

Biennial Report
of the
Public Records Advisory Council

November 2020





Introduction

This report is submitted to the Governor and the Legislative Assembly by the Public Records Advisory Council, per the requirements of ORS 192.483(2). The report summarizes the work of the Council and the work of the Office of the Public Records Advocate from December 2018 through November 2020.

The Advocate and the Council agree that the path forward for this office is one of increased independence. The Advocate and the Council will continue to work together to increase public records training opportunities for both government officials and the public while continuing to promote further legislative action that improves access to public records.

Work of the Public Records Advisory Council

Recruitment of the Public Records Advocate

In September, 2019, Ginger McCall resigned as Public Records Advocate. Upon resigning, Ms. McCall produced a report of her findings during her tenure as Advocate. It is attached at the end of this report as Appendix D. After Ms. McCall's departure, the Council embarked on the process of hiring a Public Records Advocate with then Deputy Todd Albert appointed as Acting Advocate. The Council announced the vacancy for the position, drafted interview questions, reviewed applications, and selected six candidates to interview. On June 10, 2020, the Council interviewed six candidates. From that pool, the Council selected three candidates to forward to the Governor's Office for further consideration.

The candidates were interviewed by the Governor's office and Becky Chiao was selected and appointed as Advocate pending Senate confirmation on August 6, 2020. Ms. Chiao resigned from the position on September 29th leaving the position vacant once again. On October 7th, the Public Records Advisory Council met to vote on recommendations for next steps to pass along to the Governor. The PRAC voted to ask that the Governor appoint the next Public Records Advocate from the remaining two names initially forwarded on to her office in June. The council also voted to ask that preference be given to Deputy Advocate Todd Albert. In late October 2020, the Governor's office accepted the PRAC's recommendation, appointing Todd Albert as permanent Advocate pending Senate confirmation.



Survey

In keeping with the Public Records Advisory Council's responsibilities under ORS 192.483(a), to "survey state agencies and other public body practices and procedures for receiving public records requests, identifying the existence of records responsive to the requests and gathering and disclosing responsive records; (B) determining fee estimates and imposing or waiving fees...; (C) and determining and applying exemptions for required disclosure of public records," the Council drafted a list of questions which were included in an inaugural survey of state and select local government bodies in January 2019.

The questions were:

1. Please provide the name, job title, and contact information of the person completing this survey.
2. Please provide the name(s), job title(s), and contact information of the official(s) within your agency to whom public records requests may be sent, per ORS 192.324(7).
3. Please provide a URL link or a copy of your publicly posted public records policy, per ORS 192.324(7).
4. As of the date of your response to this survey, how many requests has your agency received in the calendar year 2018?
5. How many of those requests were not completed within the fifteen day business day deadline prescribed in ORS 192.329?
6. How many of those requests were not completed within 60 days of the date the request was received by your organization?
7. As of the date of your response to this survey, how many requests for a fee waiver/reduction has your organization granted? How many requests for a fee waiver/reduction has your organization denied?
8. As of the date of your response to this survey, what is the total approximate amount of fees that your agency collected related to the fulfillment of public records requests in the calendar year 2018?
9. Do you track the costs incurred in processing public records requests? Please explain how.
10. Have members of your organization received training on public records laws during 2018? If so, from whom?

These questions were distributed to a variety of state agencies and other public bodies (as contemplated in the statute).

The completed surveys were reviewed by the Office of the Public Records Advocate and the Council. They were also disclosed in full and in a summary compilation (drafted by the Office) to the public.



The survey was used to advance several important goals. First, it was a crucial first step in information-gathering for the Council and the Office. Once the data was obtained, it was used to inform recommendations regarding future legislative and policy initiatives. Moreover, it was contemplated by the council that transparency regarding public records processes and performance of government bodies would go a long ways towards creating accountability, which would then encourage better performance.

