

Final Report of Ginger McCall Oregon Public Records Advocate

October 2019



Introduction

In 2009, after graduating from law school and spending the summer studying for the Bar Exam, I was fortunate enough to be offered a position at the Electronic Privacy Information Center (EPIC), a non-profit, non-partisan privacy rights organization in Washington, D.C. One of the first projects I worked on at EPIC was Freedom of Information Act (FOIA) lawsuit for documents related to the Transportation Security Administration's airport body scanners. As a result of that lawsuit, EPIC obtained several hundred pages of government documents, which demonstrated both the questionable effectiveness and unquestionable invasiveness of the machines. Armed with those government documents, EPIC was able to form a diverse coalition of public policy advocates from across the political spectrum. This coalition joined together to fight a successful campaign to force the Transportation Security Administration to modify the machines and adopt privacy protections. The machines that travelers see today in U.S. airports, which show only a stick figure outline of the person being scanned, are a direct result of the FOIA documents EPIC was able to obtain.

This is the promise of public records requests. Public records requests can launch effective campaigns to change law and policy. Public records requests can lead to congressional hearings. And public records requests can lead to accountability for even the most powerful elected officials. (For a sample of recent Oregon stories made possible by public records, please see: <https://sos.oregon.gov/public-records/Pages/sunshine-week.aspx>)

We are taught in civics class that it is important to participate in our democracy. We are encouraged to vote - to make choices about ballot referendums, elected officials, and pieces of proposed legislation. But the truth is that citizens cannot engage meaningfully with government or make educated choices about their democracy if they do not know what their government is doing. And public records are key to gaining that knowledge.

Public records are often also essential for members of the public to vindicate their own rights. Public records tell the story of some of the most difficult events in a person's life: the death of a child in a state-supervised childcare setting, abuse perpetrated by a teacher, a crime committed against an individual. Public records allow members of the public to more fully understand their own stories in order to begin the process of recovery.

The great majority of government records officers believe in the importance of public records law and work hard every day to fulfill the law's mandates. But unfortunately public records requests are still sometimes stymied by high fees, inadequate government resources and staffing, lack of leadership buy-in, and the asymmetry of resources between citizens who seek information and the government bodies who deny it.

In the year and a half that I have occupied this unique position as Oregon's first Public Records Advocate, I have met with hundreds of people across the state of Oregon, with diverse backgrounds and interests- from tiny special district offices to large state agencies, staff at scrappy rural newspapers and well-funded national advocacy organizations. This position has required me to use both my knowledge of federal and state public records laws and my experience as both a requester and government employee. I have also reviewed and analyzed the

Public Records Advisory Council’s 2019 Public Records Survey – Oregon’s first ever statewide survey of public records processes. These anecdotes, experiences, and data have informed my tenure as Public Records Advocate and it is my hope that they have allowed me to craft nuanced policy proposals in this final report.

It is also my hope that the Public Records Advisory Council will make use of its now permanent tenure by continuing to have robust discussions of public records issues and make ambitious proposals to improve the law. Hopefully this final report will help to inform those policy proposals and inspire future reforms.

Fees

Perhaps the single most pressing issue related to public records requests in the state of Oregon is public records fees. High fees are often a barrier to entry for public records requesters – even for professional news media requesters.

Prior to the Public Records Advisory Council’s 2019 Public Records Survey,¹ there was limited data available regarding the collection of public records fees in the state of Oregon. However, anecdotal stories regarding public records fees are frequently in the news² and a substantial number of the requests for assistance received by the Office of the Public Records Advocate in the past year and a half have been related to fees.³ This topic was covered substantially by the Advocate in the 2018 Biennial Report of the Public Records Advisory Council.⁴

