

September 2, 2021

Todd Albert
Public Records Advocate (PRA)
800 Summer St. NE
Salem, Oregon 97310

Dear Mr. Albert:

Thank you for the notification of the next Public Records Advisory Council (PRAC) meeting slated for September 10th and 16th. Your August 20th letter, Portland mailing on the 23rd, and received on the 31st presents a time crunch. Mailing takes about seven days or so; scheduling for law library(word processing) was only available for today.

This late notice has required some adjustments to my written response for PRAC. I planned to edited a lengthy discourse on Oregon Department of Public Safety, Standards, and Training (ODPSST), however due to the limited notice, I do not have available time, and will supply the unedited version of this exposition. Please accept this as is, but I believe it will address the public's concern of Administrative Procedures Act (APA), Open Public Records Law (OPRL) violation by ODPSST and Clackamas County Indigent Corporation's OPRL. Please utilize my submission in legislative and non-legislative to record, and committee members, if it arrives after the September 10th for legislative session.

Thank you for your considerations.

Respectfully submitted,



Henry Childress
10977752
EOCI
2500 Westgate
Pendleton, Oregon 97801

Added: ODPSST policy 129, 3/2/20
Office of Secretary of State 8/24/21

Exposition Concerning Oregon Department of
Public Safety, Standards, and Training, and
Oregon Public Records Law, and Administrative Procedures Act

September 02, 2021
By Henry Childress

"If the soul is left in darkness, sins will be committed. The guilty one is not he who commits the sin, but the one who causes the darkness." Victor Hugo

I appreciate the opportunity as a citizen of this great state to provide experiences of inconsistencies in application of public records law that impede transparency in public process and government. Due to limited notification of PRAC meeting, I am required to provide an unedited version that is much more expository, and prolix than necessary. Please accept and understand the grammer, typos, and prolixity. I have added recent petitions, at the bottom of this submission, to the Secretary of the States office, Oregon Department of Public Safety Standards and Training, and Clackamas County Indigent Defense Corporation to further illustrate some of these inconsistencies..

"If you miss your history, then your story gets told for you."
Timothy Snyder

We all wear the face of humanity, equal under law, and the challenge in citizenship of bearing equal ownership of our country and its laws. Democracy depends on civic participation; it defines it. *"Every private citizen has a public responsibility."* Myra Daniels Citizenship and its responsibility are complete. The right and duty to confront our country to do better. The responsibility, and duty of holding our institutions accountable. Law and order exists to establish justice; injustice must be exposed to regain legitimacy. It is what democracy looks like. The restitution of public virtue by citizens assuming the sins of the state: a democratic restoration of ethics and laws. Principles are at stake, to all Americans, we have a duty to each other. Created and sustained by public will, liberty and rights are attained through membership in a greater fundamental whole to protect individual freedoms, and society as a whole. A corrective or counterweight to servant authorities failing to recognize these foundational rights and freedoms. *"Essential precaution in favor of liberty."* James Madison A virtue which can be acquired only by the discharge of our public duties. Duties and responsibilities as citizens and institutions looking at the same facts, midst the appearances, and laws by looking through the same public prism of equality and justice that is mandated by our laws and Constitution to effect change. A shared commitment to the law, and with true public faith, and political courage maintaining duty to disinterestedness of equal justice under law. Integrity, force of character, and the virtuous willingness to work within regulations of ethics and law, no matter how modest. *Virtus liberas fides, courage, freedom, trust, blending in a proud ideal of character and conduct with consistency in purpose and acts independent of habit, temper and speech, honesty and loyalty.* Aristotle To protect our constitution and respect the limits of personal powers of state official consented by the governed. The democratic principles in which we live. *"...inalienable Rights...That to secure those rights, Government are*

instituted among Men, deriving their just powers from the consent of the governed." Thomas Jefferson *A nation of laws, not of men* gives us the right to confront our government when they are wrong is our most fundamental right as Americans. Democracy requires constant mending. "*Democracy is not a state it is an act.*" Timothy Snyder Its self-correcting mechanism requires free-flowing open information and expression. The birthright of the people, born out of revolution, and our first right. If censored or restricted, this self-correcting dynamic ceases to function. "*A patriot has universal values, standards by which he judges his nation, always wishing it well and wishing it would do better.*" Timothy Snyder.

Virtue by calculation is the virtue of vice. Joseph Joubert ODPSST views the law under APA as mere "courtesy" rather than mandatory law under APA. This peremptory *fait accompli* of bad faith confesses to routine comfort to concentrated abuses of process, discretion and complacency to violations of regulatory laws, disregard to public guardianship, and escaping their duties of inured statecraft, lowering the net of public guardianship, in a fatuous fog of collective solipsism, obscuring rightful pathways. *So convinced of their own virtuous authority that they disdained democratic procedures.* Looking away guiltless, self-blinded to the importance of the consequences of their own actions affecting public safety, and failing to adapt to a well established precise interpretation of the law. "*Every argument that you base on facts will prove wrong and false, if the facts themselves are bases on sense which prove false.*" Lucretius Fleeing responsibilities are a manifestation of weakness; Cognitive dissonant, contradicting beliefs and riven inconsistent values, disguising it and stealing it from their own moral awareness. The public service degeneracy of lawful public transparency. Established procedures and precedence dismissed at the whim of ODPSST functionaries. Arbitrary action by agency officials repugnant to Fourteenth Amendment entitlement of due process, First Amendment right to free speech and, universal *first principles*, that allowing the public to see behind walls, forward looking to dangers of unwanted truths, hidden behind barriers in the shadows of parochial, unprincipled, hypocritical, arbitrary administrative rules, creating great dangers to our liberties. Compromising the accountability of this agency and its regulattees. These are not minor oversights. ODPSST regulattee are law-enforcement, public and private investigators. If they are fully held accountable citizens can pay with life, livelihood, reputation, freedom and property—life, liberty, and the pursuit of happiness-- Accountability is the key to oversight of these empowered citizens and public servants.

"The people are the wisest depository of public interest." "*Private citizens serve virtue as highly and with as much difficulty as those who hold office.*" Aristotle "*The wisdom of crowds.*" Sir Francis Galton The public must judge as, "*truth judges error and light darkness.*" APA and OPRL are intent to draw the public closer, to participate, to examine it's institutions of the dangers to safety, voice ,and equity of the people. Ignoring inhibitory statutes and compulsive laws, *equity abhors forfeiture*, ODPSST's actions are an unlawful abrogation of ordered liberty in regulatory laws. Failed to attend to the voice of the people. Believing in unfettered agency prerogatives, a bracing core perverse incentive in arrogating oversight solely in the hand of the agency functionaries. Through dictating changes,thinking it's their prerogative, in substantial regulatory statutes without public input. Knowing deception intimately, confusing justice with justification. A sense of duty so frail, mandates so mutable, forgoing moderation, in a notable oleaginous schema of delay, dismiss, and deny in concert with adopt, revise, amend when necessary is but a smokescreen of due diligence. "*We are betrayed by what is false within.*" The enemy within, cowardly counterfeit virtue, and the hypocrisy of Janus false-faced deeds born out of the self-awareness of their own public imperfections ,and moral relativism. A systemic dissimulation apparatus of corruption in procedural due process and regulatory laws. Continually and systematically thwarted

and rendered ineffective by alien principles. The vital principles of liberty thwarted by suppression of public entitlements, such as OPRL, is incompatible with the true nature of American democracy. Long since gone any pretense of keeping covered, a gaming the system, setting, and changing rule when needed. Aristotle defined tragedy as "*an imitation of an action that is serious and of a certain magnitude.*" ODPSST's asymmetrical political advantage is no longer flowing from the people, or guided by our constitution, or bound by our laws. Are the rules we live by lies? Farewell to vows that were, unresponsive to the public, rule of law becomes a polite fiction when it isn't simply abandoned altogether. Fiction too transparent to be a useful disguise. Arrogating power, in an attempt to shake off it's limitations; "*a dangerous system of personal influence.*" *Alexander Hamilton* Self-service not public-service, an illiberal advantage ODPSST intends to keep by this strategic solidarity against public complaints of misfeasance and public input under Adoption of Rules:ORS 183.325 thru ORS 183.410. Executive action, not by the works of established and sanctioned law, directly affecting the public's legal rights, and subject to ORS 183.325 thru 183.400. Despotism of public opinion, public complaints. Tools of democratic standards gone. The protecting of society; the preventing corruption, lost by bending of rules, logic, and a stroke of a pen. "*Here the other side; no one should be condemned unheard.*" A revision of law counter to procedural due process entitlement's legal and ethical norms without the people having a say so. A transformation of public consciousness. A cold and alien system to a democratic people no longer working for, no longer informed, and failing to hold regulattees and officers of the state accountable. Subject to *constitutional-fact doctrine* this administrative action sublimating partnership, codified in APA rule-making regulations, adversely affect public protections, and proclamations, is grossly incompatible with self-governance of a democratic constitutional republic.

In pursuant to ORS 183.390 [(A)(2)(3)] I petition to repeal of a un-codified, *sub rosa*, parochial interpretation of ORS 703.480(2)(a) in pursuant of 183.390. *(1) An interested person may petition an agency requesting the promulgation, amendment or repeal of a rule.* I petition ODPSST to adapt ORS 703.480(2)(a) as legislatively intended in which *clear and convincing evidence* of "false" as defined in order to use "false" designation, or used in "true" findings. Further, I petition to repeal rule change of ORS 703.480 (2)(a) in Policy Number 129 effective date 3/12/20, which violates and arrogates ORS 703.473(3), thus blocking all dismissed complaints under ODPSST's interpretation of "false"; and it's recent *ultra vires* rule change to include, "*unfounded*", and "*invalid*." ODPSST's policy interpolation is implausible, inconsistent in it's context or any other source of law, and not within its delegation. A parochial "*curative statutory revision*" interfering with the interpretation of ORS 703.480(2)(a), and application of ORS 703.473(3). *Westfall v. Oregon* 355 Ore 1444, 324 P3d 440 (2014) *[veer}* to the *[agency]* interpretation as long as that interpretation is plausible and not inconsistent with the policy in it's context or with any other source of law. Further, in City of Portland v. Bartlett, 304 Or App 580 (Or. App. 2020): "*As always, when construing a statute, the "paramount goal" is to effectuate the intention of the legislature. Gaines, 346 Or at 171. In reaching that goal, we consider the text of the statute in context, along with any legislative history that is helpful. If the legislature's intentions remains unclear, we then resort to general maxims of statutory construction. As the Supreme Court observed in Gaines, "there is no more persuasive evidence of the intent of the legislature than the words by which the legislature undertook to give expression to its wishes."*" These interpolations violate ORS 174.010: subverting the legislative Assembly's authority and intent of ORS 703.473(3) and ORS 703.480(2)(a) of presumption of transparency of public records. Unilaterally changing the text, thereby the meaning of a dully enacted statute. ODPSST, statutorily, and case law precedence, is prevented from going outside the *plain-text, plain-meaning* of the statute. ODPSST's revision is not in conformity with the governing statutes and void for lack of authority and totality without legal effect. Kidnapped

from their open record purpose by ODPSST's abuse of discretionary authority these statutes cannot operate concurrently. Forces statutory disharmony, not functioning consistently, as intended by state law. (see La Grande) *"Position lacked any "grounding in the statutory text, context, or legislative history."* The revision did not have the authority to bind the government. Mrs. Hale went rogue and acted outside the course and scope of her employment and duties, not an act Mrs. Hale was employed to perform, and not motivated by desire to serve as professional standards division director of ODPSST. This change in the law is manifestly unjust and oppressive. *"As nightfall does not come at once, neither does oppression. In both instances there is a twilight when everything remains seeming unchanged."* *William O. Douglas*

ORS 703.480 (2)(a0, and ORS 703.473(3) are caveats to protect from active concealment of public records. They both show clear and unambiguous, strict interpretation of legislative intent to allow access of complaint records to be available under OPRL. By misapplication of ORS 703.480(2)(a), ODPSST consigns ORS 703.480(2)(a) and ORS 703.473(3) to conflicting operational construction of the statutes. By inappropriately designating all dismissed cases "unfounded" or "invalid" under ORS 703.480(20(a), by forced determination to be considered false allegation without mandated evidence standard creates a conflict of statutes, which were previously cooperative, *pari materi*, protecting the public's interest and transparency at the conclusion of an investigation; completed, dismissed or confirmed or not a *clear and convincing* false allegations which allows public transparency, transformed by gross misuse, misinterpretation, misapplication of a clear unambiguous statute into a statutory chimera violating legislative statutory intent, OPRL, and public protection/interests.

As mandated by ODPSST statutory regulations of ORS 703.473(3), permitting all *dismissed* complaint cases, as per ODPSST March 12, 2020 revision of ORS 703.480(2)(a). This unlawfully, unreasonably narrows the limits to complaints by only opening public records allegation that have been deemed "true" by *clear and convincing* evidence, induced *proposed orders*, or disciplinary action . This allows only a sliver of public light of records open to the public. This is contrary to the broad public transparency of the legislative intent of ORS 703.473(3). A broad tool for a broad purpose of open public records. *"Under the statutory scheme, disclosure is the rule. Exceptions from disclosure are to be narrowly construed."* *Guard Publishing Co. v. Lane County School Dis.*, 310 Or 32,37 791 P2d 854 (1990) If the Legislative Assembly wished to include "invalid" or "unfounded" they are supremely adept to doing so. They would have also included other terms besides "false" in ORS 703.480(2)(a). The intent is to determine "false" by *clear and convincing* proof, not as a default. "Invalid" and "unfounded" can be both true or false, however "true" is only true , and "false" is only false. *"The expression of one thing is the exclusion of another."* False and true are mutually exclusive by standard definition, and by legislative intent. Again, they would have included this in the law if they had chose too, and would not have included such conspicuous ambiguities. *"The legislature knows how to include qualifying language in a statute when it wants to do so. It did not do so here."* [PGE v. Bureau of Labor and Industries , 859 P2d 1148, 317 Or 606, 17] Also in *Chevron*, "... a reviewing court should not disturb the agency decision unless it appears form the statue or it's legislative history that the accommodation is not one that Congress would have sanctioned.

ODPSST decision directly impacts the public's legal right of access to public records. In ORS 183.333 the Legislative Assembly clearly declares: (1) *The Legislative Assembly finds and declares that it is the policy of this state that whenever possible the public be involved in the development of public policy by agencies and in the drafting of rules. The Legislative Assembly encourages agencies to seek public*

input to the maximum extent possible before giving notice of intent to adopt a rule. The agency may appoint an advisory committee that will represent the interests of persons likely to be affected by the rule, or use any other means of obtaining public views that will assist the agency in drafting the rule. The rule-making procedural execute is unfounded, incomplete and legally invalid. ORS 183.341(4): *Agencies shall adopt rules of procedure which will provide a reasonable opportunity for interested persons to be notified if agency's intention to adopt, amend or repeal a rule.* In *Ore. Newspaper Pub. v. Peterson*, 244 Or 116, 123,415 P2d 21 (1966): *An administrative agency must when it's rule-making power is challenged, show that the regulations falls within a clearly defined statutory authority.* Reasonable care, fair disposition, and opportunity were not provided by ODPSST, as requested in petitioner's February 4, 2020, disregarded, unheeded petition letter. To reiterate, the Administrative Procedure Act was intended to provide procedural protections to individuals adversely affected by administrative action. *Those protections could not be dispensed with unless all interests affected by the action were within the agency.* [see *UPS v. Oregon Transportation Commission* , 27 Ore App 147, 555 P2d 778 (1976).]

In David B. Frohnmayr's *The Oregon Administrative Procedure Act: An Essay on State Administrative Rulemaking Procedure Reform*, 58 Or L Rev 411, 421 (1980). The purpose of the procedures prescribed in Oregon for agency rulemaking are to facilitate public participation in rulemaking. It is as follows:

"The policies of an agency in a democratic society must be subject to public scrutiny. Published standards are essential to inform the public. Further, they help assure public confidence that the agency acts by rules and not from whim or corrupt motivation. In addition, interested parties and the general public are entitled to be heard in the process of rule adoption under the Administrative Procedures Act."

Policy and procedures of Oregon regulations were provided in my February 4, 2020 petition, under the Adoption of Rules in Administrative Procedures Act:

Since ODPSST has accepted the recommended codification, I petition ODPSST to keep me informed under Adoption of Rule in ORS 183.325 thru 183.471. Please take special note to ORS 183.330 (b)(A)(B)(3), ORS 183.333(1), 183.335(1)(a thru (d),(2)(a)(A thru G), and (3)(a). Please consider this letter, and the applicable correspondence petitions of the past two plus years as public input, however, with reserved rights for further input as further information is obtained through ODPSST's rules coordinator in pursuant of ORS 183.330 (2) (b)(A thru C) for the best possible statutory construction for maximum liberty, protection of the public; locking in the firm sense of civic duty, civic morality.

In amending ORS 703.480(2)(a), ODPSST knowingly violated the following APA statutes:

- 1) ORS 183.330 (1), [(2)(b)],(3)
- 2) ORS 183.310 (9)(a): It clearly substantively affected the interest of the public.
- 3) ORS 183.332: non-conformity of state rules with equivalent federal laws and rule clearly petition.
- 4) ORS 183.333 (1) Policy statement; public involvement in development of policy and drafting of rules; advisory committees. (1) *The Legislative Assembly finds and declares that it is the policy of this state that whenever possible the public be involved in the development of public policy by agencies and in the drafting of rules. The Legislative Assembly encourages agencies to seek public input to the maximum extent possible before giving notice of intent to adopt a rule..* (2) Even though Mrs. Hale contends (see

January 29th letter from Mr. Albert) considered regulattee impact on “lively hood” if not protected by using “unfounded” or “invalid.” However, Mrs. Hale failed to seek recommendation by committee in pursuant to ORS 183.333 (3). If ODPSST did not seek recommendation even though adverse to business impact was declared, as justification to an overly broad use of “false” in a meeting with Mr. Albert, Public Records Advocate, ODPSST failed to notify interested parities of fiscal impact in pursuant of ORS 183.333(5). ODPSST declares they used the overly broad definition of “false” in ORS 703.480(2)(a) to protect regulattees from exposing dismissed cases to the public that may damage their livelihood (economic impact) ODPSST failed to do both.

- 5) ORS 183.335 (1)(c): petitioned in February 4, 2020; ORS 183.335 (1) : *Prior to adoption, amendment or repeal of any rule, the agency shall give notice of it's intended action.*, (2)(a),(A)(B)(b)(A-G), (3)(a),4, 7, 8(a),(b)(A,B) and ORS 183.335(16)(a)
- 6) ORS 183.341(4): *Agencies shall adopt rules of procedure which will provide a reasonable opportunity for interested persons to be notified if agency's intention to adopt, amend or repeal a rule.*
- 7) ORS 183.355 is unknown at this time, but suspect due to blatant disregard of APA.

ODPSST new rule is invalid because it was adopted without compliance with applicable rule-making procedures in APA. 1) violates constitutional provisions; 2) exceeds the statutory authority of the agency; 3) seriously prejudice to public interest. 4) no rational basis, or legitimate governmental purpose. Laws mandating ruling authorities including obeying regulatory laws governing ODPSST, as well as, the regulattee. *“Obedience is the essence of law.”* We as Americans, are a representative constitutional democracy under the rule of law, not a law of rule. *“Respect necessary for the rule of law to endure. Abraham Lincoln* Embodied in law, regulated by law are shared in ruling and being ruled. Public authorities, such as ODPSST, must be capable of both governing as a citizen, and to obey as a citizen by upholding the oath to support and protect the Constitution; the natural virtue of ruling and obeying the rule of law. It is therefore inappropriate for this arbitrary and capricious revision to stand, to allow the inappropriate use of the *plain-meaning* of “false” to act as default designation, to dismissed complaints without trier of fact mandated standard of *clear and convincing* to determine “false” designations to public complaints filed. Unlawfully expanding the reach in ORS 703.480(2)(a) substantive plain text of a unambiguous narrow and plain-meaning statute, thereby narrowing and nullifying the broad harmonious construction of ORS 703.473(3) presupposes *presumption of transparency*: a broad tool for the broad purpose of open public records. “ODPSST’s cynically established rule, undemocratically structured, outstripping reasonable law; an altered state threatens to strange this institution. *“The reason is the soul of the law; when the reason of the law has been changed, the law is also changed.”* A state agency acting without reasonable basis in material fact, or in law, in it's revision and revocation of ORS 703.480(2) (a) constituting *abuse of discretion*. *“Unjust law is no law at all.” St Augustine* Laws without force to apply them are no laws. Transparency withdrawn, by a disharmonious ORS 703.473(3) construction intent, in which the true Legislative Assembly's intent of statutes cannot be harmonized in ODPSST's revised state. *“Truth is always in harmony with itself.” Ralph Waldo Emerson* Substantive statutes in harmony with its clauses. In my opinion, the best definition for this type of misfeasance *pattern-or-practice* is “*code switching*.” The changing, diverting regulation, rules of procedures, or conduct for the primary interest of the agency. This is analogous to an implicit parochial agency “*Jim Crow laws*” enactments.