The survey was also designed to gather data on public records policies and public records officers (questions 2 & 3). Though ORS 192.324(7) requires that each agency make this information publicly available, many state agencies and most other public bodies do not, in fact, have this information visible on public-facing websites. This survey reminded public bodies of that requirement.

In January of 2019, the PRAC issued the Public Records Practices and Procedures Survey to 130 select state and local public bodies throughout Oregon. Local public bodies were selected for their geographic and population distribution.

74% (96 out of 130) surveyed public bodies provided responses:

	Surveyed	Responded	Response rate
City:	20	16	80%
State branch or agency:	80	62	78%
Special service district:	10	7	70%
School district:	10	6	60%
County:	10	5	50%

Approximately 72 public bodies reported an 80% or greater completion rate within 15 business days.

Approximately 45% (43 out of 96) of public bodies tracked processing costs in some fashion.



Fees were reported as being collected by a majority of public bodies tracking this information. Some of the largest total fees collected in calendar year 2018 included: (1) the City of Portland (\$767,659 total; \$629,125 to the Portland Police Bureau); (2) the City of Salem (\$155,000); and (3) the Oregon State Police (\$59,187).

Approximately 48 public bodies that collected fees also reported granting one or more fee reductions or waivers when sought by a public records requestor.

Approximately 31% (30 out of 96) of responsive public bodies did not receive training on the public records law in 2018.

The survey results were reported to PRAC in July 2019 and made public in August of 2019. The data reported were a “snapshot” in time across a large section of government agencies. One goal of the first survey was to encourage better performance on public records processing by creating accountability for public bodies. Formally incorporating a reporting requirement for similar criteria on the public records practices of government agencies into legislation may once again be suggested by the PRAC to further public records reforms. Additional data may be sought and considered by the PRAC in order to inform such future legislative proposals.

In addition, the data were used to determine which state agencies were most in need of public records training. Those agencies were then invited to attend a panel discussion/training with public records custodians and members of the media as part of the Sunshine Week 2020 celebration in March of this year. Interest was so high in this training that it was expanded to include other agencies and eventually filled the proposed auditorium location with approximately 140 attendees. Unfortunately, the panel was indefinitely postponed due to restrictions on gatherings issued by the State in response to the Covid-19 pandemic.

Full survey results here: <http://records.sos.state.or.us/ORSOSWebDrawer/RecordHtml/6924153>

Legislative Proposals

During the 2019 long legislative session, the Council had two proposed pieces of legislation, HB 2430 and HB 2431 attached as Appendices A and B.

HB 2430 (Chief Sponsored by Representative Power, Senators Prozanski and Thatcher at the request of the Public Records Advisory Council) passed, making the Council permanent, with staggered terms and the same statutorily set composition.

The Council’s second proposed piece of legislation, HB 2431 (Also Chief Sponsored by Representative Power, Senators Prozanski and Thatcher at the request of the Public Records Advisory Council), would have created four basic annual reporting requirements for state agencies. By March 1 of each year, every state agency would have had to submit to the Attorney General, the Public Records Advocate and the public records subcommittee of the Legislative Counsel Committee:



1. The number of requests for records received by the agency in accordance with the public records policy applicable to the agency;
2. The number of requests for records received by the agency as reported in paragraph (a) of this subsection for which the agency had not completed its response by the date prescribed under ORS 192.329;
3. The number of requests for records received by the agency as reported in paragraph (a) of this subsection that had not been completed under ORS 192.329 within 60 days of the date the requests were received by the agency in accordance with the agency's public records policy; and
4. The number of requests for a fee waiver or reduction that the agency has granted and the number of requests for a fee waiver or reduction that the agency has denied.

The legislation was not successful, as a fiscal impact statement required the bill to move to the Ways and Means Committee, where it did not receive a hearing before the end of session. The few agencies that did report a fiscal impact reported it to be minimal, and the largest fiscal impact statement by DHS was eventually dropped to zero, but not in time for consideration.