The discretionary nature of Oregon’s public records fee provision is the root cause of much of the confusion and animosity around fees. ORS 192.324(4)(a) states that “[t]he public body may establish fees reasonably calculated to reimburse the public body for the public body’s actual cost of making public records available, including costs for summarizing, compiling or tailoring the public records, either in organization or media, to meet the request.” This provision is discretionary enough to allow for vastly different fees to be assessed. Indeed, the Public Records Advisory Council’s 2019 Public Records Survey revealed vast discrepancies in fee collection across public bodies.⁵ Some public bodies collected tens of thousands of dollars in fees, while others collected only negligible amount.⁶

¹ 2019 *Public Records Survey*, Oregon Public Records Advisory Council, available at: <https://sos.oregon.gov/public-records/Documents/2019-PRAC-public-body-survey-results.xlsx>.

² See e.g. *High Fees For Public Records Requests Can Keep You in the Dark, Advocates Say*, Keaton Thomas, KATU News, Sept. 23, 2019, available at: <https://katu.com/news/following-the-money/high-fees-for-public-records-can-keep-you-in-the-dark-advocates-say>; *Lawsuit Against City of Portland Challenges the High Cost of Public Records*, Rachel Monahan, Willamette Week, Sept. 26, 2018, available at: <https://www.wweek.com/news/city/2018/09/26/lawsuit-against-city-of-portland-challenges-the-high-cost-of-public-records/>.

³ 2018 Biennial Report of the Public Records Advisory Council, Appendix D, November 2018, available at: <https://sos.oregon.gov/public-records/Documents/PRAC-Biennial-Report-with-Appendices-nov-2018.pdf>

⁴ 2018 Biennial Report of the Public Records Advisory Council, November 2018, available at: <https://sos.oregon.gov/public-records/Documents/PRAC-Biennial-Report-with-Appendices-nov-2018.pdf>

⁵ *Supra* note 1.

⁶ *Id.*

The fees allowable under ORS 192.324 often make it impossibly expensive for requesters to obtain the records they need. Members of the public cannot afford to pay hundreds or even thousands of dollars, nor can media representatives in today's economically-constrained media atmosphere. Worse, ORS 192.324(4)(b) allows for agencies to collect fees for the "cost of time spent by an attorney for the public body in reviewing the public records, redacting material from the public records or segregating the public records into exempt and nonexempt records." Requesters have reported to the Advocate that agencies sometimes bill \$180/hour for time that their Oregon Department of Justice attorneys spend reviewing records and applying redactions. This amount is unaffordable for both members of the public and media requesters. Also, some public bodies have begun to charge flat rate fees, often based on internal "average" cost calculations which are not always transparent to requesters.⁷ These standard fees are then charged regardless of the actual cost of processing a particular request. And some municipalities charge requesters not only for the salary of the relevant public records processing employee, but also up to 42% overhead.⁸

The Statewide Standardized Fee Schedule by the Department of Administrative Services (DAS)⁹ is an admirable effort to reduce the ambiguity and discretionary nature of fees charged for public records requests. However, this policy still allows agencies to charge attorney hourly rates for attorney time spent reviewing documents and it still allows for relatively high hourly fees for other personnel.¹⁰ Additionally, this policy only applies to state agencies, not local entities.¹¹ And, because it is simply a policy, it could be rescinded by any future administration and does not have the permanence of an actual statutory change.

A survey of federal government and other state public records laws reveals that Oregon's law allows for particularly onerous fees. The Federal Freedom of Information Act has three fee categories.¹² Under the FOIA, only commercial requesters would pay search, review and duplication fees¹³ – what everyone pays under Oregon's law. Under FOIA, news media, educational, and non-commercial scientific organizations only pay duplication fees.¹⁴ And all other requesters pay only search and duplication fees.¹⁵ Federal agencies also often charge lower hourly search rates than the DAS Statewide Standardized Fee Schedule allows, despite the

⁷ See e.g. *Lawsuit Against City of Portland Challenges the High Cost of Public Records*, Rachel Monahan, Willamette Week, Sept. 26, 2018, available at: <https://www.wweek.com/news/city/2018/09/26/lawsuit-against-city-of-portland-challenges-the-high-cost-of-public-records/>; *On Hold: Crime Victims, Public Wait 6 Weeks or More for Portland Police Reports*, Bethany Barnes, The Oregonian, Oct. 21, 2018, available at: <https://www.oregonlive.com/expo/news/erry-2018/10/cd13a8f84c9704/on-hold-crime-victims-public-w.html>.

