

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