Laws mandating ruling authorities including obeying regulatory laws governing ODPSST, as well as, the regulatte. *"Obedience is the essence of law."* We as Americans, are a representative constitutional democracy under the rule of law, not a law of rule. *"Respect necessary for the rule of law to endure.* *Abraham Lincoln* Embodied in law, regulated by law are shared in ruling and being ruled. Public authorities, such as ODPSST, must be capable of both; governing as a citizen, and to obey as a citizen by upholding the oath to support and protect the Constitution; the natural virtue of ruling and obeying the rule of law. Law gives, law enforces, law answers, law takes. Public service agents are equally accountable to our laws as any other member of society. The powerful, the weak, the rich, the poor, police and criminal. *"Justice is not what the strong say, it is what the people say under this American democracy. The clarion call of the people has spoken: protect the weak from the strong; An immutable principle of moral obligation."* *Alexander Hamilton* ODPSST's regulattees and agents, as well as prisoners of the state, everyone, all are subject equally to our laws: full stop. *"Respect for its authority, compliance with its laws, acquiescence in its measures, are duties enjoined by the fundamental maxims of true liberty."* *George Washington*

"Whenever there is an interpretation doubtful as to liberty, the decision must be in favor of liberty." Under administrative procedural law outlined in ORS 183.325 to 183.410 and within the parameters of 174.010: *In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.* Also in ORS 174.030: *Natural right to prevail; where a statute is equally susceptible of two interpretations, one in favor of natural right and the other against it, the former is to prevail.* ORS 174.040 (2),(3): *[The] remaining part are so essentially and inseparable connected and dependent upon...* These are substantive statutes requiring textual identification, ministerial interpretation. Language is contextual; when the words and the mind agree there is no room for interpretation. Statutory interpretation begins with the text. *"The best interpreter of a statute is the statute itself."* An enforcement of plain unambiguous text. *"Statutes that derogate from the common law should be strictly construed."* The statutes in question are *plain-meaning* and clear; harmonized contribution of each consistent with the pre-established harmony of legislative intent in which ODPSST's revision inconsistencies in *pari materia* are not explained. *The context of statutory provisions at issue, which includes other provisions of the same statute and other related statutes.* The public body bears the onus of sustaining it's action. *"The burden of the agency to sustain it's action."* (ORS 192.411) Show the public what ODPSST has done in its name is legal. A burden they refuse to carry. *"An ambiguous plea ought to be interpreted against the party pleading it."*

What lies on the other side of silence? Under the color of process and law ODPSST' has a duty to justify it's practices. *"Who tells a finer tale than any of us. Silence does."* *Isak Dineson* Sins of omission overwhelming truth and facts buried in silence. A monocratic faulty revision, interpretation, application, and enforcement, as well as, a wholehearted rejection of the public's input in legally questionable *one-and-done*, March 12, 2020, apocryphal policy change. No notice, no opportunity, no voice, due process is not discretionary. A unilateral revision of ORS 703.480 (2)(a), obviating the *equity of statute rule* of ORS 703.473(3) of it's ministerial, substantive legislative intent of *presumption of transparency* under the metalaw of the First Amendment of the Constitution, and OPRL's fundamental virtuous civic right to access of public records. Privileges which are inseparable from the vindication of our rights. *"The people's right to inspect public records is fundamental."* *[ACLU v. City of Eugene, 360 Or 269,299,380 P3d 281 (2016)].* *"Freedom of speech is a principal pillar of free Government. When this support is taken away, the constitution of a free society is dissolved, and*

tyranny is erected on its ruins." Benjamin Franklin

In *Davis v. Wasco IED*, 286 Or. 261, 272, 593 P.2d 1152 (1979): *Statutes which are in pari materia are to be construed together so that they are consistent with and in harmony with each other.* As per ORS 174.030, 174.040(2),(3) and 174.060 are mutually exclusive to and *in pari materia* complimentary nature of affirmative statutory intent of ORS 703.473(a) snatched from its purpose. The textual analysis clearly shows ORS 703.473(3) and ORS 703.480(2)(a) are *in pari materia*]. Harmonious and stable, interlocked together, joined is such a way it is impossible to change one without effecting the whole structure of intent and function of the statute. "*When statutes appear to conflict, we must first determine whether there is any way to reconcile the apparent conflict without exceeding the bounds of the reasonable construction of the wording of the statutes.*" [Preble v. Centennial School Dist. No. 287, 298 Or App 357, 364, 447 P3d 42 (2019)] "*[I]f the potential conflict cannot be avoided, then we must apply established rules of construction that give precedence to one of the conflicting statutes over the other.*" [City of Portland v. Bartlett, 304 Or App 580 (2020)] "*Policy is like a building made of diverse pieces interlocked together joined is such a way that it is impossible to move one without the whole structure feeling it. It is greatly to be doubted whether any obvious good come from changing any "traditional law" whatever it maybe compared with the evil of changing it. Though it cannot reform these other qualities so as to bring them into harmony with itself, at least it does not let itself be deform by them it plays a role apart.*" Michel de Montaigne A defenestration of fundamental intrinsic right of public transparency. Two aspects of one principle in our First Amendment; freedom of speech, freedom of public information. A "*traditional law*"; --information is a public good--, a natural right of a sovereign public. Disfigurement of organic law, universal fundamental law, of all free governments, deformed by ODPSST substantive statute crashing Jenga move lowering the net of protection and enforcement. The very law which was made to remedy the original evil of lack of public transparency. "*To make laws agree with laws is the best mode of interpreting them.*" "*Remove the cause and the effect ceases.*" ODPSST's abuse of definition, revision of 703.480(2)(a), is a clear violation of ORS 174.020: Legislative intent; 174.030: Construction favoring natural right to prevail; blocking access to public information, irrevocable proclamation of protections entitlement under the penumbra, meta-law, of First Amendment; narrowing the door to the truth, obviating public access to "*dismissed*" complaints, mooting the function and intent of ORS 703.473(3), which lights the flame, which gives people the light which gives the masses the possibility of power over the abuses of power. "*There are two kinds of light – the glow that illuminates, and the glare that obscures.*" James Thurber. ODPSST's defective interpretation and unilateral rule change which only allowing disciplinary action imposed complaints the light of day is "*the glare that obscures.*"

[Chroniclers] who have nothing of their own to contribute merely bring to their task care and diligence in collecting everything which comes to their attention and chronicling everything in good faith without choice or selection, leaving our judgment intact for the discerning of the truth...Naked and unshaped: each man can draw such profit from it as his understanding allows. [There are those who] spoil everything for us: they want to chew things over for us; they give themselves the right to make judgments an consequently bend history to their own ideas:for one our judgment leans to one side we cannot stop ourselves twisting and distorting the narration of that bias. They take the task of choosing what is worth knowing, after hiding from us some speech or private action which would have taught us much more. Let them make a display of their rhetoric and their arguments if they dare to; but let them judge as they like; but let them leave us the means of making over own judgments after them; let them not deprave by their abridgments nor arrange by their selection anything of material substance , but let them pass it all on as pure and wholly, in all its dimensions." Michel de Montaigne

“Habitation to the right of arbitrariness is still astonished at. This is formed in the bosom of freedom. Habit that one day become fatal to.” Alexis de Tocqueville As expressed in Mr. Albert's February 10th letter, the 1995 “grandfathering” of the Oregon Board of Investigators (OBI) broad interpretation, and consolidation into ODPSST's application, representation of ORS 173.480(2)(a). OBI is not the authority, the law is. *“Such are the effects of habituation; she can adjust to only mold us to the form which please her, that is why, say the wise, we must cling to the best form, which she will straight way make easy for us, but also mold us for change and variation, which are the noblest and most useful of her crafts.” Desiderius Erasmus* This is a fossilized chain of dogma to dogma without proper protocol considerations. Dorothy Parker once quipped, *“You can't teach an old dogma new tricks.”* is illustrative in this policy *mummification* which ODPSST procured OBI's self-serving definition: ORS 703.480(2)(a): Public records conditionally exempt from disclosure: ORS 192.345(12): A personnel discipline action, or materials or documents supporting that action. An interesting convergence of regulattee to employee conflation of with ORS 703.480(2)(a). This superimposed dogmatic encrustment of ORS 192.345(12) on ORS 703.480's plain text reflects a *sub rosa*, implicit dispensation bias, and fealty to regulatees, similar to ODPSST employees. *“Foolish consistency is the hobgoblin of little minds.” Ralph Waldo Emerson* Restated, consistency is the playground of dull minds. The lack of ethical/moral consciousness are inclined to dogmatism. The dogmas of the past are inadequate for the present. *“We should seek evidence of truth from minds stupefied by habit.” Marcus Tullius Cicero* The consequences of dogmatic determinism on display by this in-house conflation with ORS 703.480(2)(a). Regulattee are not ODPSST employees, records must be available to the public as the legislation intended under ORS 192.314 and ORS 703.473(3). ODPSST's interpretation following the same usage as their employees in ORS 192.345(12); *Same old wine in a new bottle*; a reiteration of this statute incorporated in the revision of ORS 703.480(2)(a) *“Exemption for materials or documents supporting personnel discipline action does not apply where investigation of complaint does not result in disciplinary action.”* City of Portland v. Rice, 94 Or App 292, P2d 228 (1988) aff'd 308 Or 118, 775 P2 1371 (1989); City of Portland v. Anderson, 163 Or App 550, 988 P2d 402 (1999). The dull permanence of dogmatism has no room for objectivity. Dogma is not a justification for manipulation of the spirit and intent of the law: habit does not make law. The shielding provenance of revision of ORS 703.480(2)(a) is founded on inequality and plain bad policy. A judgment does not express knowledge unless it is true *“If we consider that we grope through a fog even to understand the very things we hold in our hands, then we will certainly find that it is not knowledge but habit which takes away their strangeness.” Michel de Montaigne*

In *Haygood v. Younger, 769 F.2d 1350 (9th Cir. 1985)*, “Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural the state must provide to satisfy due process...Liberty is protected from unlawful state deprivation by the due process clause of the Fourteenth Amendment... When the federal court balances the individual's liberty interest against the state's interest in the efficient administration of its indeterminate sentence scheme, the balance weighs heavily in favor of liberty. In the balancing process, the specific dictates of due process generally require consideration of three factors: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail. where the injury is the product of the operation of state law, regulation, or institutionalized practice, it is neither random nor unauthorized, but wholly predictable, authorized,

and within the power of the state to control. In such cases, the state may not take away the protected interest without a hearing in advance of the injury. [Logan, 455 U.S. at 436, 102 S.Ct. at 1158.] When an official with the authority to rectify an erroneous practice receives notice of the wrongful practice and its harmful consequences, due process requires the state to provide a hearing before a further denial of liberty can be said to be free from Sec. 1983 liability.

There is no substantial evidence to support ODPSST's interpretation of ORS 703.480(2)(a). An action mechanism of bias over fact. No notice, no opportunity, no voice, are active expression in conduct, rules made to promote their ends of ignoring the plain truth and law for easy subjective private solutions. The provision change of ORS 703.480(2)(a) nullifies ORS 703.473(3), galvanized to the open records laws of ORS 192.314-410. Failing first principles affects the fundamental right in the First Amendment penumbra of *presumption of transparency*. The revision of ORS 703.480(2)(a) achieves no governmental objective, and restricts fundamental individual right to access of public records is but a charade of public service, thief, and fraud of public information. Abetting injustice by "*doing nothing in earnest and without effect.*" The means can never be considered isolated from the purpose, compromising and temporizing, right and wrong, legality and illegality and constitutionality and unconstitutionality. Actions of public property seized and altered, and crossed a solid constitutional red line. "*The right of the people... to petition the governmental for a redress of grievances,*" equally represented. "*The first sign of corrupt moral is the banishing of truth. Being truthful is the beginning of any great virtue.*" Pindar

Failing *strict scrutiny test* by ODPSST's failure to address and follow APA ORS 183.325- ORS 183.410 in imposing a parochial rule change also violates procedural due process. Due process is our nations vital breath, the voice, the notice to be heard, before protected interests are modified. Servant authorities can do only what the law and the people allow them to do. To allow and provide public input affecting our liberties. ODPSST ignored public input, usurping the Legislative Assemblies law making authority. Conscious act and therefore intentional; all conscious acts are intentional. Witting action, since the laws cannot do what they wish, failed to attend to the voice of the people. ODPSST's uneven hand blocking public transparency by placing another brick in the wall closing open public records. "*Suppression of the truth is equivalent to the suggestion of what is false.*" Thus effectively blocking all ORS 703.473(3) dismissed complaints from public sight, other than *proposed orders* reaching the high bar of *clear and convincing* evidence. These dissimulation revisions of ORS 703.480(2)(a) to include the misuse of words, "*unfounded*" and "*invalid*," to the Legislative Assemblies definition of "*false*." violated certain statutes of the Administrative Procedures Act (APA) to prevent such arbitrary and capricious acts by authorities of public agencies. "*The APA was intended to provide procedural protections to individuals adversely affected by administrative actions, and that those protections could not be dispensed with unless all interests affected by the action were within the agency.*" [*UPS v. Oregon Transportation Commission* , 27 Ore App 147, 555 P2d 778 (1976)]. ODPSST's actions are not in "*accord functionally equivalent to protections to the public interest...*" ODPSST actions reduce protection and entitlement afforded to the public by the deprivation of rights under the color of law.

The Legislative Assembly has the capacity to write clear statutory intent. "*The legislature knows how to include qualifying language in a statute when it want to do so.*" [*PGE v. Bureau of Labor and Industry* 317 Or. 6060,859, P2d 1143 (1993)] The legislative intent/purpose rule; and the *least-restrictive-means test* which requires the agency to protect individual civil liberties should only be as restrictive as necessary to accomplish a legitimate governmental, and fails *rational basis test*. ODPSST's parochial rule change has no rational basis and serves no legitimate governmental purpose:

"[B]ear no reasonable relationship to the attainment of a legitimate governmental objective." Black's Law Dictionary "As always, when construing a statute, the "paramount goal" is to effectuate the intention of the legislature. *Gaines*, 346 Or at 171. In reaching that goal, we consider the text of the statute in context, along with any legislative history that is helpful. If the legislature's intentions remains unclear, we then resort to general maxims of statutory construction. As the Supreme Court observed in *Gaines*, "there is no more persuasive evidence of the intent of the legislature than the words by which the legislature undertook to give expression to its wishes." [City of Portland v. Bartlett, 304 Or App 580 (2020)] By constitutional blessing, OPRL requests are for the benefit of all the people of Oregon. The even, public virtuous hand pulling down walls concealing public transparency.

Publicness of ODPSST's policy must support to preserve, protect, and defend our entitlement to public records. *The general spread of light of transparency will lay open to view the palpable truth to all.* ODPSST's *ultra vires* discretionary change ORS 703.480(2)(a) is outside the legal boundaries of a substantive statute protecting these rights. Agencies must go through lawful process defined under ORS 183.325 thru 183.410. before it can be changed, or amended. ORS 183.310 defines a "rule" under the preconditions of 9(a) "...do not substantially affect the interest of the public." This is not a simple interdepartmental rule change. This is an *ultra vires* revision that violates our First and Fourteenth Amendments, and OPRL's right to access of public records which unequivocally *substantially affect the interest of the public*. [also see 9(b)] ODPSST inappropriately used the broadest of definition of "false" to encompass "unfounded", "incomplete", and "invalid". Complaints not determinable to be *clear and convincing* evidence standard for disciplinary action. In keeping with statutory uniformity, and in concert with ORS 174.010, 173.338(c), and the *plain-meaning* standard of ORS 180.545 (a)(b) (c)and (d) regulations. This rule change is unreasonable interpretation and administration outside the Legislative Assembly's plenary purpose and intent of ORS 703.473(3) and ORS 703.480(2)(a). *"What is done contrary to the law is considered as not done."* The administration *negative misprision* blocking the public's access to complaint records. This modified, cavalier indifference towards civic duty of *rule-making* procedures of APA; ORS 183.325 thru 183.410 is inconsistent with OPRL's constitutional protections of *presumption of open records*. *"Where legislature or administrative agency uses particular term in one provision, but omits term from related provisions, term is considered not to apply to related provision."* [Perlenfein and Perlenfein, 316 Or. 16, 20, 848 P.2d 604 (1993)]

Blocking all *dismissed* complaint records is not the Legislative Assembly's intent of *substantive rule* ORS 703.480(2)(a). If so, they would have clearly state this in the strict construction of ORS 703.480(2)(a), and would not have allowed ORS 703.473(3) broad, *bright line*, interpretation of public access, after completion and disposition and closure of investigations. Impermissibly rewrites the notwithstanding clause to be broader than the text commands. *"What is done contrary to the law is considered as not done."* *"We can do only what we can lawfully do."* See *State v. Cloutier*, 351 Or 68, 98, 261 P3d 1234 (2011) (stating that "an interpretation that renders a statutory provision meaningless should give us pause, both as a matter of respect for a coordinate branch of government that took the trouble to enact the provision into law and as a matter of complying with the interpretative principle that, if possible, we give a statute with multiple parts a construction that 'will give effect to all' of those parts" Quoting *Vsetecka v. Safeway Stores, Inc.*, 337 Or 502, 510, 98 P3d 1116 (2004)); ORS 174.010 providing that courts are "to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted". *"We can do only what we can lawfully do."*

In *PGE v. Bureau of Labor and Industries*, 859 P2d 1146, 317 Or 606, 17: [T]he text of the statutory provision itself is the starting point for interpretation and is the best evidence of the legislature's intent. *State v. Person, supra, 316 Or. at 590, 853 P.2d 813; State ex rel. Juv. Dept. v. Ashley, 312 Or. [317 Or. 611] 169, 174, 818 P.2d 1270 (1991).* In trying to ascertain the meaning of a statutory provision, and thereby to inform the court's inquiry into legislative intent, the court considers rules of construction of the statutory text that bear directly on how to read the text. Some of those rules are mandated by statute, including, for example, the statutory enjoinder "not to insert what has been omitted, or to omit what has been inserted." ORS 174.010. Others are found in the case law, including, for example, the rule that words of common usage typically should be given their plain, natural, and ordinary meaning. See *State v. Langley, 314 Or. 247, 256, 839 P.2d 692* (1992) (illustrating rule); Just as with the court's consideration of the text of a statute, the court utilizes rules of construction that bear directly on the interpretation of the statutory provision in context. Some of those rules are mandated by statute, including, for example, the principles that "where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all," ORS 174.010, and that "a particular intent shall control a general one that is inconsistent with it," ORS 174.020. Other such rules of construction are found in case law, including, for example, the rules that use of a term in one section and not in another section of the same statute indicates a purposeful omission, *Emerald PUD v. PP & L, 302 Or. 256, 269, 729 P.2d 552* (1986), and that use of the same term throughout a statute indicates that the term has the same meaning throughout the statute, *Oregon Racing Com. v. Multnomah Kennel Club, 242 Or. 572, 586, 411 P.2d 63* (1966)... If the legislature's intent is clear from the above-described inquiry into text and context, further inquiry is unnecessary."