⁸ City of Portland Standard Fee Schedule for Public Records Requests, available at: <https://www.portlandoregon.gov/citycode/article/185827>.

⁹ Oregon Department of Administrative Services, Statewide Standardized Fee Schedule, February 2017, available at: <https://www.oregon.gov/OBMI/docs/DAS-statewide-policy-on-public-records-requests.pdf>.

¹⁰ *Id.*

¹¹ *Id.*

¹² 5 U.S.C. § 552(a)(4)(A)(ii)(II).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

relatively higher salary rates of federal officials.¹⁶ For example, the United States Department of Homeland Security charges \$16/hour for clerical employees and \$28/hour for professional employees,¹⁷ as opposed to Oregon's \$25/hour for and \$75/hour respectively.¹⁸ States such as Colorado, Louisiana, Maine, New Jersey, New Mexico, North Dakota, Oklahoma, and Rhode Island all have strict limits on fees, either low hourly rates (such as Maine's \$15/hour) or low per page rates (such as New Jersey's 5 cents per page).¹⁹ Many other states, including Alaska, California, Connecticut, Idaho, Indiana, Kentucky, Ohio, South Carolina, and West Virginia do not allow agencies to charge for time spent reviewing documents, which often accounts for a large portion of the fees charged by Oregon public bodies.²⁰ Others, including the FOIA and Alaska's public records law, include automatic fee waivers for some processing time.²¹

Additionally, Oregon's fee waiver/reduction provision is highly discretionary, which was also illustrated in the variable results of the Public Records Advisory Council's 2019 Public Records Survey. ORS 192.324(5) states "The custodian of a public record may furnish copies without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public." There is no clear statewide standard regarding when to grant or deny a request for fee waiver or reduction. Some public bodies, including many state agencies, routinely grant waivers or reductions to media requesters; others have a blanket policy of never or rarely granting fee waivers or reductions in any circumstance.²² The DAS Statewide Standardized fee schedule did substantially clarify requirements for fee reductions or waivers, but even this policy allows a fair amount of discretion regarding when to grant a waiver or reduction and it also still only applies to state agencies.²³

Even if a fee reduction request is granted under ORS 192, for non-state agencies there is no clear standard for what the amount or rate of reduction should be. This ambiguity leaves requesters uncertain of what to expect, which often increases animosity between government and requester. It also results in media requesters being assessed high fees, even for requests that will clearly forward legitimate public interests.

The FOIA's categorical fee-related provisions provide considerably more clarity. News media, educational, and non-commercial scientific organizations pay only duplication fees. Federal case law, regulations, and the statutory text of the FOIA all provide clarity regarding the definitions of

¹⁶ See *Federal Employee Salaries*, Zip Recruiter, October 1, 2019, <https://www.ziprecruiter.com/Salaries/Federal-Employee-Salary>; *How Much Do State Employees in Oregon Earn? Check Our Database*, Ted Sickinger, The Oregonian, Sept. 1, 2018, https://www.oregonlive.com/politics/2018/09/post_203.html

¹⁷ 6 CFR § 5.11, available at: <https://www.law.cornell.edu/cfr/text/6/5.11>

¹⁸ Supra note 9.

¹⁹ *Open Government Guide*, Reporters Committee for Freedom of the Press, <https://www.rcfp.org/open-government-guide/>

²⁰ *Id.*

²¹ *Id.* and supra note 12.

