

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

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