Also in *PGE v. Bureau of Labor and Industries*, 859 P2d 1146, 317 Or 606, 859 P2d 1143 (1993) the extent to required to resolve ambiguity, consideration is given in successive stages to: 1) text of statute and context provided by simultaneously enacted provisions in light of applicable rules of statutory construction; 2) legislative history; and 3) general maxims of statutory construction. The textual analysis of the plenary nature of ORS 703.480(2)(a) and ORS 703.473(3) is crystal clear, without ambiguity in text and context. "further inquiry is unnecessary. Where statutes are clear in their terms, there is no need to, rather it is improper to, proceed with the application of rules of statutory construction." Also in *State v. Hiller, 22 Or.App. 57, 537 P.2d 571* (Or. App. 1975) In *State of Oregon v. Elliot, 204 Or 460,465,277 P2d 754 cert den 349 US.929,75 Sct 772,99 Led 1260* (1955), "Statutory interpretation particularly implicates the rule of *stare decisis*... The doctrine of *stare decisis* wights in any context, is especially so in matters of statutory construction... when this court (OSct) interprets a statute, that interpretation becomes 'apart of the statute as if written into it at the time of its enactment.'"

"I delight in your law. It is good for me that I was affected, that I might learn thy statutes." *Psalm 119:71* ODPSST revision of ORS 703.480(2)(a), commenced after multiple correspondence in an attempt to convince ODPSST the legal and ethical fallacy of their actions. A long train of reasoning of almost three years entreating ODPSST functionaries to follow the legislative intent of ORS 703.480(2)(a), ORS 703.473(3), OPRL, and others, hoping to find some cogent reasoning in three years of evidence gathered. It was only after involving the Records Advocate's concurrence of OPRL violations by ODPSST that provoked action on ORS 703..480 (2)(a). An *ad hoc, ex post facto, ultra vires* parochial "*curative statutory revision*" codifying previous violations in meddling with the interpretation of ORS 703.480(2)(a), and the statutory destruction of ORS 703.473(3) to justify refusal of entitled public records. From a proper specific interpretation to a general in-house, twisted, forced, and broad interpretation of ORS 703..480 (2)(a). to a reading of the plain force of "*false*" to include all

designations, except those leading to disciplinary action. “ *It's cursed construction that corrupts the text.* ” A bad faith, *ultra vires*, unauthorized exercise in official duties codification, including ill fitting choice of words, “ *unfounded* ” and “ *invalid* ”, obstructing the understanding and definition of “ *false* ”. “ *One who gives a judgment outside his jurisdiction is disobeyed with impunity.* ” An opprobrious devolution from a clear unambiguous textual, *plain-meaning* text. Tyrant tools, overruling and throwing the harmony of Legislative Assembly intended understanding of both, *in pari materia*, statutes into a vague, subjective, ambiguous fiat. The overall outcome is the examination of public grievances as an instrument of censorship to advance unaccountably of public agents and regulattees. “ *Statute that is overly broad is restricting free expression cannot be saved by use of narrowing construction to remedy defect.* ” [State v. Mayard 168 Or app 118,5 P3d 1142 (2000)]; “ *State cannot prohibit speech inviting or requesting person to engage in conduct that is lawful.* ” [State v. Tusek 52 Or App 997, 630 P2d 892 (1981)]; “ *Law focusing expressly as use of protected expression for purpose of achieving forbidden result are subject to analysis for overbreadth.* ” [State v. Robertson, 293 Or 402,649 P2d 569 (1982)--“ *The most powerful magistrates should be amenable to the laws. No one should be secure while he violates the constitution and the laws: everyone should be secure while he observes them.* ”--James Q Wilson

Applying the former reasoning drawn from the nature of the later, I believe this is conflation of Public records conditionally exempt from disclosure: ORS 192.345(12): “ *A personnel discipline action, or materials or documents supporting that action.* ” implementation to this statutory revision. The use of which I have difficulty in establishing ODPSST's rational that bears legal standards. A corrupting ratiocination more of a “ *Rambo* ” administration of governance which “ *bears no reasonable relationship to attainment of legitimate governmental objective.* ” The revision of ORS 703.480(2)(a) after petitioning of non-exempt OPRL record. Retrospectively, a refractive perturbation, altering the statute to the public's disadvantage: *ex post facto* civil issue. ODPSST further blocks the public's input to rule-making procedures under ORS 183.325 to 183.410 concerning ORS 703.480(2)(a). An *ex post facto* abrogation of First Amendment rights; the nullification of fundamental right after the fact.

Nothing is done without reason, for want of reason to support ODPSST's position a cause slithers in under the guise of a lawful ethical causal interpretation, coiled onto entitled due process, and rule change protocols preventing public access. The habitual acceptance *ex post facto* misfeasance reflects the relativistic bias ethos inhibiting any thorough investigation into the real cause, even precludes it. Well entrenched bias against the perceived idiosyncratic, *degeneracy of undesirables*, such as prisoners, are an example; “ *Every great pain, whether physical or spiritual declares what we deserve; for it could not come to us if we did deserve it,* ” as Arthur Schopenhauer sarcastically expressed concerning relativistic bias. To be clear prisoners are not civilly dead, *civiliter mortuus*. *Vitek v. Jones*, 445 U.S. 480, 491-494, 100 S.Ct. 1254, 1263, 63 L.Ed.2d 552 (1980), *Wolff v. McDonnell*, 418 U.S. 539, 579, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974): [A] prisoner is not wholly stripped of constitutional protections when he is imprisoned for crime. There is not iron curtain drawn between the Constitution and the prisons of the country. [Prisoners] may not be deprived of life, liberty, or property without due process of law.

The contested issues are constitutionally intact and cannot be implicitly or explicitly vacated by administrative discretion. The diseased reasoning of prejudice; the “ *built-in facts* ” of egos, executive solipsism, and other “ *gut feelings* ” of agents precluding other causes and explanations, guarantee a slanted unjust result. This questions the true objectivity to the public's complaints against public agents and regulattees. Habituated, step by step it eventually predominates and concentrates in an institution,

and finally reigns, poisons and slanders the mandated laws, principles and process of that institution. Dependent and habituated to these hardened *patterns-or-practice*, justifies, rationalizes anything that may disrupt its cultivation. A tribalism interfering with objective reasoning; the good, by affinity, seek the good; the vile, by affinity, the vile. Agents seeing what they look for, and hearing what they listen for. *"Scarred in the flame of withering injustice."* Martin Luther King This leads to loss of objectivity, obligations, rules, and aims. Conformational bias and motivational reasoning in believing something to be true based on prejudicial ethos, infecting the innocent with guilt, and the guilty with innocence. Prejudice is persecution; the dark mirror of the mind, prejudicial habits, forming an ethos in our institutions. *"Innocent sacrificed to judicial procedure more criminal than the crime."* Michel de Montaigne Carrie Catts, a leading suffragette, and founder of League of Woman Voters, said it best, *Prejudice: An opinion, which is not based on reasoning: a judgment, without having heard an argument; a feeling without being able to trace from which it came... a stupendous obstacle to overcome without the slightest comprehension of the inconsistency of his position."* Carrie Catt

My petitions citing substantial legal and ethical validations of these entitlements to public record under ORS 192.314-410 and ORS 703.473(3) were retorted with pretermission, silent arrogation of regulatory statutes, past acts, by ODPSST, not subject to these parochial rule change when previously petitioned under OPRL, and ORS 703.473(3) then modified by ODPSST to excuse past illiberal actions. A narrative framework of revise, amend, and adapt when agency interest are required; a *de facto* quasi-statutes by parochial agency administrative *"legislation."* *"Crime once exposed, has no refuge, but in audacity. Tacitus*

Similar in *1000 Friends of Oregon v. Marion County*, LUBA No. 92-085 (Or. LUBA 1/21/1994) (Or. LUBA 1994) with reasonable interpretation applied to ODPSST(in brackets) revision. *"The agency's reasonable interpretation of the goal is entitled to some deference by the court. However, if LCDC [ODPSST] interpretation expresses existing policy and standards of Goal 14 [ORS 703. 480, 703.473, and 192.314] the interpretation constitutes a de facto goal amendment and cannot be sustained by the court. This is not an appropriate case in which to invoke the concept of deference. LCDC's [ODPSST] interpretation is not intended to clarify ambiguities in Goal 14, [ORS 703.480 (2)(a)] rather, LCDL[ODPSST] has developed a theory about the operation of Goal14[ORS 703.480 (2)(a)] which exists independent of the language or processes found in the goal itself... What LCDC[ODPSST] is effectively doing here, ie., amending its goal in the guise of interpreting it. "A person who gives an end gives the necessary means to that end."*

"The best evidence of legislative intent is the text of the statutory provision itself." "As always, when construing a statute, the "paramount goal" is to effectuate the intention of the legislature... "there is no more persuasive evidence of the intent of the legislature than the words by which the legislature undertook to give expression to its wishes." (Gaines, 346 Or at 171.) This peremptory revision, expansion, interpretation, application, enforcement, has constitutional violation implications. It is not the expressed Legislative Assembly's interpretative intent of these statutes, and therefore outside the range of discretion delegate to the agency by law. "An unambiguous regulation like an unambiguous statute, should not be interpreted, but should be enforced according to the clear language." [Schoen v. University of Ore, 21 Or App 494,535 P2d 1378 (1975)], "When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the

unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute. "The power of an administrative agency to administer a congressionally created . . . program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress." [Morton v. Ruiz, 415 U.S. 199, 231, 94 S.Ct. 1055 1072, 39 L.Ed.2d 270 (1974)]. If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute. [Chevron, U.S.A., Inc. v. Natural Resource Defense Council, Inc., 467 U.S. 837 (1984) ("Chevron")] There are no "gaps left", no legislative lacuna in ORS 703.480(2)(a). ORS 703.480(2)(a) and ORS 703.473(3) are "unambiguous," and "clear language", plain text, "intent of Congress is clear", "unambiguously expressed intent of Congress." "Plainness and clearness without a shadow of stain. Clearness divine!" Matthew Arnold ODPSSST March 10, 2020 revision of ORS 703.473(2)(a) is "arbitrary, capricious, and manifestly contrary to the statute. Agents of the people "shall conscientiously, and vigilantly discharge our public trust faithfully to preserve and wisely to administer it." is of suspect by their actions." Your own conscience give weighty judgment on your virtues and vices: remove that, and all lies spreading." Marcus Tullius Cicero

"Without justice our judgments and actions in respect of others could not be informed by rationality justifiable principle, either generally, or on particular occasion. We could not discharge our duties rightly as holders of public office. One cannot be practically rational without being just- or in deed without the other central virtues. It is an apparent conflict of right as holder of public office one cannot be practically rational without being with right arises from inadequacies of reason not from moral ethical character." Alistair MacIntyre

Over their ministerial duty, ODPSSST, "kick against the goads" of law, has chosen to trust themselves first. A self-manifestation of law, actions not provided in the codified will of the sovereign, the plain words of the instrument itself, contrary to laws and *stare decisis*. Institutional authoritarianism not sprung out of duty by authority, or servant leaders, but misconduct of office, confused in its understanding of authority and obedience. A construct of their own powers contrary to their sworn oath of office, "to declare the law not make it," and their responsibility to the people, and the state. Where there is people there is power; all power flows from the people. The public is the measure of all things state which rests upon the explicit or implicit consent of the people. The source of authority remains in its people, not in agents of public institutions. Political power is exercised in the interest of the governed not in the interest of public agents. A public power, an army of inalienable law made permanent by our Constitution, oath of office, and the virtue of civic conscience captive to the plain text of the law. Regulate administrative conduct requires respect for the rules and discipline. If *plain-meaning* provision can be so disregarded, or new provisions omitted, or inserted derogation at the unfettered discretion of agency functionaries(PIP), our laws will become feeble and helpless: feeble laws, feeble nation, helpless public. An instrument of agency liberty to amend, grant indulgences, and dispensations its sees fit to grant. "The intention of the person is the soul of the instrument." A power given by the people alone, using the keys of office for private redress, not content with the powers granted to construe, or interpret these statute. This *high instrument of government* misused, a private tool, a necessary instrument to preserve our system of rights, interfering, arresting the constructed

legislative course, and operating counter to the intentions of our legislation, our constitution, and the consent of the governed. An arrangement without a democratic future.

"One cannot change anything without judging whatever one abandons to be bad, and whatever one adopts to be good. Since anyone who undertakes to chop and change usurps the right to judge and must pride himself on seeing the defect in what he would get rid of and the good in what he would bring in. Most iniquitous to which to submit immovable public regulations and observances to the instability of private ideas. Advancing their cause for whom law and order means seeking their cause for whom law and order means seeking their own advantage. Submitting of private ideas, private reasoning having jurisdiction only in private matters, and to undertake against divine ordinances something that not State would tolerate against civil ones. The law is the sovereign judge of its judges; judicial discretion is limited to explaining and extending accepted usage: it cannot deflect it or make innovations. The way of the law is weighty, cold and constrained, it is no good for resisting way which are lawless and wild. Through divine Providence has sometimes passed beyond the rules to which we are hand by necessity, it was not dispensing us from them. Laws remain respected not because they are just, but because they are laws. That is the mystic basis of their authority." Michele de Montaigne As duly noted in ORS 244.010(6) "The Legislative Assembly recognizes that public officials should not make private promises that are binding upon the duties of a public official,-because a public official has no private word that can be binding on public duty." In *Sundermeir v. PERS*, 269 Or App 586, 595-96, 344 P3d 1142, rev den, 357 Or 415 (2015) "[W]hen a statute clearly and unambiguously says one thing, we cannot simply conclude that the legislature meant something entirely different." The words used in these statutes are plain; the words in the Constitution are plain. The right and safe course is in the *plain-meaning* of the statutes, and the safe guardianship of our Constitution.

"Everyone sees what you seem to be, few perceive what you are, and those few do not dare to contradict the opinion of the many who have the majesty of the state to defend them." Niccolo Machiavelli OPDSST seems versed, and well acquainted with the dark art of Machiavellian expediency principles, masquerading as just and orderly official rules. Vitiated by an abasing arrogance, capricious miasma, and arbitrary dominion created by *personnel-is-policy* (PIP) *opere operato*. "Nothing less than robbing America of her franchises... and, in fine, of spreading arbitrary dominion over all." Charles J. Fox The confusing way it is applied and the corrupt way that rules, regulation and protocol mutability are based on happenstance redress. Kafkaesque unpredictability, random chance of which one hazards upon, and the public virtuousness of that particular agent. Are we looking at the same facts and laws? Is OPDSST looking through the same public prism of equality and justice that is mandated by our laws and constitution? "The law speaks to all with the same mouth." Law as truth must present the same force and face everywhere and for everyone--equal under law--. Policy grounded in fair-play, consistency, and proper interpretation of law. "Lawful commands receive a strict interpretation, but unlawful ones receive a wide and an expansive interpretation." PIP has an inherent subjective bias, and internal inconsistencies from solipsistic functionaries own volition, *ad libitum* regardless of policy, laws or ethical concerns. A personal situational egoistic abstraction in which their ends justifying their means.. "Nothing wrong with shooting as long as the right people get shot." Clint Eastwood (Harry Callahan) Arbitrary acts of capricious choice, unsanctioned elastic power of PIP's vicissitude is nothing less than regulatory despotism. "A person who gives an end, gives the necessary means to that end." Subjective rules and dogma kept in place by a compliant, dispensational, epikariocratic agency. Dogmatic vanities, fruits of the perfidious few, clothed in robes of rectitude, *corrupted its unstable cloth*, driving the disfranchisement by trespassing on, failing to conform to a higher authority of regulatory, common, and natural law, and infidelitous to *first principles* of plain truth, public good, and

justice. The corruption of principles by collective solipsism of PIP. Self-assertion instead of fixed principles of law assertions. Rules, regulations and protocols based on chance redress, caprice, and arbitrary. An administrative theology of “rules for thee, not for me” maybe wide spread and does the greatest harm, whether to the entire system, or to there parts. “*You shall not circulate a false report. Do not put your hand with the wicked to be an unrighteous witness. You shall not follow a crowd to do evil; nor shall you testify in a dispute so as to turn aside after many to pervert justice.*” Exodus 23:1-2

“*The promise of equal treatment under law may be the most radical promise of all of our laws, or in the history of law.*” Neil Gorsuch A Republic If You Can Keep It (From Benjamin Franklin's response when asked by James McHenry, one of the thirty-nine Constitution framers what kind of government they created) Our institutions operate on law is policy, public virtuous ethics is policy, and *nemo est supra leges*: no one is above the law. Law, as truth, must present the same face everywhere and to everyone. Our government must mean something more than arbitrary rule of man, custom, and the law must stand above all persons. An ethical baseline looking at the same facts and laws, and being true to both. “*Things that are equal to the same thing are equal to each other.*” Euclid Righteous is fairness, fairness is justice, justice is righteous; the natural law, and vital moral urging of balance, equality, fairness. And the first principles of goodness, truth, and justice, inherent in the universal nature of people, fervently advocated by a free and united democratic people. “*The world itself is the world's court of judgment...the moral significance of the world.*” Georg Wilhelm Fredrich Hegel The same public prism of equality, equity, and justice, mandated by our laws, and deepest dye of our Constitution. This perversion by OPDSST's private sphere entanglement of governmental function is antithetical to the promise-written in stone- “Equal Justice Under Law.”, in the architrave, on the front entablature of the supporting structural arch, on the public face of the United States Supreme Court for all its citizen to see. “*The sentiment of justice is so natural, and so universally acquired by all mankind, that it seems to be independent of all law, all party, all religion.*” Voltaire

OPRL entitlements are further adulterate by the recent unauthorized modification of ORS 703.480(2)(a). This confesses to having the administrative authority to fill a legislative lacuna when clearly in ORS 703.480(2(a)) none exists, for OPDSST to add, “*unfounded*”, and “*invalid*”, and the paresis of ORS 703.473(3). “*Reason is the soul of law, and when the reason of any particular law ceases, so does the law itself.*” Under ORS 192.450(1) “*The burden of the agency to sustain its action.*”, as well as actions under ORS 183.325 to 183.471. “*An exposition that springs from the vitals of a cause is the fittest and most powerful in law.*” “*Safety of the state is the supreme law.*” This manifest necessity of protections must not be arbitrarily trifled with by transgressive administrative discretionary actions by such unauthorized expansions of a *plain-meaning* statute. The law is the administrative authority; administrative authority is not the law. This cannot be ignored; *ignoring is a cure for nothing, what we ignore, we empower.* To be clear, OPDSST's interpretation of ORS 703.480(2)(a) does not coincide with the legislative expression which inheres in the *plain-meaning* of the statutes. OPDSST coerces ORS 703.473(a) to irrelevant. “*We are unwilling to deem a legislative act meaningless unless no other reasonable conclusion is available. It is reasonable and consistent with ORS chapter 197 to give the word incorporation its accepted and distinct legal meaning [1000 Friends of Oregon v. Wasco County Court, 703 P.2d 207, 299 Or. 344 (Or. 1985)]*

OPDSST has *ultra vires* legislated by expanding a notwithstanding provision of ORS 703.480(2)(a) nullifying substantive statute of ORS 703.473(3). Administrative mischief frustrating the purpose of these battered and broken statutes, thereby nullifying the constitutional and statutory rights codified in these statutes to a precise and unequivocal meaning of “*false*”. “*An interpretation that renders a statutory provision meaningless should give us pause, both as a matter of respect for a coordinate*

*branch of government that took the trouble to enact the provision into law and as a matter of complying with the interpretative principle that, if possible, we give a statute with multiple parts a construction that 'will give effect to all' of those parts" (Vsetecka v. Safeway Stores, Inc., 337 Or 502, 510, 98 P3d 1116 (2004)). "The law help persons who have been deceived, not those deceiving." This denial and revisions of OPRL are a reflection of ODPSST hostility towards transparency laws under OPRL. "People that have nothing to hide, hide nothing." This is only subterfuge, an attempt to legitimize secretiveness and silence records to protect regulattee's. *Intentio caeca mala: a concealed intention is an evil one.*" Null, nay, iniquitous, and tyrannical, it has no valid legality. "Our outward actions exactly agreeable to our inward purpose and intentions." Archbishop John Tillotson*

"Every case of exemplary punishment is unfair to individuals: that is counterbalanced by the public good." Tacitus ODPSST substantive predicate according to Mrs. Hale is to provide a conservation of parity between complaint petitioner and regulattee guiding OPDSST's discretion. As advocated in a January 29, 2020, response letter from Todd Albert, Acting Oregon Public Records Advocate: *"DPSST acknowledges this is a broad interpretation of the term "false" but believes it to be a reasonable interpretation of ORS 703.480(2)(a) to minimize the negative impacts on an investigator's reputation and business."* In 192.314; Right to inspect public records; notice to public body attorney. (1) *Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.338, 192.345 and 192.355.* Mrs. Hale's axiomatic assertion, *"Minimize the negative impacts on an investigator's reputation and business"* is not a condition exemption provided for by ORS 192.338, 192.345 and 192.355. Even with ORS 192.355 (2)(a), there is no evidence the complaint information requested under OPRL would have a negative impact on investigator's reputation. A purely speculative supposition of damage to Mr. Coates business. However, there is nothing speculative concerning ORS 183.310 (9)(a), ORS 703.480(2)(a), or even 183.333(3) which ODPSST and Ms. Hale has ignored. Where is the data? If the data exists ODPSST would and should have provided it.