²² See e.g. Point 4 of the City of Molalla's Public Records Policy, available at: https://www.cityofmolalla.com/sites/default/files/fileattachments/city_recorder/page/484/molalla_-_public_records_request_form_2018_00611195xb8084.pdf.

²³ See supra note 9.

news media, educational, and non-commercial scientific organizations. Other states, including Idaho, Illinois, Connecticut, Oklahoma, and Texas also follow FOIA's example and have less discretionary fee waiver provisions.²⁴ Additionally, many states, including Connecticut, Louisiana, Maine, and Maryland also encourage waiver for indigent requesters.²⁵

At the same time, public bodies have legitimate concerns about overly broad or frequent requests. A small number of requesters can demand an outsize amount of government resources with "all records related to" or "all communications related to" requests. Allowing a single requester to tie up a large amount of government time is harmful not just for the government and the taxpayers, but also for all other requesters who are forced to wait in the queue behind such an onerous request. Often fees are the only disincentive for overly broad or frequent requests. As such, any fee policy ought to be designed to incentivize narrow requests. Many fee policies already do this. The FOIA, for example, allows for the first two hours or 100 pages of any public records request to be free.²⁶ Alaska's public records law allows for the first five hours of public records request processing time per calendar month to be free of charge.²⁷

In light of these facts, Oregon should adopt a policy that takes into account both the transparency goals of the law and the reality of limited government resources. The best approach would be to set up categories of requesters, as FOIA does, allowing agencies to charge public interest requesters (news media, educational requesters, and non-profit organizations) only duplication fees and all other non-commercial requesters only search and duplication fees. However, given that state and local agencies often operate with less resources than federal agencies, Oregon's law should adopt an approach which incentivizes narrowed requests, even for news media and public interest requesters. In light of these concerns, the law could provide that these categorical discounts apply for only the first 500 pages or 5 hours of time per month. This compromise should allay concerns from smaller, more financially-limited government offices and would properly incentivize narrow requests.

This categorical approach to fees should be paired with low hourly or per page costs for requests – no higher than Maine's \$15/hour or New Jersey's 5 cents per page.²⁸ This, again, is a very clear policy. It is easy for public bodies to apply and easy for requesters to understand. It would also incentivize narrow requests.

Also, Oregon's law should be modified to forbid public bodies from charging attorney hourly rates for public records request processing. Most ordinary citizens, and even most news media organizations, cannot afford to pay \$180/hour for attorney time. It is unlikely that even the elected officials who drafted this statute and the public officials who apply it could afford those kinds of costs. Charging for attorney time is a clear barrier to transparency and is a relative outlier among state and federal public records laws. This should be abolished in law and practice.

²⁴ See supra note 19.

²⁵ *Id.*

²⁶ 5 U.S.C. § 552(a)(4)(A)(iv)(II).

²⁷ See supra note 19.

²⁸ *Id.*

Additionally, under the Federal Privacy Act,²⁹ any U.S. citizen has a right to access most records related to themselves and may only be charged duplication fees for that access. Oregon's law should allow for similarly low cost access to anyone who is making a first party request for records related to themselves or a deceased family member, especially crime victims and families of deceased persons whose cases are the subject of government investigation. Requiring victims to pay exorbitant fees for these kinds of records is a clear and uncompassionate miscarriage of justice.³⁰ Easy, inexpensive access to records about oneself is a core component of Fair Information Practices and should be included in Oregon's law.³¹

Finally, as discussed in the 2018 Biennial Report of the Public Records Advisory Council,³² Oregon's law does not provide an intermediate appeal option for requesters who feel that the fees they are being charged are unreasonable. ORS 192.324(6) states “[a] requester who believes that there has been an unreasonable denial of a fee waiver or fee reduction may petition the Attorney General or the district attorney.” There is no similar authority for the Attorney General or district attorney to review the reasonableness of fees assessed – including the reasonableness of public body flat rate fees, time estimates, or hourly rates. Nor can the Advocate intervene unless the matter involves a state agency or the parties both agree to facilitated dispute resolution. Often, the only recourse for a requester who feels he/she is being charged an unreasonable amount of fees is to go to court.³³ Most requesters, though, cannot afford to take a public body to court to challenge fee reasonableness. This creates a noticeable loophole in the law, allowing public bodies to charge unreasonable fees, leaving the requester no option but to give up on the request. This problem could be remedied by empowering the Attorney General or district attorney to review fee reasonableness under ORS 192.324(6).