When Ms. McCall vacated the office of the Public Records Advocate, she recommended that the council pursue independence. This was pursued in SB 1506 during the 2020 short session (Appendix C). SB 1506 was introduced by the Senate Interim Committee on General Government and Emergency Preparedness for Representative Karin Power and Senator Kim Thatcher at the request of Public Records Advisory Council. The bill successfully passed the Senate with bi-partisan unanimous support, having been carried on the floor by ex-officio member Senator Thatcher. However, the bill ultimately died in the House as the session came to an early conclusion.

After the short session ended, Acting Advocate Todd Albert presented some possible changes to the bill language that would solve administrative issues that raised during the short session. The council voted to move forward with advocating for Mr. Albert's modified legislative concept during the upcoming legislative session.

Welcoming new members

Since the previous report was submitted, the following new members have been appointed:

Emily Harris, representative of the news media who is a member in good standing of a professional journalism association;

Adam Crawford, representative of the Department of Administrative Services; and

Stephanie Clark, representative of the Secretary of State's Office.



The Work of the Office of the Public Records Advocate

Requests for Assistance since December 1, 2018 (345)

Requests for assistance have been received from members of the public, representatives of the media and employees of state and local governments. Such requests have included the resolution of disputes involving the identification of appropriate records, overcoming exemptions to disclosure, the application of fees, standards for processing fee waivers and reductions, vexatious or frequent requesters, and the development of policies to ensure consistent resolution of public records requests.

Trainings

To date, the Office of the Public Records Advocate has conducted numerous in-person trainings, from groups as small as six individuals to those as large as 200. Individuals are trained on a variety of topics related to providing public records, policy formulation, technological solutions, resources for information and guidance, constituent communication, and best practices. Those attending training include a large cross-section of state and local government employees, as well as members of the public.

Additionally, the office has made both government and public trainings available online in an easy-to-use streaming format. In particular, the office has created a comprehensive Public Records 101 General Training available to all users on its website as in-person trainings are not possible during social distancing measures in place to respond to the COVID-19 pandemic.

Other

As Acting Advocate, Todd Albert worked with Secretary of State's Office IT staff to create a distinct website separate from the Secretary's agency website. The purpose of this was to begin to carve out the office as fully independent from any elected official. He also collaborated with State Archives graphic design staff to create a unique logo for the office.



Future Goals

The Council intends to continue to move forward with future legislative proposals, including the push for independence of the Office.

The Office of the Public Records Advocate will continue to provide training program and public outreach. It will also use its website as a platform to inform the public about public records laws.

Additionally, for public bodies that don't yet have public records policies, the Office will endeavor to work with those offices to create public records policies that promote transparency and are user-friendly.

ORS 192.475(3) also empowers the Advocate to issue written advisory opinions. The Office would like to begin issuing such opinions, providing that it has sufficient staffing and resources to provide a high quality of opinion.

Under a new permanent Advocate, the Office of the Public Records Advocate may also once again request additional funding not previously approved for the hiring of two additional staff and training-related travel. The Office has seen a significant growth in requests for assistance and training over the past two and a half years and will require additional staff to fulfill its obligations if that growth trend continues, as it is expected to. As the Office continues to raise public and government awareness of its services, it can reasonably be expected that requests for assistance and training will continue to increase accordingly. The expansion of the Office would allow for more public outreach, more training, more assistance, and more research-based policy proposals.

Summary

Both the Office and the Council intend to continue this important work to improve transparency and the functioning of public records laws in the State of Oregon.

Since the last report was submitted in November 2018, the Council has:

1. Recruited a Public Records Advocate to replace Ginger McCall;
2. Conducted a first-ever statewide public records survey; and
3. Proposed three important pieces of legislation.

The Office of the Public Records Advocate has:

1. Conducted many trainings, reaching hundreds of state and local public employees and members of the public;
2. Handled 345 requests for assistance; and
3. Engaged in purposeful outreach to stakeholders in government and the public.