The information petitioned is of public nature, not personal nature, as defined by ORS 192.355 (2)(a). *"An inconvenience does not solve as argument."* *"Private disadvantage is made up by public good."* Any chilling effect, as described by Ms. Hale's melting argument, is not sufficient to overcome presumption favoring disclosure: *presumption of transparency.* *"Legal niceties are not law."* Ms. Hale failed to follow ORS 183.333(3) which requires data of fiscal impact. Pretermitted silence is a data point not favoring ODPSST position. If data exists, I assume, ODPSST would have provided it as required under rule-making regulations. A negative inference can be established by the pretermision of ORS 183.333(3): ODPSST has not data on adverse impact of Mr. Coates' business if complaints were to be provided to the public. The reasoning to which Mr. Coates' business would have significantly impacted. ORS 183.333(3) states, *"the agency shall seek the committee's recommendations on whether the rule will have a fiscal impact, what the extent of that impact will be and whether the rule will have a significant adverse impact on small businesses. If the committee indicates that the rule will have a significant adverse impact on small businesses, the agency shall seek the committee's recommendations on compliance with ORS 183.540.* *"Nothing has really happened until it has been recorded."* Virginia Woolf

It doesn't appear Ms. Hale sought to ascertain if Mr. Coates would be impacted by providing the fullness of the public complaints against him to the *public-at-large*. I believe Ms. Hale is mistaken in the consequence for the justification. *"No proof is incumbent on a person who denies fact."* A spurious argument confusing *cause and effect*. An *ad hoc*, fact-free, motivational reasoning ratiocination,

habitual accommodation to regulattes over public entitlements not backed by data, law, but “*inner facts*”, “*gut feeling*” that open records of complaint would affect Mr. Coates business: “*Law arises out of the fact.*” Regardless, providing knowledge is a mandated greater good fealty to the protection of the *public-at-large*. This subjectivity to “*facts*” inhibits objective investigations of peers or regulattes. When facts get in the way of our desires, we put the public at risk. “*Once they have departed from reason the emotions drive themselves on their very weakness indulges itself, venturing imprudently on to the deep.*” *Cicero*

If ODPSST uses the “*catch-all*” implications of ORS 192.355(9)(a), the substantive statutes of OPRL and thus ORS 703.473(3) would be rendered superfluous. The notwithstanding clause of ORS 192.338, 192.345 and 192.355 was never intended by the Legislative Assembly to turn the scales of justice against *transparency of record* by allowing one notwithstanding provision [ORS192.355 (9)(a)] to arbitrarily control the totality of OPRL to *reductio ad absurdum*. This clearly violates the constitutional entitlement of OPRL. The Constitutional greater good trumps, and purges legal chicanery of the *diaboli ex machina* provision of ORS 192.355 (9)(a). “*The default rule of the pubic records law is disclosure. ORS 192.314 provides that rule and three limited exemptions. Every person has a right to inspect any public record of a public body in this state, except as other wise expressly provided by ORS 192.338, 192.345 and 192.355. (emphasis added)...the notwithstanding clause in ORS 192.390 is limited to the conditional and unconditional exemptions expressly listed in those statutes. But absent those exemptions, public bodies generally must disclose public records. In other words, without the ability to rely on those limited exemptions, the default rule for public bodies is disclosure.* [City of Portland v. Bartlett, 304 Or App 580 (Or. App. 2020)]

ODPSST's apocryphal policy prevents all *dismissed* complaints to be hidden from the public, which is not fully prosecuted to the high bar of *clear and convincing* evidence standards used by ODPSST. It is constitutionally unreasonable to remove the vast majority of the complaints allowable must be deeply questioned. What does this say about an agency that plasters over facts; the useful rendered obscure? The truth has to be defended. Why keep the public ignorant of information locked behind ODPSST's control? What harm would be brought by opening complaints? To what public good is it to hide complaint records, lowering the nets of accountability? Which would prove the greater harm? Regulattee, or public? I believe the republic, constitution, and public would be the greater harm. “*All logical arguments can be defeated by the simple refusal to reason logically.*” *Steven Weinberg*

“*Knowledge is a weighty thing: they sink beneath it. Knowledge can only lodge in a powerful nature.*” *Marcus Tullius Cicero* It is hard to separate likelihoods from consequences not leading to disciplinary action which may affect public safety. Inferior to knowledge. ODPSST management plan of covering objective uncertainty to subjective certainty by concealing records from the public. Lies blood, the notion that there are truths unsuitable for the common man. (If guilt or innocence of charged public complaints are “*undetermined*” or “*invalid*” as examples) Nevertheless, we are safer when we are all informed. The threat to public safety will not lessen by hiding all complaint records. It will likely only increase the threat by hiding petitions of complaints; taking unnecessary risks to public safety without the public's oversight and knowledge. The public should not accept anything that cannot be legitimately refuted, especially when disobedient to entitled public transparency laws, as ODPSST has clearly demonstrated. Aristotle believed in three types of good reasoning, those that establish credulity, those that appeal to logic, and those that appeal to the emotions. ODPSST has provided none of these arguments. The public must be given the freedom of knowing the reason/reasons for dismissal or conviction of public complaints against regulattes. Doubt is satisfied by knowledge when unsatisfied by

faith. *“Only the educated are free.” Epictetus* As for democratic governance, it is a universally accepted truth that an educated, and informed citizenry is vital to its welfare, propriety and existence. *“Let every sluice of knowledge be open and set a-flowing.” John Adams* *“The only way to have a resilient population is for them to be informed....Promote, then, as an object of primary importance, institutions for the general diffusion of knowledge. In proportion as the structure of a government gives force to public opinion, it is essential that public opinion should be enlightened.” George Washington*

Knowledge is protection and power. Protection from and power over servant authorities usurping democratic sovereign power and influence. The public deficiency from ODPSSST's deprivation of knowledge the public has a reasonable right to possess knowledge of the workings of our government. A systemic democracy of knowledge; a democratic doctrine of open source of knowledge that should be valued and expanded. The state should be intolerant of collective ignorance, laws aren't. To push the light of knowledge out to those they serve. Knowledge and intellect are servants of will. The dynamic creative public reasoning is public will. Open knowledge, open intelligent electorate, the instruments for the full expression of rational public will. Censorship dulls this vital instrument of democracy, corrupting the power it possesses, and degrading its expression. If the will is tainted, thwarted with half-truths, lies and silence so is the objectivity of public will. We all should accept ignorance is not a cure, it never has, and never will be, but a social disease that cripples the strength of public influence, existential determination, of a democratic government. The *Big Lie* of omission wearing down shared realities; realities no longer shared with the public. Any agent of public-will that would prevent the *“sleuth of knowledge from freely flowing,”* deprives the public of knowledge provided in public transparency. *“The government itself, which is only the mode which the people have chosen to execute their will, is equally liable to be abused and perverted before the people can act through it.”* Henry David Thoreau Intentional governmental withdrawal of knowledge/intellect, taking away the keys of governance realities removes or hinders the public's ability to grasp the reality of governmental functions, and to act on malfeasance. The ease of deception of an uneducated public. Taken for fools by a perfidious few for their own self-interest, creating a *veil of ignorance* preventing the public from knowing what our government is doing under our name. Not the *veil of ignorance* donned by Lady Justice ensuring equity, in which no one is advantaged or disadvantaged, but misuse and abuse of public transparency laws forced on its people. The uneducated, uniformed citizen is much more receptive and accepting of illegitimate democratic principles. *“The worst of all chains are those of the mind”* Chaining and caging the public mind, the public will, by keeping the public behind a *veil of ignorance* preventing due entitlements and equality. The basic rights and duties, and its principles of social benefits for all. The self-governance, ruling sovereign, the foundation charter of which our society determines its principles of justice. A material recognition of a universal right of a free society in which the freedom of the individual is limited by that freedom of all the rest of us. The state is the expression of that freedom. *Governed activity which reduces its capacity of rational justification.* *Without knowledge rational judgment and rational action are impossible to be uneducated in the virtue is precisely to be unable as yet judge rightly what is good or best for oneself. Virtue is achieved with struggle requiring maintenance to sustain. We cannot judge and act rightly unless we aim at what is in fact good:; we cannot aim at what is good except on the as is of experience of right judgment and action Aristotle*

Knowledge is the servant of the will. Public ignorance of governance breeds indifference. It allows the public to go astray, choosing bad instead of good, false instead of what is true. These defects of public knowledge seed error, distorting decision making of what is true and good. The naivety of fettered

knowledge creating serious impediment to the perfection of the public will for the benefit of a unfaithful few at the detriment of the whole. The public will is "*The Force*", *volkgießt*, the spirit of the people, the counterweights, the political embodiment behind our laws, to bring about change for the greater good. This is eloquently expressed by Michel de Montaigne, "*We cannot be held to promises beyond our power or our means. That is why since actions and performances are not wholly in our power and since nothing really in our power but our will—it is on the will that all the rules and duties of Man are based and established.*" Induced error of public-will degrades the spirit of the citizenry. A public more easily swayed to the configuring will of maleficent authority restricting public information. A negative perturbation of public-will, the less force our laws sustain public will. "*The more empty a soul is and the less furnished with counterweights, the more easily its balance will be swayed under the force of its first convictions.*" *Michel de Montaigne*

As the fear of public knowledge grows, knowledge is countered by authorities using perfidious power to block progress and process of the public will. Citizen prisoners of constraining ignorance, induced by governmental activities, fed bits and pieces of informational constructs of authorities own ends. "*A little learning is a dangerous thing.*" *Alexander Pope* A society of docile, pliant public, impressionable as Silly Putty, easily lead, lifting manufactured realities, easily manipulated, and deforming public will, without the realization that knowledge provides. Supplicants subject to the whim of agency functionaries. Citizens ignorant to the full knowledge available, by selected, or limiting cognition, through censorship manipulation, leading the public in the direction desired by our public servant leaders. Shepherding the uninformed, under-educated, and misinformed into respective pens to shape, reinforce and act on controlled ends. A cognizant citizenry is a worrisome situation for corrupted officials. An objectified public will, working the public-will through inducement of ignorance through reducing public transparency, public knowledge, to the benefit, expedience, and power and prerogative of public officials. This knowledge is power that the *public-at-large* cannot have, and therefore doesn't deserve, mentality. "*Our power does not know liberty or justice. It is established on the destruction of the individual will.*" *Vladimir Lenin* This mind-set of this, and antebellum laws against knowledge still seems to exist. --Keep ignorant, keep in control--. "*A nigger should know nothing but obey his master. [Learning], he would become unmanageable, and no value to his master. It would make him discontented and unhappy.*" Fredrick Douglass (description his owners, Mr. Auld reasoning) This eventually leading to question who's will is it ? The public's or the private will of governmental authorities? The active will towards justice, or slanted justice, laws and ethical practices that subjugate Americans, subjugation of will, becoming slaves rather than being their masters.

To drain lies blood, public transparency is one of the keys stabilizing the state and for the protection the will of the people. There is no tangible necessity to keep the knowledgeable hidden from *public-at-large*. As stated by many enlightened and historic figures, knowledgeable citizenry provides a more stable democracy, stronger country, and more efficacious citizenry. The halo of public will is much more brilliant, and extended through the forward and trailing edge of knowledge, and understanding compels us to think, reevaluate, and yes, criticize our government. *To abandon facts is to abandon freedom. If nothing is true, then no one can criticize power because there is no bases upon which to do so.* *Timothy Snyder* The Will must not be limited by forced lack of knowledge, originating from deficiency of public transparency imposed by misguided public servants of authority. Freewill=free knowledge=free society. "*We will have consented to handing over our independence, our decision-making ability, and our brains.*" *Ann McClintock*

"A people who mean to be their own governors must arm themselves with the power knowledge gives.

A popular government without popular information or the means of acquiring it, is but a prologue to a farce or tragedy, or perhaps both." James Madison We are in the age of information. Francis Bacon recognized nearly 400 years ago that "*knowledge is power.*" and using knowledge to pursue equality and justice. Heaven forbid the public gain any advantage over ODPSST's regulattees, and peers in this democratic republic. The power of the hierarchical elites hegemony disrupted by openness and clarity of public information. By the public due process, with the power of knowledge, to judge according to objective truth. Intentional unequal knowledge limits the public sovereign's power. Without knowledge there is no discernment of truth in which the clear evidence of knowledge permits. Rank hypocrisy in a country that professes *equal justice under law*, popular sovereignty, and self-governance. "*Unable to see the realities of their former state. That is the world of knowledge, the idea of good appears last of all, and is seen only with an effort: and, when seen, is also inferred to be the universal author of all this beautiful and right. Purest of light of the light and of this visible world and the immediate source of reason and truth is the intellectual; and that this is the power upon which he who would act rationally either in public or private life must have his eyes fixed.*" Plato

What moving principle favors regulattee over the public by controlling the message, malfeasance dispensation, defending regulattees, and agency functionaries over the citizenry? Where is the surety of *equal under the law*? Is the state a contrivance or a means to guard and protect our system of rights? Are the rules we live by lies, manifested by relativistic bias *pattern-or-practice*? Trust what is indirectly stated by the obfuscation of the truth. Truth has to be defended. Freedom is the ability to say that two plus two makes four. If that is granted, all else follows. If we are not allowed to obtain truth and speak truth to power we have no freedom, or a democracy. In so, ODPSST is failing to act accordingly; to err towards public safety, and protection, through knowledge leading to truth in the complaints made against regulattees, or agency functionaries; to absorb the risks to the public, as per its professed aim and mandate. The evidence assets, fact prove, and the public has the right to know. Servant authorities of our public institutions seems to forgets their positive role as a morally educative power. Our government should protect and promote its citizens. rights It states clearly in ORS 192.235: *It is the policy of the Legislative Assembly to encourage state agencies to inform the public, the Legislative Assembly and the Governor of matters of public interest and concern. It is further the policy of this state to guarantee to its citizens the right to know about the activities of their government, to benefit from the information developed by state agencies at public expense and to enjoy equal access to the information services of state agencies.* The denials and subsequent revision are a reflection of ODPSST's reckless disdain for public transparency, and its duty to warn and protect. "*Open records is to be protected so that it could bare the secrets of government, and inform the people. Safety, voice, and equity for the public are principles to be examined.*" George Washington

"History is the science of causes and effects." Edward Gibson The previous history of misfeasance, blanket obstructionism dictates a reasonable suspicions of ODPSST aims and motives. Why does ODPSST consistently grab a two handled pot from the smaller less supported, less steady handle? An Unmasking of a systemic bias, implicit, or explicit personal benefits outside the public sphere. An unqualified immunity, protecting the regulattees, such as, police, sheriffs, and investigators, and other potential detractors to full public accountability, much less the people's agents of ODPSST. Laws according to which part of the public one belongs. "*A privilege is, as it were, a private law.*" Agency directed dispensation, exploitation of *ultra vires*, mutability of laws, statutes, and rules. "*A dangerous system of personal influences.*" Alexander Hamilton A private policy, providing malfeasance protections and immunity to regulattee and peers, refusing to hold regulattees to equal or higher ethical standard. All represent an agency's particular ethos of loyalty deceit counter to public interest. My father was a

police sergeant and used to say, “*There is a thin line between a good cop and a bad cop.* It’s easy to step over that line.” To compensate, indulgences in dispensation of malfeasance are necessary to keep men and women in law enforcement. It has been suggested that if dispensation was not implicitly allowed, would cause a shrinking base of police officers, and reduce recruitment. But, what if dispensation never corrects but, merely encourages malfeasance and leads to abuse of given police, investigator powers. “*Spare the rod, spoil the child?*” The special justice entanglement of *thin blue line* hyper-relativistic bias, dispensation ethos running through the veins of this public body only facilitates malfeasance, and hyper-mediocrity. The arbitrariness and superficiality of a slanted power class system. The public’s common cause against injustice, come to see justice as a serrated edge of inequality, contrived and the resentment it magnifies. The democratic principle of empathy, Golden Rule of law and governance, questions of right and wrong, justice and injustice, there should be no competition between equals when it comes to justice; justice cannot exist without equality. The people, all are entitled to equality, and principle of empathetic governance. Using the authority of governance to provide equity to all, treat each citizen with the knowledge their chosen authority will ensure. ‘*The body will die the clock will run down; robbed of equality and fair process the government will becomes arbitrary.*’ *John Adams*

“*My intent give a name to my act; intentio mea imponit nomen operi meo.*” Since there is no name for this governing system, that I am aware, and *thin blue line, big blue wall* usually interpreted as police biased dispensation of misfeasance, a broader neologism is fitting from the Greek word *epikarsios*, meaning *bias* or *slanted*, influenced in a particular direction, prejudice, and the word for power: *cracy*. Combined together: *epikarsiocracy* =slanted power. An inured systemic complacency in which ethical legal dilemmas are solved without much discomfort when peers stray from the rule of law. An ease by looking the other way rather than to take action against their own, or regulattees. Culpable mental states by interpreting every fact against the public. With prejudicial hyper-relativism, inter-subjectivity, and deft deterministic prejudicial ear, refusing actionable causes when errors are revealed through evidence that asserts and facts that prove, as well as, examined against arguments, pass unquestioned without push back. Power of discernment is adulterated by relativism. This implicative denial of rejecting evidence because we do not like what it implies, or facts getting in the way of our desires, putting the public at risk. ODPSST's relativistic determinism, conformational bias, motivation ratiocination knowing sidestepping law and rights by well practiced perfidy. The documented commonly used game of obstruction methods are through prevarication, equivocation, pretermission, obfuscation and circuitry used as a shield for corrupt practices requires only common sense, and law to slice through these unethical tactics to hinder public transparency. Regrettably these Fabian tactics are effective in relying on the politics of public resignation of, “*it is what its is,*” and *curia terribilis*. As Ariosto described, “*The hands and their law-bags are full of summonses, libels, inquests, documents and power-of -attorney; they have great folders of glosses, counsel's opinions and statements. For all that, the poor are never safe in their cities, but are surrounded in front, behind and on both sides by procurators and lawyers.*”