Public Records Request Tracking & Investment

One of the takeaways from the Public Records Advisory Council's 2019 Public Records Survey was that many public bodies do not have a tool to track public records requests or gather even the most basic data about public records request processing.

Recently, the Department of Administrative Services (DAS) has been working to procure a public records tracking tool. This proposal is worthy of budgetary support and should be prioritized. It would be advantageous if DAS could procure a public records tracking tool then offer it at a reduced cost to state and local public bodies, similar to what the Oregon State Archives does with its electronic records management system (Oregon Records Management

²⁹ 5 U.S. Code § 552a(f)(5).

³⁰ For two particularly heartbreaking examples, see *Public Comment Submitted to the Public Records Advisory Council*, Alexander W. Pletch, Rizk Law, Sept. 20, 2019, available at: <https://sos.oregon.gov/public-records/Documents/rizk-law-comments-september-2019.pdf>

³¹ *Code of Fair Information Practices*, Electronic Privacy Information Center, https://epic.org/privacy/consumer/code_fair_info.html; *Fair Information Practices*, International Association of Privacy Professionals, <https://iapp.org/resources/article/fair-information-practices/>

³² *Supra* note 4.

³³ See *In Defense of Animals v. OHSU*, 199 Or App 160, 182-83, 112 P3d 336 (2005).

Solution).³⁴ DAS should also follow the Archives example by providing assistance and training for public bodies who buy the public records tracking system.

Some public records tracking tools also have a public-facing portal submission component. Any tracking technology that also has a public facing submission portal should be built with meaningful input from the requester community, including a diverse cross-section of members of the public, advocacy organizations, and news media. Developers of public records portals should follow a “build with, not for” model³⁵ and should design technologies that are accessible to a diverse population. Public records portals should never be used as a way to create additional barriers – for instance, by requiring news media or members of the public with simple telephonic requests for information to instead submit requests through a portal or requiring all requesters to enter credit card information before submitting a public records request.

Public records tracking and submission tools are only one piece of a much-needed investment in public records. In my travels around the state of Oregon, I have spoken to hundreds of records officers, public information officers, and other government officials, and the vast majority of them care deeply about public records and are working hard every day to provide good customer service. But many of them also reported that their offices are understaffed, that they face increasing numbers of broad requests, and that they don’t have regular access to technologies that would allow them to search electronic records efficiently.

It was heartening to see that Governor Brown and the Oregon Department of Human Services (DHS) have committed to making a substantial investment in public records processing at DHS.³⁶ Other agencies should follow suit with a full review of their public records programs, and corresponding reforms. This should be done in collaboration with records retention experts at the State Archives, IT experts familiar with agency information systems, and management experts who can look at staffing levels and workflows. Where appropriate, agency leadership and the legislature should invest additional resources in agency public records programs, particularly in staffing and technologies that allow for more efficient and comprehensive searches of electronic records.

Elected Officials

This problem was discussed previously in the 2018 Biennial Report of the Public Records Advisory Council,³⁷ but it bears repeating here, because some have argued that concerns about elected officials and public records are overblown.

³⁴ *Oregon Records Management Solution*, Oregon State Archives, <https://sos.oregon.gov/archives/Pages/orms.aspx>.

