

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