ODPSST may use this *pattern-practice* freely so long as it accomplishes its self-interested purpose. Functionaries continuing to work a PIP instrumentality. If the actions are effective, regardless of moral, ethical or legal contradictions, it's good, as long as it is successful for their chosen aim. An aching void of moral courage to evaluate their peers lacking objectivity, and intellectual honesty is well documented. An indoctrinated culture of elite impunity, blanket amnesty in *epikariocratic* absolution. Demonstrating an ethos of implicit abuse of misfeasance dispensation, and unqualified immunity to peers, and regulattees unethically cloaked in relativistic *private* entitlements; plenary remission of guilt

and penalty indulgences. “*Private reasoning having jurisdiction only in private matters.*” *Michel de Montaigne* Private feelings interfere with public good, private reasoning must yield to public advantage, but unauthorized exercising official duties by bestowing private entitlements dissembled as public service consideration. “*Private right ought not to be determined in confusion from private considerations.*” Closing ranks against the public; a willful *abuse of power* and *abuse of discretion*, creating a ranking system of people to justify superior credulity by a relativistic ranking reasoning granting personal benefits to public employees or third party. (Private Investigators) Relativistic bias + power = epikariocracy= institutional inequality + injustice. “*A system of morality which is based on relative emotional values [relativism] is mere illusion, a thoroughly vulgar conception which has nothing sound in it and nothing true.*” *Socrates*

Justice cannot be fair if only a certain group has the most opportunities and power. “*Nothing is more unjust than to extend equity too far.*” Amid this garish corruption inside such groups, everyone else is on the outside, marginalize by relativistic bias transgressing the inclusive concept of justice written in our Constitution, and legislated in our laws. A regulatory agency compelling the public to obey the law, but doesn't make laws binding to itself, assuming the laws don't apply to them. A --*Rules for thee not for me*-- *pattern-or-practice*, shading the whole agency. ODPSST metamorphosing into an echo chambers of relativistic conformation bias, infraction dispensation of agents, and regulattees. “*You cannot ride with the cops, and root for the robber.*” *Antonin Scalia* An unaccountable construct; Separate, unequal, and blameless at the center of a private sphere entangling and intruding on to a public sphere is antithetical to public oversight, public safety, and public accountability. Rules, regulations and protocols based on chance redress, absurd caprice and arbitrary. Private reasoning yields to public advantage; private interest must reasonably yield to those of the community. The universal moral urge of balance, equality, fairness, and inclusive justice, so fervently advocate and inhabit the laws and constitution of our people. Equal rights for all, special privileges for none. Elite formations of “*privileged groups seldom give up their privileges voluntarily,*” “*A dispensation is a wound, because it wounds a common right.*” to tolerate such *pattern-or-practice* is itself official misconduct, leading to greater abuses and corruption: *tyranny by inches; democracy death by 1000 cuts.*

“*Power doesn't corrupt as much as it exposes.*” ODPSST's actions defines itself. “*Nothing discloses character like the use of power.*” *Robert Green Ingersoll* It has lost focus of public service above itself. Fragility emboldens excesses; escaping the responsibility is a manifestation of institutional weakness, a public organization allowing regulattee, or peer dispensation bias in its agency are a symptom of a weak institution. Such practices creates a rooster-less, hobbled hen house, without warning calls, without protection, allowing foxes access, unable to sustain outside seditious influences, perverts its primary public fealty mandate, shaping the institutions to their seditious ends. The nurtured *epikarsiocracy* iniquities. The inequality of a confused misguided allegiance, misidentifying subjectivity with objectivity, mistaking what service means and what subservience means. An unclear combination of brazen corruption and sheer incompetence degenerating professional virtuousness to mitigate, moderate excesses, and maintain principled public standards. The buried sins of dispensation dole, *pattern-or-practice* of a *epikarsiocratic* institution, connecting institution, agents and practice down a dark stairwell full of pathos and garish corruption, so amply demonstrated over the past three years. “*It's the inside game, cold,sure, distracted, forever closed off to us.*” *Don de Lillo* So clearly exposed by the ease and willingness to violate agency constraining statutes when it applies to itself, regulattee, and/or agency peers. The hallmark of fairness is consistency in the application of law. It is essential to its function, and the universal reason for its creation. “*Nothing in law is more intolerable than the same case should be subject to different views of law.*” Theses defects shown by ODPSST's

abuse of power, and public service indifference are antithetical to its moral vitality, and public deference mandate, crippling the entire enterprise.

Public servants, agency functionaries, and public authorities, in theory, should be held to a higher standard than the average citizen due to the inequity of power, asymmetric power, they have over the citizenry. *“Power is not conferred but for the public good.”* Any agency supporting such hypocrisy of purpose, makes a mockery of our agency's mandate, rule of law, and our constitutional intended protections are faithless to their oath of office. Without sharing in, or moved by ethics, principles, rules, and law are only as good as the public agents private virtuousness. One of the functions of ODPSST is to facilitate regulate moral development, directly or indirectly maintain public security, and our system of rights weighted for the common good and individual freedom. *“Despotism corrupts the person who submits to it far more than the person who imposes it.”* Alexis de Tocqueville ODPSST's faith in theses professional principles of moral/ethical courage are truly tested by the application of moral objectivity of their peers equipoise with that of the public. A professional strength signified by the demonstration of moral ethical courage to ensure equality to all. *“For this is a time for courage and time for challenges. “Neither conformity nor complacency will do.”* John F. Kennedy To repair any lack of ambition for probity, or breach of incuriousness, towards agency peers or regulattee malfeasance.

“Now is time to make real the promise of democracy.” Martin Luther King All professional evaluations of peer, and regulattee misfeasance should be based solely on ethics, facts and the law with even handedness. The professional intention of accepting nothing, approving nothing except by following laws, reason, and refusing to compromise over the right principles. The ethnically in that one's word once given is binding, clarity and common sense in one's opinion, with candor and simplicity, both private and public. When the, *“storm strikes the craft,”* exposing its weakness by its inability to accept facts and law, ODPSST has chosen to hide and ride it out by mischief of governance. The only matter not hidden from the public by ODPSST is its antipathy towards the *public-at-large*. Instead of shielding the public from contradictory facts, ODPSST must develop the bravery to deal with uncomfortable nature of peer oversight and inter-agency accountability. The function of public institutions, and in this case, the authorities that oversee the public is no better than the weakest member in that organization; the chain of accountability/responsibility to the public. The strengths and weaknesses are determined by how easily links of public virtues are maintained. It is the duty of the public and organization to mend that link, and strengthen the chain in order to hold the ship of state from ethically drifting, unbound and/or losing its mandate public service of protecting rights and security of the public. *“For any reason whosoever, moral standards are consciously and unprecedently breached in one area of society, such as political, it will follow, as night the day, that those standards will start collapsing all down the line.”* Margaret Halsey

By oath, ODPSST agents have chosen a side; the side of the public. The oath to protect the public. The spirit of full commitment to public service and fulfillment of that oath. The acceptance of moral standard and obligations, above the minimum mediocrity of laws. Eloquently evinced by Alexander Solzhenitsyn, *“Current modernity boasts of the fact that everything is in accordance with “the law” in modern society if one is correct from the legal point of view, then no one will demand of him or her a higher level of moral action. A famous statement of modernity is “that which is not prohibited by law is permitted” which is a rejection of applying a moral valuation to action. In truth, the legal measure, the juridical way of measuring is lower than the ethical. It is the atmosphere of spiritual and soul-connected mediocrity.”* Law is the base level, punishable legal level under law, not the highest ethical,

moral level which should be personally attained. What legality doesn't cover the public oath does to ensure consistency with virtuous, ethical, and moral good. Through accepting all the institutions obligations, renouncing private sphere, and accepting a public sphere of fealty. Private reasoning yields to public advantage. By oath functionaries assume ethical demand of that institution. A self-commitment above the statutory obligations. An ethical marriage with that institution not to be disgraced by infidelity to fealty by peer protect or regulattee *pattern or practices*, which may have an extrinsic or intrinsic influence over oath takers, but a solid loyalty to the public duty is demanded. Anything outside the public sphere is infidelity and inexcusable. "*An oath is indivisible; it is not to be accepted as partly true and partly false.*" "*All oaths equivocation is utterly condemned.*" The general public aegis is the unambiguous subject, and aim of public oaths. Not a public's oath to public authority, or their regulatory charges, as in a authoritarian monarchical society, but a public service oath to the public sovereignty of democratic constitutional republic. As such, it is more than a sterile compact, but the whole concept of social good. "*If we has no oaths, we would have no law, and if we had no law, we would have mere anarchy, and so we must line ourselves with law, and keep the law by oaths.*" *Bernard Cornwall*

"*The natural light teaches us that the knowledge of the understanding must always precede the determination of the will. Whoever refuses to obey the general will must be constrained by the whole body of his fellow citizens to do so.*" *John Rawls* Light is a symbol of truth, purification, and lighting of intrinsic and extrinsic darkness; expelling ignorance and evil. Turn on the lights, the roaches scatter.

"*The one that believes does not flee.*" *Isaiah 28:16* ODPSST doesn't seem to believe the public necessity of the light of public transparency by their actions. "*And the light shines in the darkness, and the darkness did not comprehend it.*" *John 1:5* Combine this public burden with investigations and determinations by complaint investigators not controlled by oversight of a public complaint records. No public witness, public oversight of records to determine validity of allegations through OPRL by preventing any meaningful oversight of ODPSST regulattee compliance investigator's determinations, allowing the questioning their fulfillment of their public mandate. The discretion allows ODPSST to abrogate, sideline laws, general statutes, such as ORS 703.473(3), by amending statutes to a more specific delineation and then applying to nullify all public access to complaints, except complaints leading to disciplinary action at ODPSST's sole discretion, sole arbitrator of public record disclosure. Concealment of public oversight as well as regulattee oversight, and secreting away the vast majority of complaint records. "*For everyone practicing evil hate the light and does not come to the light, but his deeds should be exposed. But he who does the truth comes to the light, that his deeds may be clearly seen.*" *John 3:20-21* The removal of all dismissed complaints would remove all public oversight of ODPSST complaints. "*A person who does wrong hates the light(of discovery)*" This subjective variable of each investigator's discretion is troubling in this multi-authority censorship. It is said, "*Faith walks gaily into darkness,*" "*faith best seen in the dark.*" *Soren Kierkegaard* But, how can one substitute reason for faith and trust when there is no justification for the faith when practical reasoning demonstrates an unfaithful public agency fleeing from their obligations, and clinging to democracy neglect. The same functionaries that determine whether public complaints are judged are the same functionaries that conceal complaint records from the public. Works hidden from public oversight by misinterpretation, *ultra vires* rule-making, and other methods of censorship are documented. "*Even in the darkest of times we have the right to expect some illumination.*" *Hanna Arendt* ODPSST's faith destroying actions consistently demonstrating perfect contempt of regulatory statutes, laws and constitutional entitlements. Without trust there is no truth; no verification, no trust. Why venture, why risk without the partner of Faith and Fact? Knowledge cannot be based on faith-outside religious faith based "knowledge"? "*To trust an untrustworthy man is to give him power to harm.* This in

conjunction with documented misfeasance and relativistic bias favors the regulated, widens the trust gap, making it is all the more imperative that dismissed complaints be brought into the public light.

With transparency comes trust; to push the light out to those they serve. The *fiat lux* to all the light we cannot see. *"The mind once enlightened cannot become dark."* Thomas Paine The preventing of the public faith that, *"Faith grasp the objective uncertainties and affirms it...An objective uncertainty held fast is an appropriation process of the most passionate inwardness is the truth."* Soren Kierkegaard We the people can solve the Faith and Trust dilemma by preventing the incandescence open public records from disappearing into the shadows. The public and agency should not be rivals in the attempt to find truth from falsehood. The shadow of a shadow destined to destroy legitimacy of public institutions. We all should be equally concerned in the truth being made clear. Our agencies must not be the sole arbitrators of what is truth and what is falsehood. *"It's so much darker when a light goes out than it would have been if it had never shone."* John Steinbeck

A shadowy attenuation no longer harmonious, centered, affirmative, and *equal under law*. ODPSST's novel interpretation of ORS 703.480(2)(a) has splintered the concordance which is implausibly inconstant with ORS 703.473(a) and the plain-meaning of ORS 703.480(2)(a) becoming a shell, a ghost, of its former legislative intent. A specialized unilateral, arbitrary rule-making repeals ORS 703.473(a) statute without the Legislative Assembly's concurrence. In ORS 174.010 General rule for construction of statutes. *In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.* A rule created within a statutory scheme cannot amend, alter, enlarge upon, or limit statutory wording that it has the effect of undermining legislative intent; going beyond their ability to do so: (see also 8/21/2018 memo) *"whatever the legislative history might show about the legislature's intentions, those intentions must be reflected in actual statutory wording that, when reasonably construed, is capable of carrying out such an intention."* *State v. Patton*, 237 Or App 46, 53, 238 P3d 439 (2010), rev den, 350 Or 131 (2011). ODPSST's rule revision alters, enlarges upon and undermines the legislative intent. Going beyond their legal ability to do so. An administrative agency may not amend a statute by its rules, but may merely fill in gaps to effectuate the purpose of a legislative act as enunciated in *U. of O. Co-Oper. v. Dept. of Rev.*, 273 Or. 539, 550, 542 P.2d 900 (1975). Under administrative law the Legislative Assembly has left no gaps of intent in ORS 703.480(2)(a) for ODPSST's discretionary action to fill due to the unabridged plain-meaning definition of false. *Van Ripper b. Liquor Cent. Com*, 228 Or 581, 591, 365 P2d 109 (1961): *Agencies can only fill in the interstices in the legislation to aid in the accomplishment of the statutes purpose.* ODPSST's interpretation expresses a new policy or standard varying in substance from the existing policy and standard of ORS 703.480(2)(a). The interpretation constitutes a *de facto* goal amendment. ODPSST's interpretation is not intended to clarify ambiguities, which is plain-text and unambiguous, instead has developed a supposition about the functioning of ORS 703.480(2)(a) *"Which exists independent of the language or processes found in the goal itself. Amending its goal in the guise of interpreting it."* [See *1000 Friends of Oregon v. Wasco County* 299 Or 344 P2d 207 (1985)]. ODPSST may support ambiguities, but the law rarely does.

The unambiguous ORS 703.473(a) intent and purpose is to allow public access to complaint records after an investigation is completed and dismissed, or proposed order is given. ORS 703.480(2)(a) is a ministerial, textual, and plain-meaning substantive statute in which the Legislative Assembly's intent is abundantly clear and unambiguous. *"Words are to be understood according to their proper meaning."*

"Whenever there is not ambiguity in the words, then no exposition contrary to the words is to be made." ODPSST's rule revision does not *"aid in the accomplishment of the statutes purpose."* Calculated substitution of personal policy priorities bias for those of Congress's enacted law by withholding regulatee complaints in violation of OPRL; ignoring and injuring the safety of the people of Oregon. *"The intention of the person is the soul of the instrument."* *"Outward acts indicate the thoughts hidden within."*

In *U. of O. Co-Oper. v. Dept. of Rev.*, 273 Or. 539, 550, 542 P.2d 900 (1975): *Agencies are restricted to powers granted them by statute, and that the agency may not by its rules alter, or enlarge the statute.* *Oregon Newspaper Publishers v. Dept. of Corrections*, 988 P.2d 359, 329 Or. 115, 329 Ore. 115 (Or. 1999) *Some of those rules are mandated by statute, including, for example, the statutory enjoinder "not to insert what has been omitted, or to omit what has been inserted."* ORS 174.010. *Others are found in the case law, including, for example, the rule that words of common usage typically should be given their plain, natural, and ordinary meaning.* See *State v. Langley*, 314 Or. 247, 256, 839 P.2d 692 (1992) (illustrating rule); *Perez v. State Farm Mutual Ins. Co.*, 289 Or. 295, 299, 613 P.2d 32 (1980).

Delegation of statutory interpretation is not authorized without proper procedural legislative repeal of statute. In *Ochoco Const., Inc. v. Department of Land Conservation and Development*, 667 P.2d 499, 295 Or. 422 (Or. 1983) *An agency is a creature of statute. It has no inherent power, but only such power and authority as has been conferred upon it by its organic legislation.* ORS 703.480(2)(a) and 703.473(3) are substantive statutes; a change in existing regulations, *substantive rule*, are subject to procedural requirements, such as, the right of interested persons to comment before the rule takes effect.

ODPSST is making law without proper due process procedures, and authority; obviating open records laws; discounting statutory laws outright by changing provision within the law not amended by the Legislative Assembly. An unauthorized change of the legislative assembly's construct of a statutory regulations. ODPSST's rule-making is clearly outside the range of proper legal discretion delegated to the agency by law. Long since gone the pretense of keeping covered, but a solipsistic administrative will believing their discretion is greater than the peoples legislative will, with cavalier indifference in following procedural regulations, unilaterally and arbitrarily dodging the statutory requirements of public input under ORS 183.325 to 183.410. *"Their beauty lies in the disquisitions and the pursuit of varied and opposing argument which legal matters can do so well accommodate."* Michel de Montaigne Is this how laws are to serve us? Arbitrary parochial laws of their own invention, twisted, forced, or obliquely interpreted, not touched by superior law, is an offspring of despotic power, manifestly unjust, and oppressively hostile to the principles of liberty, rule of law, and justice. *The normal restraints in a healthy State do not provide for such abnormal occurrences.* James Madison By not following statutory procedures, and absent of any factual or legal support, disqualifies ODPSST's arbitrary capricious decision. ODPSST's special form of reasoning, not consistent with ministerial laws, placing an unnecessary burden on public access to records under OPRL. An arbitrary and capricious abuse of discretion rendering decisions without disclosing legal eligibility criteria and other substantive deviations from ORS 183.325 thru 183.410, as well as, ORS 703.473(3) and ORS 703.480(2)(a), and other statutes. Arrogating the power of the law; a power impulse placing themselves above the law. A law unto itself, usurping the Legislative Assembly's authority; unmaking the imbalance of power by destroying the checks on authoritative power crossing a constitutional *red line*. One department of government may employ force to restrain the injustice on another; the legitimate exercise check upon another. The time honored checks on oppressive abuse of authority, so crucial to a free American

society. I intend to use that force to restore the mandated balance. The principled demand instilled in our constitution and ODPSST's mandate, the ideas of making authorities, citizens, and regulatees as good as possible. *"Belief in the equal moral worth, and equal moral authority of every individual are the real source of democratic equality."* Gordon S. Wood Equal voice, equal power give us the ability to protect all. *"Safety of the People, requireth... the Justice be equally administered to all degrees of People's that is, that as well as rich, and mighty, as poor and obscure persons, may be righted of the injuries done them..."* Thomas Hobbs Without these fundamental principles one can do no good. No service to the state in the lightest avail if authority and administrative power are not people of good will. *"The history of liberty is the history of process. The fundamental fairness of due process."*

Due process of law and equal protection of the laws are the sureness of these law to operate on all alike are not subject to an arbitrary exercise of the power of government. In *Brewster v. Board of Education of Lynwood United Sch. District*, 149 F.3d 971, 982 (9th Cir, 1998): *The procedural due process violations deprived the constitutionally protected liberty and denied adequate procedural protection.* ODPSST has failed to, *"provide fair notice of the nature of the issues and a fair fact-finding procedures. Procedural due process is based on the notion that procedures that may result in the deprivation of certain constitutional rights provide fair notice of the nature of the issues and fair fact-finding procedures."* [Griffin v. Board of Parole, 116 P.3d 930, 201 Or. App. 21 (Or. 2005)] *"Flying from a fault, we fall into vice."* Horace Refusing to respond to multiple public petitions questioning these inconsistencies, and failing to provide fair-warning in rule change under ORS 183.325 to 183.410 *'We have taken special care to insist on fair warning when a statue regulates expression and implicates First Amendment values.'* (See, e.g. *Buckley v. Valeo*, 424 U.S 1, 40-41, 96 S.Ct 612, 645,46 L.Ed.2d 659 (1976); *Smith v. Goguen*, 415 U.S. 566, 573, 94 S.Ct. 1242 1247 , 39 Led.2d 605 (1974)) *Marks v. U.S.* 430 U.S. 188, 97 S. Ct. 990, 51 L.Ed.2d 260. A deprivation of constitutionally protected liberty interest, and adequate procedural protections. ODPSST has ignored and injured the democratic process of our First and Fourteenth Amendment privileges and immunities of the citizens of the United States. First Amendment protection people from being silenced. Protections arising out of the nature and essential character of the federal government. ODPSST should protect and promote its citizen's rights, not take them away. *Due process is not an end in itself; its constitutional purpose is to protect a substantive interest to which the individual has a legitimate claim of entitlement :Constitutional law § 514. Constitutional law § 525 (6): a state create a protected liberty interest, within the meaning of the due process clause of the Fourteenth Amendment by placing substantive limits on official discretion.* ORS 703.473(3) is in *pari materia* of ORS 703.480(2)(a), providing public access to records in pursuant OPRL.