³⁵ *Building Technology With, Not For Communities*, Laurenellen McCann, Medium, Mar. 30, 2015, available at: <https://medium.com/organizer-sandbox/building-technology-with-not-for-communities-an-engagement-guide-for-civic-tech-b8880982e65a>

³⁶ *The Cost to Comply with a Public Records Bill Quietly Drops to \$0. Will Lawmakers Act?*, Molly Young, The Oregonian, June 20, 2019, available at: <https://www.oregonlive.com/news/2019/06/the-cost-to-comply-with-a-public-records-bill-quietly-drops-to-0-will-lawmakers-act.html>

³⁷ *Supra* note 4.

First, despite the inclusion of elected officials as public bodies in Oregon’s public records law, there is no right to appeal elected officials’ decisions on public records disclosure to any authority other than a court.³⁸ In other words, if a records request is denied by an elected official, the only option that the requester has left is to take the matter to court. Most requesters lack the resources to vindicate their rights in court. This creates a lack of accountability around the decisions of elected officials as any disputes about the disclosure of public records in their possession can only be settled in court, which is an often prohibitively costly and time-consuming undertaking for most requesters.

As such, an intermediate appeal option should be created for records of elected officials. Some have argued that it would be awkward for one elected official to review another’s actions regarding public records, and this is true. But that awkwardness does not prohibit Oregon’s judges, who are also elected officials, from reviewing the public records decisions of other elected officials under the current model. Similarly, the elected Oregon Attorney General is responsible for reviewing the public records decisions of state agencies overseen by the Governor, another elected official. Also the Attorney General’s Department of Justice manages the awkward responsibility of both advising agencies about public records requests and also provide appeal review function on those very same public records requests. And in the Federal government, under the FOIA, administrative appeals of agency decisions are actually adjudicated by a separate agency office within the same agency that made the decision. Clearly, if the political will exists, it is possible to find a solution to this problem. While independence in state government is a challenge this Advocate is familiar with, it is not impossible to imagine that some kind of separate, independent, or even simply walled-off office can exist which can provide a reliable review of elected officials public records decisions.

Additionally, some have argued that review of an elected official’s public records decisions is not necessary because if they do not comply with public records law, elected officials will face consequences during the next election. However, this is only true if one assumes that all requesters have the ability to let the electorate know about an elected official’s poor public records performance. Elected officials are also unlikely to face negative electoral consequences if there are no actual challengers in the next election. In elections where one party is clearly dominant and there are no primary challenges, the probability of an elected official being voted out of office for wrongly denying public records requests is extremely low.

As noted in the 2018 Biennial Report of the Public Records Advisory Council,³⁹ the problems created by a lack of intermediate appeal rights are exacerbated by the habit of some elected officials who make liberal use of ORS 192.427, which allows an elected official to claim the right to withhold disclosure of documents not only in their own custody, but also documents in the custody of any other person “to which an elected official claims the right to withhold disclosure”. This provision invites abuse which, like other disclosure decisions made by an elected official, can only be reviewed by a court. Some have argued that fears regarding abuse of

³⁸ ORS 192.427.

³⁹ Supra note 4.

this provision are overblown. But the cover story from The Grants Pass Daily Courier on July 11, 2019 is an excellent illustration of this problem.⁴⁰

In his second year as Josephine County legal counsel in 2016, Wally Hicks handed the county Board of Commissioners a draft of a new public records policy that would significantly change the way the county handles records requests from the public.

Not only did the new policy direct that all but routine requests be routed to the legal counsel's office, it also effectively created a barrier unique in Oregon to citizens seeking records.

That's because the legal counsel in Josephine County is an elected position — the only one among Oregon's 36 counties — and under state law, the decision of an elected official to deny the release of records is appealable only to the courts.

Typically, when the public is denied records from local government, appeals can be made free of charge to the county district attorney, who is a state employee and by law must render a decision within a week. Appeals to the courts, however, are neither free nor quick, thus creating a barrier to public access.⁴¹

Though many of the public records being handled by Mr. Hicks are not his own records, under this ORS 192.427, he is claiming the right to withhold disclosure, which is then only reviewable by a court. According to the Courier, this has stymied local newspaper public records requests.

