at all those bills to see what had happened with them.
Mr. Pitcher said there were three or four bills that the letter went out with. He said there were some hurdles in the process and he needs to figure out a way to identify more quickly bills with open government impact statements. Some bills had hearings before they had the statement. The only bill he knew of that passed was related to gender affirming care. They expanded the existing conditional exemption for protections that would identify someone that provides gender affirming care and abortion services.
Co-Chair Fisher said that it does seem to be somewhat problematic that legislators could have a hearing without a government impact statement available regarding the implications of the bills that they’re passing. He said that is something they could talk to them about in June during their legislative days.

Fourth Agenda Item – Discussion of Bi-Annual Report Process

Co-Chair Smith said that the report was ready for comments. **Mr. Landauer** moved to adopt the report. **Mr. Miles** seconded the motion. **Co-Chair Smith** provided more commentary on the report. He said the committee didn’t have a lot of widgets that they produced in the last two years and didn’t go through a large number of statutes. That’s because a lot of bandwidth was taken up on figuring out SB 890 and they took some meeting time to figure out legislative changes for the committee. There was robust discussion but only recommendations for two of the statutes. He wasn’t sure if the committee wanted more information on the legislative outreach the committee has been doing in the report.

Mr. Landauer said he didn't mean to cut off discussion and meant the motion in jest. **Mr. Miles** said that generally you need a motion to have a discussion; they could have a discussion and then go forward with the motion.

Co-Chair Fisher said this prompted a couple of thoughts on how to present the committee's work in the most effective way. He thought the content was good. He wanted to see inclusion of how many total have been reviewed. **Mr. Pitcher** said he had a spreadsheet to help with counting that.

Mr. Njus said he recalled a bit of frustration voiced in previous iterations of the report, that new exemptions were being piled on faster than the committee could look at them, and he wondered if that might be something worth including again. He also thought that they could use language from their letter to legislators.

Ms. Wu suggested including more information on the legislative outreach work they have done and the fact that the letter exists.

Co-Chair Smith added on his list of changes to add the legislative advocacy letter as an exhibit and put a blurb in there about what they did.

Committee members discussed how to edit the document given quorum rules.

Mr. Miles said that if they are just making minor changes they could approve it with the understanding that there are going to be additions.

Co-Chair Smith moved to adopt the report subject to modifications on the following topics, which is to outline the total number of exemptions reviewed to date with the caveat of how many have been added since the inception of the Sunshine Committee, with some commentary regarding the ongoing increase of numbers, add some more information related to legislative advocacy and include as an exhibit their advocacy letter, and some information on SB 890 and how that got enacted.

Mr. Landauer seconded the motion. All were in favor. Motion passed 6-0.

Fourth Agenda Item – Discussion of Decedent and Survivor Exemption Summaries

Co-Chair Fisher said he only had a note on the public safety memorial board being able to determine if information is being kept confidential. He thought there should be some public accounting of why they made that decision and some sort of public interest balancing test.

Mr. Miles said the board offered a benefit for the death of a family member in public safety in the line of duty. He said he's a little more comfortable with that exemption. He agreed that as it was public funds, there should be some oversight.

Co-Chair Smith said the bulk of the board is all public safety professionals, so they're savvy to the world of the information they're receiving. He said he did think it was a little wonky to have the board itself decide what is and isn't confidential, but he thought the board itself would seem to know where to draw the line.

Mr. Njus said he was a little suspicious of any situation where there are just some people who decide and there's no clear check on that. He said he thinks it can create a situation where the board will decide in most cases that the information should be kept confidential.

Mr. Miles said he thinks the money comes from gifts but not actually necessarily state funds. He understands the concerns with the board's complete authority to decide confidentiality. He also said there could be a possibility for fraud.

Co-Chair Fisher thought they could make a recommendation to standardize it and require a public interest balancing test.

Co-Chair Smith said he was comfortable converting it to a public interest balancing test so they have to make the argument.

Mr. Landauer agreed that a public interest balancing test was a good idea and didn't understand the justification for doing it this way.

Co-Chair Smith made a motion that ORS 243.960 be modified as such that the existing exemption from public records is instead of being in the discretion of the board itself to be in a public interest balancing test so it will be conditionally exempt from the materials they've received.

Co-Chair Fisher introduced an amendment that all materials are conditionally exempt based on a public interest balancing test.

Mr. Miles said he was going back and forth on the issue based on the type of benefits they offer, like mortgage benefits, health and dental benefits, scholarships. He wasn't sure why it was the way it was.

Mr. Njus said in this case they could say that the legislature should examine whether an exemption is needed at all and if so apply a public interest balancing test.

Mr. Miles said that financial information and personal information is already exempt.

Mr. Landauer and **Co-Chair Fisher** suggested inviting someone from the board to talk to the committee about it. **Mr. Pitcher** will reach out.

Fifth agenda item – Discussion of Interpreter Information Exemption Summaries

Co-Chair Fisher said he didn't have any thoughts on this exemption and opened the floor.

Mr. Miles said there are court privileges and he is generally going to be against changing court privileges based on public records law.

Ms. Wu said they don't want to dissuade people from using the services of an interpreter in a court proceeding ever.

The committee did not make a recommendation on this exemption.

Sixth agenda item – Discussion of Whistleblower Exemption Summaries

Co-Chair Fisher said he had a question regarding why the state landscape architect board was included. **Mr. Miles** said he thought that one should be removed.

Ms. Wu said that to be consistent they should invite them to talk to the committee as well.

Mr. Miles said he is a registered architect in Arizona and being a lawyer is his second career. He guessed the issue was related to unlicensed practice.

Mr. Landauer suggested inviting someone from the landscape architect board and the public safety board to have a discussion with the committee. **Mr. Pitcher** will reach out.

Seventh agenda item – Further discussion or items

Co-Chair Fisher talked about items to discuss in the next meeting. They will not be holding one in April. He'll give an update on the legislative session and look at bills they submitted their form letter to. Then other agenda items included a potential presentation to the judiciary committee in June, what the process is to come up with a more formal proposal for legislative changes ahead of the next session, review the next set of exemptions, and hear from those two entities if they are able to come. **Co-Chair Fisher** also talked about holding another in-person meeting in September.

Ms. Wu said she was happy to host it again at the DOJ conference room in Salem. She said there is also a conference room at the Portland DOJ building. Committee members agreed to hold the in-person meeting in Portland.

Adjournment