ODPSST has dishonored it's obligation to inform the public under the presumption of transparency in the promise of the First and Fourteenth Amendments of the Constitution. ORS 703.473(a) and 703.480(2)(a) cannot be eliminated in it's effect by an administrative regulation that is manifestly contrary the legislative intent of these statutes through improper, unauthorized expansion of the *plain-meaning* definition of *"false"* as defined by the legislation. The *plain-meaning rule* " is the principle that if a law seems clear, you should take the simplest meaning of the words and not read anything into the law. In *Black's* definition: *"The rule if writing , or provision in a writing appears to be unambiguous on its face, its meaning must be determined from the writing itself without resort to any extrinsic evidence."* Also, the *Black's* definitions of *"false"* are: *Untrue, deceitful; lying, not genuine; inauthentic.* It is abundantly clear the intent of the Legislative Assembly to prevent manifest malicious false complaints: false reports. This is under the same standards of evidence of *clear & convincing* in determining if a public complaint report is manifestly false; not as a default if evidence doesn't reach the high bar of *clear & convincing*. The courts have held that in construing a statute and choosing

between alternative interpretation of an ambiguous statute, the courts must choose the interpretation which will avoid any serious constitutional difficulty. *"Statutes made for the public advantage ought to be broadly construed."* ODPSST's policy revision removes all *dismissal* entitlements of records from ORS 703.473(3), obviating it's statutory, as well as, constitutional purpose and intent. Statutes should not be, "construed to legislature intent to produce unreasonable or absurd result: *State v Galligan, 312 Or 35 816 P2d 601 (1991)*. *"The most desirable laws are those which are fewest, simplest, and most general. No person commits crimes more grossly, widely, or regularly than do our laws. If anyone obeys them only when they are just, then he fails to obey them for the reason he must. Our laws, by their chaotic deformity, contribute not a little to the way they are applied and corrupt way in which they are executed. The fact that their authority is so vague and inconsistent to some extent justifies our disobeying them and our faulty interpretation, application and enforcement of them."* Michel de Montaigne

"Reason is an activity of the soul in accordance with perfect virtue." Aristotle With reason and intent as the guide, the legislative definition is intended to be complete. *"In dubious cases, the more favorable construction are always to be preferred."* There is no latitude for the agency to make it's own legislation, or policy decisions as to the coverage of the statutes to include "unfounded", "invalid" and "incomplete." "False" is "false", "unfounded" is "unfounded", and "incomplete" is "incomplete", "invalid" is "invalid" are precise terms. "False" is not synonymous with any of these other terms, as defined by ORS 703.480(2)(a). "Unfounded falsehood", "incomplete falsehood", or "invalid falsehood" is not defined, or provided by the Legislative Assembly's canon of construction of this plain-meaning, substantive statute. "Unfounded false", "invalid false," two negatives are a positive, so "unfounded false", and "invalid false," in another way of describing a truth. A . A truism created by merging these words and meanings in ODPSST's revision. This is clearly not what the Legislative Assembly intended by this *doublespeak*. A verbal sleight-of-hand advancing *abuse of discretion*.

"What is to give light must endure burning." Viktor Frankle See, *Sundermeir v. PERS, 269 Or App 586, 595-96, 344 P3d 1142, rev den, 357 Or 415 (2015)* ("[W]hen a statute clearly and unambiguously says one thing, we cannot simply conclude that the legislature meant something entirely different."). If ODPSST were to be allowed to continue to embody the calculated vagueness definitions of "unfounded", "incomplete" and "invalid" on to the never ambiguous word-- false--of ORS 703.480(2)(a) interpretation, it disembodies the art, reason and force of the legislation's constitutional intent of ORS 703.473(3), as well as, ORS 192.314 to 192.478(OPRL). The sphere of meaning; the intention and influence is grounded in the First and Fourteenth Amendment entitlements; a sphere of democratic necessity. "[False] is always strong....Cut these words and they would bleed, they are vascular and alive, they walk and run." Ralph Waldo Emerson

"When a local enactment is found incompatible with a state law in an area of substantive policy, the state law will displace the local rule." *La Grande/ Astoria, 281 Or 149. In Wilson v. Tri-Met, 234 Or App 615,228 P3d 1225, rev, 348 Or 669 (2010)* "The full effect cannot be given to both statutes, the more specific statute will control over the more general one." In *Tharalson v. State Dept. of Revenue, 573 P.2d 298, 281 Or. 9 (Or. 1978)*: In construing a statute and in choosing between alternative interpretation of an ambiguous statute the interpretation which will avoid any serious constitutional difficulty is chosen. ORS 703.473(3) is the most constitutionally specific and therefore the controlling construct.

Straight and clear as a ray of light, the reason and meaning of ORS 703.480(2)(a) and ORS 703.473(3) statutes are plain-meaning and unambiguous; legislation to create in men a benevolent disposition. The

reason and meaning, *straight and clear as a ray of light*. For only an ally of bad faith could object to them. “*Things that have had fixed interpretation are to be altered as little as possible.*” ODPSST overly broad interpretation to a specific, concise meaning of “*false*” in ORS 703.480(2)(a), including any other designation that doesn’t lead *clear and convincing* evidence to warrant disciplinary actionable offense outlined in ORS 703.401 to 703.995 is outside the range of discretion delegated to the agency by law. ODPSST has frustrated the administration of public transparency, and insulated the regulatee, and agency functionaries from rightful public oversight interest, inconsistent with ORS 173.473(3) legislature’s intended function. As a consequence of this vandalism of a *plain-meaning* statutes, *ubi eadem ratio ibi idem jus: like reasons make like law*; ORS 703.473(3) is obviated, deconstructed to a non-functioning law. See *McKean-Coffman v. Employment Div.*, 312 Or 543, 549, 824 P2d 410, adh'd to on recons, 314 Or 645, 842 P2d 380 (1992) (explaining that “*courts must refuse to give literal application to language when to do so would produce an absurd or unreasonable result*” and instead “*courts must construe the statute if possible so that it is reasonable and workable and consistent with the legislature's general policy*”); *State v. Stout*, 281 Or App 263, 273, 382 P3d 591 (2016), aff'd, 362 Or 758, 415 P3d 567 (2018) (“*We are not to read a statute out of context so as to produce an unworkable or absurd result, or counteract the legislature's clear intention.*”). *Cessante ratione legis cessat ipsa lex-reason: is the soul of law, and when the reason of any particular law ceases, so does the law itself.* ODPSST’s revision of ORS 703.480(2)(a) to include “*invalid*” and “*unfounded*” from the legislative intent parameter of “*false*” changes the functional intent and language of ORS 703.473(2)(a) to: “*Alleged violation and investigation is confidential and is not subject to disclosure under [OPRL] unless leads to allegation is true and/or leads to disciplinary action.*” “*Useless laws weaken the necessary laws.*” *Montesquieu*

Clearly, this is not the intention of the precise language of ORS703.473(3) to limit access to all dismissed cases in public record. If the Legislative Assembly’s intention and purpose for the statute they would have included these definitions in the precise language stipulated and would have not required a disabling statute of ORS 703.480(2)(a). “*Cut anything into tiny pieces and it all becomes a mass of confusion.*” *Lucius Amaeus Seneca*. In the construction of statutes: ORS174.010 General rule for construction of statutes. *In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.* Arbitrary administrative rule-making, and unauthorized rule revision changes without proper procedural duties are abrogating, overriding the legislative intention without legal authority. “*Where there is no authority to establish a rule, there in no necessity to obey.*” Law making is delegated solely to the Legislative Assembly. ODPSST is abrogating, trampling, and usurping the legislative intention. Obviating the public safety and “*paramount goal*” of ORS 703.473(3); the public’s access to complaints investigated, and processed to completion, under this statute, is making new law. “*The legislature knows how to include qualifying language in a statute when it want to do so. It did not do so here.*” [*PGE v. Bureau of Labor and Industries* , 859 P2d 1148, 317 Or 606, 17]

Defined in ORS 703.480(2)(a) is: “*...notwithstanding when the department conducts an investigation under this paragraph, all information about the alleged violation and the investigation is confidential and is not subject to disclosure under ORS 192.311 to 192.478 if the department determines that the allegation is false.*” ODPSST determines if allegations are true or false is by the mandate: *clear and convincing* evidence. If ODPSST is to determined public complaints are true by *clear and convincing* evidence, ODPSST employs ORS 703.480(2)(a)’s definition of “*false*” as a default if *clear and*

convincing doesn't support a true finding. "Invalid," "incomplete," and "unfounded" are not "false" designations as defined by the Legislative Assembly under ORS 703.480(2)(a), and plain-meaning, plain text as defined by Blacks Law Dictionary. The same standard of *clear and convincing* must also apply to determine if the complaint is designated "false." *Clear and convincing* is the mandated standard, and to by equity of judgment, a "false" designation must be held to that same standard in the determination of a true allegation in order to use a "false" designation under ORS 703.480 (2)(a). By statutory regulation ORS 703.473(3), and ORS 703.480 (2)(a) any designation that falls outside the mandated *clear and convincing* evidentiary guilt standard is available to under OPRL. Therefore, designations of "unfounded", "incomplete", or "invalid" to allegation can not justify blocking entitled public records under OPRL. "So convenience a thing to be a reasonable creature, since it enables one to find or make a reason for everything one has a mind to do." *Benjamin Franklin*

As expressed in my February 4th letter to you: *Aside from Mr Albert's disagreement with OPDSST's interpretation of ORS 703.480(2)(a), it was noted in Mr. Albert's letter, "DPSST acknowledges this is a broad interpretation of the term "false" but believe it to be a reasonable interpretation of ORS 703.480(2)(a) to minimize the negative impacts on an investigator's reputation and business." A conservation of parity argument to protect the accused, as well as the accuser. However, this sophistry of groping for the golden mean, is but a Solomon's parable of only finding unguarded public injustice.*" A conservation of equity of evidence to prove allegations of truth and to prove allegation of falsehood should apply if OPDSST's *conservation of parity* position is to be apply fairly to the whole of investigation with equity to truth and falsehood designations, "Doubt truth to be a lair." Not the ham-handed method currently employed. "The only thing in the middle of the road is road kill and yellow strips." The same standard of *clear and convincing* evidence should apply to "false" determination; not as a default designation to hide complaint records from the public if *clear and convincing* evidence is unobtainable as currently applied. False and true should equate and counterbalanced in determining the allegations validity. . An equal consideration for the public in maintaining this high bar for public safety sake, as to, determining if the public complaints are "false" under ORS 703.480(2)(a); to prove the falsehood of the public complaint by the same standard of *clear and convincing* evidence as mandated by law.

The designations of "unfounded", "invalid" or "incomplete" are open to inspection for public safeguard considerations. Protecting the public is OPDSST's mandated object of pursuit. It is not mandated to protect regulattee from discovery of public complaint records subject to OPRL which doesn't reach the high bar of *clear and convincing* evidence. Equating that equal protection of regulattee with the safety of the general public tips the balance in favor of regulattee, rather than the public through the prevailing structural injustices. "No Spartan deliberated about the best constitution for Scythians." Aristotle I do not believe this is the Legislative Assembly's intention of OPDSST's public mandate to protect the regulattee over the public.

The people's share in the government is the greatest under the American constitutional republic. The citizens are the sovereignty, and what is done is done by their will and authority. "Power that is derived cannot be greater than that from which it is derived." It concerns all affairs of the state administered by the people; the legitimate source of political authority. It is their duty to take them under their charge. The great equalizer of this American democracy in the wisdom of our government. The touchstone to our national hymn: "The universe bend toward justice;" all things are moral to good souls; a collective moral strength through the unity of purpose, provided by, for and of the people. The great alacrity the vigilance of the public eye. A natural universal magnanimity of devotion to ensuring

institutional fealty to the protection of its mission, and to the people of the agency. Equality before the law; *“fairness is the right.” Abraham Lincoln* The *sum and substance*, the *alpha & omega* of the whole matter; the vital moral urge of balance, equality, fairness, and justice to fervently advocate and inhabit the laws and constitution of our people, if not all peoples.

“One should avoid wrong-doing with more care than being wronged, and that the supreme object of man's effort, in public an private life must be the reality, rather than the appearance.” Socrates
Professional Standards Division Director, professional ethics should defend the public with full devotion, without fear or favor. Leadership matters, proper, real leadership is a sacrifice; sacrificing our desires for someone else. Sacrificing private desires for the public's desires. True leadership must be servant leadership. Self-mindedness is a weakness in people; it is a travesty in public institutions. A betrayal of community and a dishonor to the people they serve, and themselves. *“Passions of honor frequently leads to deeds of dishonor.” Plutarch* The obligations of leadership by priority is to the people of Oregon; the mission of the agency, and the people of the agency. As to the people of the agency, this must include what is generally mandated by statutory regulations, adherence to policy, and constitutional protections and entitlements, but *First Principles* universal to all people. Not only the mediocrity of law, but with the nobler, ethical conscience, and moral distinction. *“Power is not conferred but for the public good.”* An agency must strive to achieve not only its legal obligations as a goal, however, legality is the base, the floor not supreme end to aspire. It is only the starting point for ethical moral goal of an organization. To be reflective of ones own powers, steadfast, loyal, and zealous guardians for the people of Oregon. *“When a man assumes a public trust he should consider himself as public property.” Thomas Jefferson* We entrust the conduct of our affairs to men and women who understand that their first duty as public officials is to divest themselves of the power they have been given. *“Eternal vigilance is the price of liberty.”* They should always fulfill their *moral vocation, moral will*. Consciousness is the supreme judge of moral turpitude, and consciousness of guilt. Loosing ground to ethical considerations, legal considerations are not far behind. Rarely should they fail to meet the obligations to the people, according to the laws, statutes and values of the state. Self-surrendering not self-serving, knowing it is better to suffer wrong than do wrong. Not the donning a halo of fanatical devotion, but a halo of light providing knowledge and leadership. Relying mainly on the strength of personal and public virtue of sacrificing private desire for the sake of public good, also makes it fragile, if virtuousness is weak, or absent, forecasting private and public virtue and interest divergence. *The spirit of liberty is the spirit which weighs their interest alongside its own without bias.*
Learned Hand *“The great radiance of virtue.” George Clinton* Knowledge must not be obscured, and available to all. To be known for corrective leadership, and safety for us all. A virtuous fidelity to one's personal and professional moral vocation. A commitment allowing for normal united frailty, human frailties in us all. *“To set always according to your best conviction of your duty or act according to your conscience; the immediate conscientious of our determinate duty. The will which so acts is the good will.” Johann Gottlieb Fichte*

Together, holding society by rules and principle, never separating one's action for another, for in its essence they are one and the same, society and individuals. A devotion to public rectitude is an essential public virtue under a representative democracy. *“Virtue gain much by being put to the proof.” Lucius Annaeus Seneca* A common interest to guaranteeing and protecting our laws and rights; a shared commitment to the laws, true faith with the political courage to maintain an objective disinterestedness protecting *equal justice under law*. Protecting the constitutional rights and respecting the limits of personal power by public officials. *“A power should be strictly interpreted.” “If you want*

to govern the people, you must place yourself below them. If you want to lead the people, you must learn how to follow them." Lao Tzu Public virtuousness can be difficult. Democracy is tough and messy, authoritarianism is easy and clean. The self-critical aspect of democracy by finding, exposing, and showing the truth; flanking the enemy of democracy is fighting the good fight. This exposure may be out of reach to those arrogant, resistant, concealing oligarchs of public agencies finding it easier and cleaner to be autocratic. "*There is a tendency in all governments to an augmentation of power at the expense of liberty.*" James Madison An insidious advance of irresponsible power breaking the ties that bind democracy, refusing to leave effective restraints against the accumulation of power. "*'Power corrupts,' as humankind gains more and more power it creates a cold mechanistic world ill-suited to our needs.*" Yuval Noah Harari "*The fatal poison of irresponsible power already in her hands, and soon commenced its informal work.*" Fredrick Douglass ODPSST should be held fully responsible for their exercise of power by the people. The American people must not acquiesce to authoritarianism, national or local, it must be fought against, or we will lose our democracy. "*Power concedes nothing with a demand. It never did and it never will.*" Fredrick Douglass "*Infect the whole commonwealth with their vices; and not only because they are corrupt, but also because they corrupt others, and do more harm by their bad example than by their sins.*" Marcus Tullius Cicero

The public is not the agencies employee's or charges. Authorities may see them as citizen upstarts having the temerity of telling them how to govern. We are not is the service of the state,mere machines- *homo machina-* of the state, but the force of public authority. "*An Assembly of a Part only.*" Thomas Hobbs "*The great inexorable strength unity,*" Abraham Lincoln synergy of democracy, collectively and individually. *The plurality of selves* by unity of American democratic principles of *e pluribus unum*. "*The self-perpetuating power of the sovereign body.*" Thomas Hobbs We are the agencies authorities, and should be treated as such by answering to the governed. It is the public's duty to "*Stand and act: Institutions do not protest themselves, they fall one after the other unless each is defended from the beginning.*" Tim Snyder (*On Tyranny*) External vigilance is failing internal vigilance. A corrective counterweight to defend institutions, and the natural right of men, when normal tools of reparation have become instruments of repression, they need our help to preserve democratic decency. "*Democracy is not a state it is an act.*" Timothy Snyder We must stand up and act to protect our government. The power of our collective imagination of public will is immense: the *deus ex machina* of our society and government. "*For man, when perfected, it is best, but when separated from law and justice, he is the worst of all; but justice is the bond of men in state for the administration of justice, which is the determination of what is just, is the principle of order in political society.*" Aristotle

"Public interest depends on private virtue." James Q Wilson Putting the common good ahead of self. *Public virtue* is putting public's common good ahead of the institutional self. A bonding, united strength, united around a common purpose that serve the common cause, for the greater public good. *Virtue* appeared more often in writing of George Washington, John Adams, Thomas Jefferson, and James Madison than *republic* did. All considered, their American experiment doomed if virtuelessness dominated. Madison wisely added safety checks for such unfounded optimism of virtuousness in officeholders, as well as the others, by setting up *checks and balances*. "*There is a tendency in all Governments to an augmentation of power at the expense of liberty [the] 'essential precaution' in favor of liberty.*" James Madison Together we defend the laws, the institutions, and ideals on which our country are based. "*We have to stand for the rule of law because rule of law doesn't stand by itself.*" We as responsible citizens have a duty to protect our institutions from falling victim to one-sided inwardness, epikarocracy of institutional authoritarianism. Becoming feeble, petty, iniquitous institutions shrugging off the unity mandated to them by the public will through laws and statutes for, by, and to the people.