The board has denied multiple records requests over the last 18 months from the Daily Courier and one from the Illinois Valley News. None were appealed to the courts, and in the case of the Daily Courier, it was due to the cost involved.⁴²

Similarly overbroad applications of ORS 192.427 may be remedied by creating an intermediate review opportunity under ORS 192 and, additionally, by creating limits on what documents are considered to be in an elected official's custody and reasonable limits on what documents outside of the custody of an elected officials can be withheld in their name.

Independence of the Office of the Public Records Advocate

It is essential that the legislature adopt the Public Records Advisory Council's legislative proposal⁴³ for independence of the Office of the Public Records Advocate. The independence of this office is important in order to be able to propose ambitious reforms, engage in meaningful and trusted facilitated dispute resolution, and even offer credible training on public records. The Council's proposal contains several important provisions.

⁴⁰ *County's Public Records Policy Invites Abuse, State Advocate Says*, Shaun Hall, Grants Pass Daily Courier, July 11, 2019, available at http://www.thedailycourier.com/archives/story.html?i=s_52469

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Legislative Proposal on Independence*, Oregon Public Records Advisory Council, <https://sos.oregon.gov/public-records/Pages/advisory-council.aspx>

First, the proposed legislation states explicitly that the Office of the Public Records Advocate is independent. It also sets up a clear reporting structure for the Advocate, which will minimize potential future interference by elected officials. The Advocate will be selected by, report to, and be removable for cause only by the Council. This minimizes the potential for political interference by any one elected official, since the Advocate will be reporting to the entire Council.

Additionally, the Council will be able to ask legislators to introduce proposed legislation on its behalf, instead of proposed legislation going through the Governor's office. This is important because the Governor's office no longer releases legislative concepts in response to public records requests,⁴⁴ and the withholding of discussions regarding the Council's legislative proposals would put the Council – which is based on a principle of transparency – in an awkward position. Additionally, running the Council's proposals through the Governor's office could open up the possibility of political interference by that office.

It is essential that this legislation be passed as soon as possible, preferably during the short session, to ensure the integrity of the Office of the Public Records Advocate, to rebuild public trust in the Office, and to be able to attract qualified applicants for the position of Public Records Advocate.

Conclusion

In order to ensure that the public records law actually provides meaningful access to all members of the public, fee reform is particularly important. High fees are a clear barrier to entry. A clearer, less discretionary fee structure, similar to the FOIA and paired with low hourly or per page rates, would meaningfully increase access for all requesters.

In order to offset the costs that public bodies will not be collecting via public records fees, organizational leadership and the legislature should commit more resources to public records processing. One particularly important investment would be the procurement of a public records tracking tool which could be offered at a low, affordable cost to state agencies and local public bodies.

Additionally, an intermediate appeal option should be created to ensure that there is proper oversight for elected officials who withhold public records. Concerns about the awkwardness of having an office under one elected official review public records decisions of another are overblown and already exist in regards to elected judges reviewing the public records decisions of other elected officials. A solution can be found if the political will exists.

Finally, the independence of the Office of the Public Records Advocate should be enshrined to the maximum extent in the law. The independence of this office is essential to its effectiveness.

⁴⁴ *Oregon Agency Sued After Refusing To Release Upcoming Bills*, Dirk VanderHart, OPB, Sept. 10, 2018, available at: <https://www.opb.org/news/article/oregon-agency-sued-legislature-upcoming-bills/>

It is my hope that this report inspires further reform on Oregon public records law. I especially hope that the report will give the Public Records Advisory Council useful information as it contemplates further proposals. The 2017 and 2019 reforms meaningfully improved public records processing here in Oregon, and it is important that Oregon continues to build on that tradition.

Acknowledgments

Thank you:

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