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Via Email

December 17, 2021

Public Records Advisory Council  
Legislative Subcommittee  
Chair Emily Harris  
emilyjourn@gmail.com

RE: Oregon Public Records Costs

Dear Chair Harris and subcommittee members:

The Reporters Committee for Freedom of the Press (“Reporters Committee”) appreciates the invitation to contribute to your discussion about the costs of producing public records. We welcome the Council’s attention to this issue because Oregon’s current approach to cost apportionment results in inconsistent application of the law to the detriment of the public and agencies alike.

Founded in 1970, the Reporters Committee is an unincorporated nonprofit association dedicated to safeguarding the right to a free press. Our fifty-year legacy of providing expert, non-partisan information and free legal services to journalists and news organizations has established the Reporters Committee as an authority on First Amendment freedoms, including access to public records. Our mission is to protect the right to gather and distribute the news; to enhance government accountability by ensuring access to public records, meetings and courtrooms; and to preserve the principles of free speech and unfettered press, as guaranteed by the First Amendment of the U.S. Constitution.

In early 2019, the Knight Foundation identified a critical resource gap for local newsgathering—lack of legal support--and made a transformational gift to the Reporters Committee to address this issue.<sup>1</sup> In turn, the Reporters Committee launched the [Local Legal Initiative](#) (LLI) with the intent to embed lawyers across the country to provide free, direct legal services to journalists and news organizations. After a highly competitive application process, the Reporters Committee selected Oregon, along with Pennsylvania, Tennessee, Oklahoma, and Colorado, as its inaugural cohort. Oregon’s application stood out because of the staunch public support for government transparency exemplified by the persistence of Oregon’s Public Records Advisory Council (PRAC) and Public Records Advocate (PRA) in the face of significant institutional challenges.<sup>2</sup>

<sup>1</sup> Topper, Jenn, *Reporters Committee for Freedom of the Press receives \$10 million investment from the Knight Foundation*, (Feb. 19, 2019), <https://perma.cc/LW9S-XNRH>.

<sup>2</sup> See, e.g., Stites, Sam, *Oregon Legislature fortifies independence for state public records advocate*, Oregon Public Broadcasting, (Jun. 23, 2021), <https://perma.cc/QF6F-5FNJ>.

The strength of state public records laws — and the extent to which they provide affordable access — varies widely. At your November 12, 2021 meeting, this Committee identified the need for a nationwide survey of state laws to inform your legislative concepts, and noted several potential resources, including the Reporters Committee’s [Open Government Guide](#). Our guide provides a complete compendium of information on every state’s open records and open meetings laws. Each state’s law is arranged according to a standard outline with Sections I.D.(1-6) containing detailed descriptions of respective cost provisions. The guide also includes a digital tool, making it easy to compare laws in all fifty states. Comparisons of state public records laws regarding costs are included in the footnote below.<sup>3</sup>

Journalists and news organizations across the country frequently struggle with the high costs of public records, particularly when reporting investigative stories. Such costs are especially burdensome for journalists and other requesters in Oregon — so much so that excessive fees were cited in a [2019 report by the former Oregon Public Records Advocate](#) as “perhaps the single most pressing issue related to public records requests in the state.”

The 2019 PRA report also included a brief analysis of various states’ cost provisions and concluded that “Oregon’s law allows for particularly onerous fees.” The report identified other promising legislative arrangements for apportioning costs between the government and requesters. For example, some states place a ceiling on the total amount of fees that may be charged to a requester.<sup>4</sup> Other states do not allow agencies to charge for time spent determining whether the records are exempt from disclosure.<sup>5</sup> At the federal level, the Freedom of Information Act (“FOIA”) specifically defines what fees may be assessed. Crucially, representatives of the news media may only be charged duplication fees under FOIA,<sup>6</sup> and all fees must be waived if the information “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”<sup>7</sup>

Journalists and news organizations are unable to tell important stories about their local communities — stories about schools, police, and the environment — if they are priced out of accessing information they need to report them. One particular concern is that Oregon has a discretionary standard regarding when to grant or deny a request for a fee waiver or reduction resulting in highly variable costs statewide for substantially

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<sup>3</sup> [Section I.D.\(1\) Levels or limitations on Fees](#), [Section I.D.\(2\) Particular Fee Specifications or Provisions](#), [Section I.D.\(3\) Provisions for Fee Waivers](#), [Section I.D.\(4\) Requirements or Prohibitions Regarding Advance Payment](#), [Section I.D.\(5\) Prohibitive Fees Designed to Discourage Requesters](#), [Section I.D.\(6\) Fees for Electronic Records](#).

<sup>4</sup> See, e.g., Colorado, Louisiana, Maine, New Jersey, New Mexico, North Dakota, Oklahoma, and Rhode Island.

<sup>5</sup> See, e.g., Alaska, California, Connecticut, Idaho, Indiana, Kentucky, Ohio, South Carolina, and West Virginia.

<sup>6</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II)

<sup>7</sup> 5 U.S.C. § 552(a)(4)(A)(iii)

similar requests.<sup>8</sup> And once a fee reduction request has been granted, for non-state agencies there is no clear metric for determining what the amount or rate of reduction should be.<sup>9</sup>

Even in cases where a District Attorney independently determines that release of the public record is in the public interest, agencies still retain the discretion to impose costs. This can result in successful petitioners either paying high costs, being unable to access records ordered disclosed, or incurring delays as they once again petition the District Attorney for relief. An example from Eugene Weekly and University of Oregon's Catalyst Journalism Project is illustrative.

[Catalyst](#) is a teaching, research, and service initiative designed to illuminate complex issues facing our community by combining investigative reporting and solutions journalism. Catalyst partnered with Eugene Weekly to investigate the death of a man experiencing a mental health crisis whose wife had called dispatch asking for help accessing treatment.<sup>10</sup> Multiple police officers from the Eugene Police Department responded and employed force measures against the man which was captured via body camera videos. The City of Eugene denied a request for the videos, and Eugene Weekly petitioned to the Lane County District Attorney for access. The District Attorney issued detailed findings confirming the significant public interest in disclosure of the videos and ordered the agency to release them.<sup>11</sup> Notwithstanding a finding of public interest in the body camera videos, the City of Eugene denied Eugene Weekly's request for a complete fee waiver and instead granted a modest discount. Consequently, Eugene Weekly and Catalyst were charged over \$600 for approximately 1.5 hours of video from a single officer.

The Reporters Committee intends our comments to highlight why costs of public records matter to those who act on behalf of the public through their reporting. We appreciate the Council prioritizing this matter for the 2023 session. Please do not hesitate to contact Ellen Osoinach, Oregon's LLI staff attorney, with any questions at [eosoinach@rcfp.org](mailto:eosoinach@rcfp.org).

Sincerely,

The Reporters Committee for Freedom of the Press

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<sup>8</sup> See, e.g., *Final Report of Ginger McCall Oregon Public Records Advocate*, (Oct. 2019), <https://perma.cc/5RKP-C6NQ>.

<sup>9</sup> ORS 192.324(5)

<sup>10</sup> Tabrizian, Ardeshir, *A Hidden Death*, Eugene Weekly, (July 22, 2021), <https://perma.cc/5F72-QBT4>.

<sup>11</sup> Mortensen, Camilla, *DA Orders Release of Body Cam Footage*, Eugene Weekly, (Aug. 12, 2021), <https://perma.cc/C8L2-SAY6>.