The current *pattern-or-practice* will continue to eliminate any accountability; *checks and balances*, the entitled virtuous power of oversight by the public. “*The tyranny of a prince in an oligarchy is not so dangerous to the public welfare as the apathy of a citizen in a democracy.*” Montesquieu (*The Spirit of the Laws*)

The people, the plurality of forces united by a common need; the collective sovereign share the government with their chosen administrators and thereby qualify to help fix laws, and policy, as legislatively intended in APA. In order to live by the law one must understand its principles. A sharing in the government are for all citizens; the splendid and the vile. It follows that laws must govern all; the appointed for administrative authority, as well as, citizens. Law is “*A surety to one another of justice.*” *Lycophron* The law is its people, people are the law. The state government belongs to the people that live in it. Law does not adapt to the whim of authority, as under tyranny, it adapts through the will of the people. To avoid creeping fascism of *clerical authoritarian bureaucracy* our public institutions must be sensitive, obedient, and resolute to public will. *Salus populi suprema lex, regard for the public welfare in the highest law.* The plurality and power of the state is its citizens. A uniquely American exercise in democracy; confrontational and unnerving to dissident authorities; inspiring and empowering to the people. “*It's a conformation that the people are the ultimate arbiters of who govern them or how, not the other way around. The essence of the American promise.*” Noah Rathman

“*What use to be vices have become morality,*” *Lucius Annaeus Seneca* Out of ordinary become ordinary; the counter-ethical *pattern-or-practices*, in which the tyranny of bureaucratic expediency are the main motivational beliefs, which overlook, ignore, misrepresent, maladapted laws, are agents against the Will. There is a shrinkage of ethics when only judged by expediency. Right or wrong, ethical or legal, play little to no role when matters of expediency dominate in an institution. Character makes a person, city, state and country. “*By ethics, by law, by action, character is higher than intellect. If a man dissemble, deceive, he deceives himself, and goes out of acquaintance with his own being.*” *Ralph Waldo Emerson* If that man or woman is corrupted, the entire institution is compromised. The corrupt series of obstructive acts undermines the public interest of our institution and the governance of it. Such as, “*the appearance of the law must be upheld, especially when it is being broken.*” Under such deceptive practices people of Oregon are relegated to subservient status by oligarchical agencies losing its public commitment virtue. An interest was nearer to individual interests rather than was the interest of the state. “*The beauty or ugliness of a character lay not only in its achievements, but in its aim and impulse; its true history lay, not among things done, but among things willed.*” *Thomas Hardy* The tendency of the political section in power to work the state in its own interests, a power fetish of governance, and subsequently the public resentment of those of opposite views to a system under which the public inevitable suffer. A private/personal sphere incorporated within public sphere. A public agency morphing into a chimera of public and private interest in which private interest taking primary pursuit and control. Mutual incomprehension of two realities, subjective and objective truth, conflicting in mortal combat, fighting with fact welded in different way in which we all lose. ODPSST seem to be such a agency. A Kafkaesque public institution metamorphosed from public interest loyalty to regulattee/peer fealty. A public sphere incorporated into a private sphere no longer recognizable as a public institution. Pushing, stretching rules, policy and law, undermining its legal mandates, no longer having any real tangible public function bound to fundamental ethics and democratic principles. An institutional bubble with separate law, justice and rights operating under legal fiction, or something like it. Functioning as if an LLC, not personally responsible for act of misfeasance, possessing inherent immunities, qualified immunity. A masked legal entity not part of the general public, and societal responsibilities. Functioning only to perpetrate their own existence. An aberrant reality, going off script,

functioning as our government, poisoning the democratic process. Metamorphosed by private interest to mainly providing employment, salaries, power, personal prestige parasitizing our institution. A state agency that will manage its own affairs first and foremost at the expense of the public. A state outside, its own class, separate and unequal, above those whose interest it is supposed to protect and defend.. A monopolistic parasitic bureaucracy providing imitation of legitimacy to regulattee oversight, and public service. *“Possessed by what we now no more possess. Something we were withholding made us weak.” Robert Frost*

“When the white man turns tyrant, it is his won freedom that he destroys.” George Orwell Monarchical, epikariocratic principles in a republican government weakening of the branches of the institution, and risking the vitality of the whole. *“In monarch the King is the Law in Democracy the law is the King.” Thomas Paine* Bureaucratic entropy with its own interests. A mirage of mission; the closer one seems to get the further it recedes. A deliberate ignominious systematical plan meted out with public indifference. *A patina of public due diligence, wiped away the dullness implausibility.* Creating isolated enclaves of power; islands of separateness, contradicting the meaning of public service. A handful of agency oligarchs acting against the interest of the people. *“A common vice among those who think their capacities are above the ordinary, above the laws.” Michel de Montaigne* An imperial bureaucracy in which public virtue has no tangible meaning, leaching corroding principles corrupting traditions essential public institutions. A solipsistic minority believing their convective, convictions are above the capacities of the vast public majority. Eroding the moral ground that ensure a trusted bond sworn to protect. Bureaucratic pathology damaging the democratic roots of the agency; making it susceptible to the institutional disease of corruption.

Our public institution are lengthen shadow of all men. Conscientious and motivated citizens are the guardrails to those authorities who refusal to acknowledge this fact. The indefinite office of citizenship is to protect the agency mission for all of us. *Those that rule according to his own fancy. This tyranny is just that arbitrary power of an individual which is responsible to no one, and govern all alike, whether equals or betters, with a view to its own advantage not to that of its subjects, and therefore against their will. No freeman, if he can escape from it, will endure such a government.*

Aristotle ODPSST has ignored public input, violating regulatory statutes, and rule of law In a democracy, being a citizen is essential work. The people are the wisest depository of public intent. The unlawful abrogation of public input through the imperfect participants of our indefinite office of citizenship. No discussion of risks and benefits of this revision of ORS 703.480(2)(a). *No arguments replete with logical facilities,* only silence and a peremptory, disingenuous, as Mrs. Hale put it, “courtesy”, copy of the new rule. Bad collaboration leads to bad policy. Producing policy by decree, without fear of impunity, or sense of responsibility to the people. Tattered threads of pubic sovereign wound around and through bureaucratic machinery. No longer entangled in public service, but an authoritarian creep, a byzantine bureaucracy exploiting ones authority, and subverting our democracy, and marginalizing its people. *“... more and more power drains away from the individual... and we have less and less say about the shape of events which shape our future.” William F. Buckley Jr.* A blatant disregard of ORS 183.325 to 183.410, ordains that citizens have by right a substantive, tangible input in policies that has consequences to their liberty. One of the most comprehensive definitions of citizenship is that *“Every private citizen has a public duty.” Myra J. Daniels*

ODPSST failed to provide a due process entitlement. This certainly was not fulfilled by OPDSST peremptory letter announcing a rule change without public input and information request concerning ODPSST intentions. The pyrrhonism of ODPSST unilateral interpretation, modification, and revision

of ORS 703.480(2)(a) and transgression of public participation in ORS 183.310 thru 183.750 rule-making regulating statutes violates our, the public's, natural right A dark curtain of arbitrarily codification by decree; without due process of law is an infringement on one of the most comprehensive definitions of citizenship. An instrument binding up the state's responsibility and accountability. Not an instrument that we, as the public shape for our own purpose, but misused, breaking the ties, not longer bound by laws that bind us. Violating the public concomitant nature of democracy, and public trust through public verification; to tear back the curtain of darkness, preventing the public entitlements, is to follow the evidence. Where the light falls; to question everything, including authority, in the spirit of a free and open society, will be held accountable. A Public oversight to protect the mission of our agencies is to fulfill its meaningful commitment; to err towards constitutional and natural right of the people. Created through initiative petition filed July 7, 1910, and adopted by the people Nov. 8, 1910 a natural law of American democracy, citizen sovereignty, as exempled by Oregon Constitution Article VII Sec. 6: *Incompetency or malfeasance of public officer.* (*Oregon Constitution (2018 Edition)*) *Incompetency or malfeasance of public officer. Public officers shall not be impeached; but incompetency, corruption, malfeasance or delinquency in office may be tried in the same manner as criminal offenses, and judgment may be given of dismissal from office, and such further punishment as may have been prescribed by law.* The reign of natural law, morality we ought to be able to count on the rule of rational law in society. We ought to be able to count on rationality of our public agents. The characteristic of which is the rule of law. The perpetual immutable agreement of all peoples innate to all it's citizens that cannot be violated. *The sentiment of justice is so natural, and so universally acquired by all mankind, that its seems to be independent of all law, all party, all religions.* Voltaire Natural right to self-protection, presumption of transparency (open records) petition and proclamations, protections and entitlements in our democracy are natural right natural laws. *Our endeavors are all worldly, and among the worldly are the most natural are the most right.* Aesop Natural law, powered by the people, universally ordered, performed without any doubt; the natural common consent of the people, deeply aware of the force when anyone tries to violate it. *Whatever disagrees over the sovereign good disagree about the whole philosophy.* Marcus Tullius Cicero

"People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing." Chief Justice Warren Burger

One cannot win an argument that is not made; *silence is one of the hardest arguments to refute.* ODPSST's outright refusal to answer direct questions, or the use sophistical machination through the utilization of intellectually dishonest circumvention devices, such as, obfuscation, equivocation, pretermission, prevarication, or other methods of subterfuge is to blink at reality; to fend off the truth. *In all truths, an admixture of falsehood so like Truth that there is no way of deciding, or determining anything whatever with complete certainty.* Marcus Tullius Cicero Sophistical contrivances to thwart, avoid, or divert attention of situation that may negatively reflect functionaries actions. It could be reasonably concluded, *qui non negat fatetur-- he, or she that does not deny, admits it.* Silent pretermission creating a monologue rather than public dialogue. This is not a silent appreciation of the facts and its content, but a confession by pretermission to avoid acknowledgment of the reality of a neglectful public servant. Wearing a mask of virtue, a form of shame that has a kind of weight. A nefarious attribution, hiding from public gaze, only amplifies adverse inference. *Our outward actions exactly agreeable to our inward purpose and intentions.* (Archbishop John Tillotson) The silent true narrative of the deceivers and the deceived. A silent conspiracy of an untold vacuum of public injustice. *The law help persons who have been deceived, not those deceiving.* "Secrecy is generally the veil of iniquity—confident [of] some evil design." (Robert Mumford)

The first art of fiction is silence: contagious silence. *“Silence is the ultimate weapon of power.” Charles de Gaulle* Silence to public concerns by public officials is a most blatantly authoritarian arrangement; a permanent illiberal bias. Tyranny by silence, attempting to create an illusion of integrity; a mirage of mission meted out with public indifference of silence seen, not heard when silence is the response to injustices. Horizons receding as public petitions advance, depriving the public of a critically important firewall against usurpation of the people, self-governance and popular sovereignty. These non-responsive silent actions to a public petitions speaks much louder than words. A responsive lie may be more nobler. It is direct, but silence is more sinister. Contempt and lie by omission is one non-verbal, non-responsible malefic package. Remaining silent emboldens the lie. *“Great is truth, but sill greater, from a practical point of view is silence about truth.” Aldous Huxley* It is not normal, the public must speak out against it by standing up for the truth honor for all who gave all. There is long term damage when this kind of behavior is normalized. *“The actions under such public responsibility speaks still louder.” “The deepest feeling always shows itself in silence; not in silence, but restraint.”* What are these restraints that keep what is clearly entitled to the public? Why such debilitating restraints of public protection and obligation? A doctrine of the trinity, rationally incomprehensible, and must be accepted on faith. The tonic immobility induced by the *trinity-of-complacency* of seeing, hearing, and speaking no evil? A collective of solipsistic coven? The expediency of easier wrong over the harder right? Take your pick, whatever the motives these manipulations control the process and thereby the outcome of it's preference requires more than on public agent. *“Justice must always question itself, just as society can exist on by mean of the work it does on itself and on its institutions.” Michel Foucault* Justice hears all the repressive silence, and weighs the omissions. *“A conspiracy is everything that life is not. It's the inside game, cold,sure undistracted, forever closed off to us. We are the flawed ones, the innocents, trying to make some rough sense of the daily jostle. Conspirators have a logic and daring beyond our reach. All conspiracies are the same taut story of mean who find coherence in some criminal act.” Don DeLillo*

ODPSST should be humbled to their convective capacities. It requires at least a shine of public legitimacy by enforcing a minimum standard of public conduct. The core principles that have guided our public institutions and judicial system. This profound hypocrisy must not be cursed by *Dunning-Kruger effect* directing lax oversight of *watchdogs that do not bark*. A power granted by the enabling legislation that the legislation has expressly authorized. ODPSST has no right by law to assert it's own realty of law by arbitrarily making use of this accumulation of abnormal power abrogating these regulatory statutes in a calculated attempt to prioritize protections of regulattee over the public. Out of the ordinary become ordinary countervailing public interest. It is said, *“Nothing discloses character like the use of power.” Robert Green Ingersoll* In the face of these tasks; the petition responses are a matter of utmost indifference by words and deeds that form the indictment of sacrificing standards and principles to satisfy a particular bias. Seriously questioning the agencies commitment to the public and the primacy of the rule of law. *“Without agreement abut some basic facts, citizens cannot form the civil society that would allow them to defend themselves.” Tim Snyder*

“Each man's morals shape his destiny.” Erasmus “All thing are enchain in the fetters of their destiny.” Montesquieu . Instead of the public virtue of seeing a wrong and fixing it, ODPSST saw a wrong and made it worse. An apparatus of excuse, and justification for malfeasance of public protection issues. *The public's common cause against injustice, come to see justice as a serrated edge of inequality, contrived and the resentment it magnifies.* An interest nearer to individual interest than was the interest of the state. Floating through violations of the rule of law; looking for weaknesses, or openings in order to

hedge the law. Just as important, subordinating, circumventing and perverting the protection in the letter and spirit of the law. *“Republics do not collapse because of one person; they collapse because men inside the regime look for loopholes in the law... and then seek to expand the loopholes until the law itself has no meaning.”* *Timothy Snyder* If they are not true to the law, then reason itself is totally false. Uncovering the defining characteristic of ODPSST's functionaries is for ODPSST's purpose and responsibility rather than the public's. A badge of false faith, arbitrary power of an individual viewing his own advantage not of the public and against the will of the people. *It is excellent to have a giant's strength, but it is tyrannous to use it like a giant.* Representing a clear conflict of interest. Indifferent to the public's wrath, failing to keep within their compass, becoming judges in their own causes. Violating the rights of individuals in order to avoid comprises to it's undemocratic policies which are abhorrent to a free open society. *“Raw power ruled, and it's only real goal was to destroy all other powers besides itself.”* *Martin Luther*

An indictment through indifference. ODPSST is a democratic not oligarchical institution. Agency functionaries and their charges, do not trump our constitution or laws. A mandated alliance with the people, not their charges. If people do not feel they are represented by anything, or anyone how can they believe and respect governing institutions when they do not respect the public? Society expects the citizens to respect those who administer justice. Once justice collapse for the majority of the public so does the republic. I believe ODPSST has failed to appreciate it's position and responsibility to the public in return. ODPSST has failed to pursue the public's will in favor of the agencies will; failed to uphold the oath of public office for private gain. When justice cannot be achieved in society, dire consequences follow. The primary responsibility of government is the safety of its people: period. Any agency that has lost sight of this *sacrum santorum* is no longer a functional governmental institution. In these failing ODPSST has not provided it's primary delegated pursuits of public protection. Opening a *Pandora's box of infinite troubles.* *Cordell Hull* *“A[ruler] is only a fiduciary power to act for certain ends, there remains still in the people, the legislative act contrary to the trust reposed in them... Man being, as has been said, by nature, all free, equal and independent no one can be put out of his estate, and subjected to the political power of another; without his own consent.. if a government fails to oblige its citizens, its power must be limited. Governments should protect its citizens rights.* *John Locke*

Considering ODPSST's public mandate, an encumbering, prejudicial hypocrisy by refusing to respond to lawful and just public petitions, confesses contempt of the public and it's laws. How can the public trust the integrity and interpretation of regulattee complaint conclusions. A convenient expediency in refusing to provide dismissed public complaints, not reaching the high bar of disciplinary action, for the public to judge for themselves. The risk of error is high; reducing the safeguards to the public countervailing public interest. The right to test the veracity, we need particular proof of the written complaints; for all the public to be informed to judge for their own protection. To rest an unsettled public mind; regardless of reaching the high bar of *clear and convincing evidence* for disciplinary action. *“Uncertain evil most torments us.”* *Lucius Annaeus Seneca*

Who will guard the guardians if the guardians refuse to do so? The public must trust ODPSST's conclusion without the agency providing any documents for the public to property judge under ORS 703.473(a). A trust not warranted, in my opinion, supported by 140+ pages of documented misfeasance over a three year period. An historic contempt for its own regulatory statutes, ignoring clear facts, concerning ODPSST's actions. A solid archive of evidence that could not be disputed or denied. *“History has many cunning passages, contrived corridors and issues.”* *T.S. Elliot* A full panoply of documented material under girding these accusations *“The wickedness of mankind makes it*

necessary for the law to suppose them better than they really are.” An unencumbered hypocrisy not easily dismissed by a conscientious public, or by even the most stridently restrained authorities. The evidence so conclusive, and argument so clear, that even great authority, fairly considered and weighted, cannot stand.” Abraham Lincoln :

ODPSST has, in my opinion, scorned their oath, flouted the rules, and attempted to undermine the integrity of the state. The public deserves a clear, honest picture of what is happening, whether good, or bad the public needs to know the truth.. That is the way we restore confidence to truthfulness by being very transparent in governmental action. *Res pisa sequitur*-the thing speaks for itself. “*Events that stand recorded history... as they followed on another, or as they produced one another, causes or effects, immediate or remote. History supplies the defects of our own experience. It shows us causes as in fact they were laid, with their immediate effects: and it enables us to guess at future events.*” Henry St. John ODPSST is no longer synchronous with the public choral Muse of America, but instead moving on its own, becoming separate, losing the sense of shared harmony of belonging to shared idea. From an us to a *them*, stripping our adhesive cohesion, the glue of democracy, by becoming their own greater good, unable to see, and smooth societies wrinkles, only seeing their own. This alone is cause for public trepidation. Creating a widening trust deficit of proper complaint disposition, public commitment and institutional integrity. “*Secrecy is generally the veil of inequity confident of some evil design.*” Open public records, open discretionary, and due process matters are at the heart of public protection, public trust, public accountability; a democratic entitlement in which ODPSST refuses to provide. The public, “*Should seek evidence of the truth from minds stupefied by habit.*” Marcus Tullius Cicero

This malfeasance is a clear violation of constitutional procedural due process. Procedures such as ORS 183.411 to 183.471. Deprivation of certain constitutional right providing fair notice of the nature of the issues and fair fact-finding procedures. These procedural due process imposes constraints on governmental decision that deprive individual of constitutionally protected liberty interest. In *Wilkerson v. Austin* US, 126 S.Ct 2384, 162 Ed2d 174 (2005), “*Procedural due process imposes constraints on governmental decisions that deprive individuals of constitutionally protected liberty interests... The fourteenth Amendment “liberty” to entitlements required by Due Process Clause to ensure that the state created right is not arbitrarily abrogated.*” ODPSST actions entails refusing to respond to ORS183.411 to 183.471 petition letter, dated February 4, 2020, addressed to Lindsay Hale, Professional Standards Division Director, and abrogation of rights to public records of public complaints filed with ODPSST. “*The more crafty and artful a man is, the more he is loathed and mistrusted, once he has lost his reputation for probity.*” Montesquieu

ODPSST's group action has become a case study of political policy and law. If one wishes to find malfeasance it will certainly be found; if one wishes to view ODPSST as a moribund, publicly trifling institution, there is abundant evidence to do so. If one wishes to interpret the actions of the administrators and its functionaries as being politically motivated and self-serving, one will find circumstantial evidence to support the theory: and if one wishes to view ODPSST as a public protection oversight agency with bias advantaging regulatees protections over the general public, one will also find evidence to support that thesis.

God gave us our voice, our constitution ensures it for all, and with firm belief that right makes might, my attempts were to convince ODPSST of the constitutionality, statutory law, court precedence and ethical motivations to do the right thing: making the case that no one is above the law. To do their part

as agents of the public to protect the public from regulattee malfeasance and the dangers of apathetic bureaucratic entropy; to follow policy, statutory regulations and constitutional entitlements of the public. Denied not but for the facts, but in spite of the facts. On its merits, which is clearly established and contradicts law and precedence, ODPSST has failed the this cardinal function. Bare facts are the starting point of any investigation. *“ To abandon facts is to abandon freedom. If nothing is true, then no one can criticize power, because there is no basis upon which to do so. If nothing is true , then all is spectacle.”* Timothy Snyder

The true and honest read of the facts will show this fundamental requirements were not provided. Information was not gathered. The public was not listened to by repeated non-responses. The risks to the public was not fully assessed or appreciated. The unilateral authority to act was not provided by statutes, case law or policy. The goals of the institutions to serve the public-at-large were not provided. Decisions were not reassessed or revised by furthering information received. Regrettably the corrosive silence of public records remain unresolved, and troubling. The silent, exclusion, and isolation from principles creates a danger for us all. The sources of facts go away, filling with myth creating a vacuum in which truth suffocates.

“Post-Truth is pre-Fascism. Without agreement about some basic facts, citizens cannot form the civil society that could allow them to defend themselves. To abandon facts is to abandon freedom. If nothing is true, then no one can criticize power because there is no bases upon which to do so.” Timothy Snyder

I conceive the Constitution of the United States to rest... upon the fundamental proposition of the integrity of the individual: and that all governments and all provide institutions must be designed to promote and protect and defend the integrity and the dignity of the individual that is essential meaning of the Constitution and the Bill of Rights. Any form of government, therefore, and any other institutions which make men means rather than ends, which exalt the state or any other institution above the importance of men, which place arbitrary power over men as a fundamental tenet of government are contrary to that conception

David Lilienthal

August 31, 2021

Stephanie Clark, Director
Archives Division
Office of The Secretary of State
800 Summer Street NE
Salem, OR 97310

Dear Ms. Clark:

Thank you for your response letter dated August 24th. I do have a few question concerning Administrative Procedures Act. (APA) requirements.

Your letter implies that Oregon Department of Public Safety Standards and Training (ODPSST) that if it is agency policy the agency need not file rule-making documents as required by APA. This seem like a “backdoor” in to avoid the checks, and justifications for rule-making under APA, even the

requirement of filing changes with the Secretary of State. ODPSST's parochial, *ultra vires* rule-making is a usurpation of the Legislative Assembly's role in the substantive statutes, such as Oregon Public Records Law (OPRL), breaching the separation of powers. "*Our outward actions exactly agreeable to our inward purpose and intentions.*" *Archbishop John Tillotson* Please note on page eleven, the last page of policy number 129, the very end of the policy, ODPSST changed the rule, *rule-making*, of a plain-meaning, ministerial statutes ORS 703.480(2)(a) by the Legislative Assembly (public will) from *false* complaint to include *unfounded* and *invalid*. This changes the function of its *pari materia* statute ORS 703.473(3) censoring the vast majority of public complaints against investigators, changing the intent of the Legislative Assembly's intention of *presumption of transparency* of public records; *metlaw* of our First Amendment rights.

This is clear violation of 174.010. General rule for construction of statutes: *In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.*

"Policy" defined under Webster's: *A plan or course of action, as of a government, intended to influence and determine decisions, actions and other matters.* "Rule" is defined, under Black's Law dictionary as *the general principles by which a government is guided in its management of public affairs; a regulation governing a court's or an agency's internal procedures.* ORS 183.310(9) defines a "rule" as *"any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency."* They seem synonymous to me.

Please say this isn't so, all an agency has to do is add it to its policy (in this case the very last section of the policy) in order to usurp APA, and our First Amendment rights under OPRL? A rule, and a policy is synonymous in my opinion, and should not distinguish file-able with Secretary of State under APA, or not file-able if it is policy. The overriding consequence is that the public is prevented from records allowed under OPRL simply by adding it to policy notification.

Please, if you are able explain, ODPSST's ability to by-pass APA in this manner, and what is Secretary of States role in preventing such abrogation of fundamental entitlements as open public records and public input and state notice of rule-making under APA.

Thank you for your attention in this matter.

Respectfully submitted,

Henry Childress
10977752
EOCI
2500 Westgate
Pendleton, Oregon 97801

August 17, 2021

Stephanie Clark, Director
Archives Division
Office of The Secretary of State
800 Summer Street NE
Salem, OR 97310

Dear Ms. Clark:

Under OPRL, I petition for records of the Notice of Proposed Rulemaking, with statement of need and fiscal impact, concerning Oregon Department of Public Safety Standards&Training Policy Number 129, effective date 3/12/20.

Specifically, but not exclusively, related to ODPSST's rule change concerning repeal rule change of ORS 703.480 (2)(a) in Policy Number 129 effective date 3/12/20, to include, "*unfounded*" and "*invalid*." ORS 703.480 Board and department duties; rules; fees; (2)(a) states: *(a) Investigate alleged violations of ORS 703.401 to 703.490 and of any rules adopted by the board or department.* *Notwithstanding ORS 703.473(3), when the department conducts an investigation under this paragraph, all information about the alleged violation and the investigation is confidential and is not subject to disclosure under ORS 192.410 to 192.505 if the department determines that the allegation is false.*

I also wish to contest this change. This rule change arrogates ORS 703.473(3), thus blocking all dismissed complaints under ODPSST's interpretation of "*false*," under *clear and convincing* evidence, and it's recent *ultra vires* rule change to include, "*unfounded*," and "*invalid*." ODPSST's policy interpolation is implausible, inconsistent in it's context or any other source of law, and not within its delegation. A parochial "*curative statutory revision*" interfering with the interpretation of ORS 703.480(2)(a), and application of ORS 703.473(3). These interpolations violate ORS 174.010, subverting the legislative Assembly's authority and intent of ORS 703.473(3) and ORS 703.480(2)(a) of presumption of transparency of public records. Unilaterally changing the text, thereby the meaning of a duly enacted statute. ODPSST, statutorily, and case law precedence, is prevented from going outside the *plain-text, plain-meaning* of the statute. ODPSST's revision is not in conformity with the governing statutes and void for lack of authority and totality without legal effect. Kidnapped from their open record purpose by ODPSST's abuse of discretionary authority these statutes cannot operate concurrently. Forces statutory disharmony, not functioning consistently, as intended by state law.

I had previously petitioned Public Records Advocate (PRA), Mr. Todd Albert, to redress the issue of OPDSST utilizing "*invalid*," "*unfounded*," and "*incomplete*," as synonymous in action to "*false*" under ORS 703.480(2)(a) to prevent public access to records under OPRL. Mr. Albert recommended to Ms. Lindsay Hale, Professional Standards Division Director, to codify through *rule-making* ODPSST's implicit, inured *pattern-or-practice* of an over-broad definition of a plain-meaning, textual, ministerial substantive statute intent of "*false*." This further suppressed access to public records available under OPRL by broadening the Legislative Assembly's intent of "*false*" under ORS 703.480(2)(a) to conceal

complaints by the public. A surprise reversion after thinking Mr. Albert was a public advocate, not an agency advocate to suppress public records, and counter to PRA's mandate, as stated duties and authority under SB 106, 2017 of the Public Records Advisory Council (PRAC). The mission statements include, *"Identify inefficiencies and inconsistencies in application of the public records law that impede transparency in public process and government; Make recommendations on changes in law, policy or practice that could enhance transparency in public process and government, and facilitate rapid dissemination of public records to requester."* Mr. Albert's advocacy action was counter to the legislative purpose of PRA, and PRAC as enumerated above. (Letter of action included:

ODPSST's position was express in a phone discussion with Mr. Albert. In a response letter from Mr. Albert, aside from Mr Albert's disagreement with OPDSST's interpretation of ORS 703.480(2)(a), it was noted in Mr. Albert's letter, *"DPSST acknowledges this is a broad interpretation of the term "false" but believe it to be a reasonable interpretation of ORS 703.480(2)(a) to minimize the negative impacts on an investigator's reputation and business."* A conservation of parity argument to protect the accused, as well as the accuser. However, this sophistry of groping for the golden mean, is but a Solomon's parable of only finding unguarded public injustice." A conservation of *equity of evidence* to prove allegations of truth and to prove allegation of falsehood should apply if ODPSST's *conservation of parity* position is to be apply fairly to the whole of investigation with equity to truth and falsehood designations, *"Doubt truth to be a liar."* Not the ham-handed method currently employed. *"The only thing in the middle of the road is road kill and yellow strips."* The same standard of *clear and convincing* evidence should apply to "false" determination; not as a default designation to hide complaint records from the public if *clear and convincing* evidence is unobtainable as currently applied. False and true should equiipoise and counterbalanced in determining the allegations validity. An equal consideration for the public in maintaining this high bar for public safety sake, as to, determining if the public complaints are "false" under ORS 703.480(2)(a); to prove the falsehood of the public complaint by the same standard of *clear and convincing* evidence as mandated by law.

ORS 703.480 (2)(a), and ORS 703.473(3) are caveats to protect from active concealment of public records. They both show clear and unambiguous, strict interpretation of legislative intent to allow access of complaint records to be available under OPRL. By misapplication of ORS 703.480(2)(a), ODPSST consigns ORS 703.480(2)(a) and ORS 703.473(3) to conflicting operational construction of the statutes. By inappropriately designating all dismissed cases "unfounded" or "invalid" under ORS 703.480(20(a), by forced determination to be considered false allegation without mandated evidence standard of *clear and convincing* creates a conflict of statutes, which were previously cooperative, *pari materi*, protecting the public's interest and transparency at the conclusion of an investigation; completed, dismissed or confirmed or not a *clear and convincing* false allegations which allows public transparency, transformed by gross misuse, misinterpretation, misapplication of a clear unambiguous statute into a statutory chimera violating legislative statutory intent, OPRL, and public protection/interests.

Clearly, this is not the intention of the precise language of ORS703.473(3) to limit access to all dismissed cases in public record. If the Legislative Assembly's intention and purpose for the statute they would have included these definitions in the precise language stipulated and would have not required a disabling statute of ORS 703.480(2)(a). *"Cut anything into tiny pieces and it all becomes a mass of confusion."* *Lucius Amaeus Seneca*. In the construction of statutes: ORS174.010 General rule for construction of statutes. *In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or*

to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all. Arbitrary administrative rule-making, and unauthorized rule revision changes without proper procedural duties are abrogating, overriding the legislative intention without legal authority. *"Where there is no authority to establish a rule, there is no necessity to obey."* Law making is delegated solely to the Legislative Assembly. ODPSST is abrogating, trampling, and usurping the legislative intention. Obviating the public safety and *"paramount goal"* of ORS 703.473(3); the public's access to complaints investigated, and processed to completion, under this statute, is making new law. *"The legislature knows how to include qualifying language in a statute when it wants to do so. It did not do so here."* [PGE v. Bureau of Labor and Industries, 859 P2d 1148, 317 Or 606, 17]

ODPSST has dishonored it's obligation to inform the public under the presumption of transparency in the promise of the First and Fourteenth Amendments of the Constitution. ORS 703.473(a) and 703.480(2)(a) cannot be eliminated in it's effect by an administrative regulation that is manifestly contrary the legislative intent of these statutes through improper, unauthorized expansion of the *plain-meaning* definition of *"false"* as defined by the legislation. The *plain-meaning rule* is the principle that if a law seems clear, you should take the simplest meaning of the words and not read anything into the law. In Black's definition: *"The rule of writing, or provision in a writing appears to be unambiguous on its face, its meaning must be determined from the writing itself without resort to any extrinsic evidence."* Also, the Black's definitions of *"false"* are: *Untrue, deceitful; lying, not genuine; inauthentic.* It is abundantly clear the intent of the Legislative Assembly to prevent manifest malicious false complaints: false reports. This is under the same standards of evidence of *clear & convincing* in determining if a public complaint report is manifestly false; not as a default if evidence doesn't reach the high bar of *clear & convincing*. The courts have held that in construing a statute and choosing between alternative interpretation of an ambiguous statute, the courts must choose the interpretation which will avoid any serious constitutional difficulty. *"Statutes made for the public advantage ought to be broadly construed."* ODPSST's policy revision removes all *dismissal* entitlements of records from ORS 703.473(3), obviating it's statutory, as well as, constitutional purpose and intent. Statutes should not be, "construed to legislature intent to produce unreasonable or absurd result: State v. Galligan, 312 Or 35 816 P2d 601 (1991). *"The most desirable laws are those which are fewest, simplest, and most general. No person commits crimes more grossly, widely, or regularly than do our laws. If anyone obeys them only when they are just, then he fails to obey them for the reason he must. Our laws, by their chaotic deformity, contribute not a little to the way they are applied and corrupt way in which they are executed. The fact that their authority is so vague and inconsistent to some extent justifies our disobeying them and our faulty interpretation, application and enforcement of them."* Michel de Montaigne

As mandated by ODPSST statutory regulations of ORS 703.473(3), permitting all *dismissed* complaint cases, as per ODPSST March 12, 2020 revision of ORS 703.480(2)(a). This unlawfully, unreasonably narrows the limits to complaints by only opening public records allegation that have been deemed *"true"* by *clear and convincing* evidence, induced *proposed orders*, or disciplinary action . This allows only a sliver of public light of records open to the public. This is contrary to the broad public transparency of the legislative intent of ORS 703.473(3). A broad tool for a broad purpose of open public records. *"Under the statutory scheme, disclosure is the rule. Exceptions from disclosure are to be narrowly construed."* *Guard Publishing Co. v. Lane County School Dis., 310 Or 32, 37 791 P2d 854* (1990) If the Legislative Assembly wished to include *"invalid"* or *"unfounded"* they are supremely

adept to doing so. They would have also included other terms besides “*false*” in ORS 703.480(2)(a). The intent is to determine “*false*” by *clear and convincing* proof, not as a default. “*Invalid*” and “*unfounded*” can be both true or false, however “*true*” is only true, and “*false*” is only false. “*The expression of one thing is the exclusion of another.*” False and true are mutually exclusive by standard definition, and by legislative intent. Again, they would have included this in the law if they had chose too, and would not have included such conspicuous ambiguities. “*The legislature knows how to include qualifying language in a statute when it wants to do so. It did not do so here.*” [PGE v. Bureau of Labor and Industries, 859 P2d 1148, 317 Or 606, 17] Also in *Chevron*, “*... a reviewing court should not disturb the agency decision unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned.*”

Defined in ORS 703.480(2)(a) is: “*... notwithstanding when the department conducts an investigation under this paragraph, all information about the alleged violation and the investigation is confidential and is not subject to disclosure under ORS 192.311 to 192.478 if the department determines that the allegation is false.*” ODPSST determines if allegations are true or false is by the mandate: *clear and convincing* evidence. If ODPSST is to determined public complaints are true by *clear and convincing* evidence, ODPSST employs ORS 703.480(2)(a)’s definition of “*false*” as a default if *clear and convincing* doesn’t support a true finding. “*Invalid*,” *incomplete*,” and “*unfounded*” are not “*false*” designations as defined by the Legislative Assembly under ORS 703.480(2)(a), and plain-meaning, plain text as defined by Blacks Law Dictionary. The same standard of *clear and convincing* must also apply to determine if the complaint is designated “*false*.” *Clear and convincing* is the mandated standard, and to by equity of judgment, a “*false*” designation must be held to that same standard in the determination of a true allegation in order to use a “*false*” designation under ORS 703.480 (2)(a). By statutory regulation ORS 703.473(3), and ORS 703.480 (2)(a) any designation that falls outside the mandated *clear and convincing* evidentiary guilt standard is available to under OPRL. Therefore, designations of “*unfounded*”, “*incomplete*”, or “*invalid*” to allegation can not justify blocking entitled public records under OPRL. “*So convenience a thing to be a reasonable creature, since it enables one to find or make a reason for everything one has a mind to do.*” Benjamin Franklin

“*Reason is an activity of the soul in accordance with perfect virtue.*” Aristotle With reason and intent as the guide, the legislative definition is intended to be complete. “*In dubious cases, the more favorable construction are always to be preferred.*” There is no latitude for the agency to make it’s own legislation, or policy decisions as to the coverage of the statutes to include “*unfounded*”, “*invalid*” and “*incomplete*.” “*False*” is “*false*”, “*unfounded*” is “*unfounded*”, and “*incomplete*” is “*incomplete*”, “*invalid*” is “*invalid*” are precise terms. “*False*” is not synonymous with any of these other terms, as defined by ORS 703.480(2)(a). “*Unfounded falsehood*”, “*incomplete falsehood*”, or “*invalid falsehood*” is not defined, or provided by the Legislative Assembly’s canon of construction of this plain-meaning, substantive statute. “*Unfounded false*”, “*invalid false*,” two negatives are a positive, so “*unfounded false*”, and “*invalid false*,” in another way of describing a truth. A . A truism created by merging these words and meanings in ODPSST’s revision. This is clearly not what the Legislative Assembly intended by this *doublespeak*. A verbal *sleight-of-hand* advancing *abuse of discretion*.

“*What is to give light must endure burning.*” Viktor Frankle See, *Sundermeir v. PERS*, 269 Or App 586, 595-96, 344 P3d 1142, rev den, 357 Or 415 (2015) (“[W]hen a statute clearly and unambiguously says one thing, we cannot simply conclude that the legislature meant something entirely different.”). If ODPSST were to be allowed to continue to embody the calculated vagueness definitions of “*unfounded*”, “*incomplete*” and “*invalid*” on to the never ambiguous word-- *false*--of ORS 703.480(2)(a) interpretation, it disembodies the art, reason and force of the legislation’s constitutional

intent of ORS 703.473(3), as well as, ORS 192.314 to 192.478(OPRL). The sphere of meaning; the intention and influence is grounded in the First and Fourteenth Amendment entitlements; a sphere of democratic necessity. “[False] is always strong....Cut these words and they would bleed, they are vascular and alive, they walk and run.” Ralph Waldo Emerson

Publicness of ODPSST's policy must support to preserve, protect, and defend our entitlement to public records. *The general spread of light of transparency will lay open to view the palpable truth to all.* ODPSST's *ultra vires* discretionary change ORS 703.480(2)(a) is outside the legal boundaries of a substantive statute protecting these rights. Agencies must go through lawful process defined under ORS 183.325 thru 183.410. before it can be changed, or amended. ORS 183.310 defines a “rule” under the preconditions of 9(a) “...do not substantially affect the interest of the public.” This is not a simple interdepartmental rule change. This is an *ultra vires* revision that violates our First and Fourteenth Amendments, and OPRL's right to access of public records which unequivocally *substantially affect the interest of the public*.[also see 9(b)] ODPSST inappropriately used the broadest of definition of “false” to encompass “unfounded”, “incomplete”, and “invalid”. Complaints not determinable to be *clear and convincing* evidence standard for disciplinary action. In keeping with statutory uniformity, and in concert with ORS 174.010, 173.338(c), and the *plain-meaning* standard of ORS 180.545 (a)(b) (c)and (d) regulations. This rule change is unreasonable interpretation and administration outside the Legislative Assembly's plenary purpose and intent of ORS 703.473(3) and ORS 703.480(2)(a). “*What is done contrary to the law is considered as not done.*” The administration *negative misprision* blocking the public's access to complaint records. This modified, cavalier indifference towards civic duty of *rule-making* procedures of APA; ORS 183.325 thru 183.410 is inconsistent with OPRL's constitutional protections of *presumption of open records*. “*Where legislature or administrative agency uses particular term in one provision, but omits term from related provisions, term is considered not to apply to related provision.*” [Perlenfein and Perlenfein, 316 Or. 16, 20, 848 P.2d 604 (1993)]

Blocking all *dismissed* complaint records is not the Legislative Assembly's intent of *substantive rule* ORS 703.480(2)(a). If so, they would have clearly state this in the strict construction of ORS 703.480(2)(a), and would not have allowed ORS 703.473(3) broad, *bright line*, interpretation of public access, after completion and disposition and closure of investigations. Impermissibly rewrites the notwithstanding clause to be broader than the text commands. “*What is done contrary to the law is considered as not done.*” “*We can do only what we can lawfully do.*” See *State v. Cloutier*, 351 Or 68, 98, 261 P3d 1234 (2011) (stating that “*an interpretation that renders a statutory provision meaningless should give us pause, both as a matter of respect for a coordinate branch of government that took the trouble to enact the provision into law and as a matter of complying with the interpretative principle that, if possible, we give a statute with multiple parts a construction that 'will give effect to all' of those parts*” Quoting *Vsetecka v. Safeway Stores, Inc.*, 337 Or 502, 510, 98 P3d 1116 (2004)); ORS 174.010 providing that courts are “*to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted*”. “*We can do only what we can lawfully do.*”

In *PGE v. Bureau of Labor and Industries* , 859 P2d 1146, 317 Or 606, 17: *[T]he text of the statutory provision itself is the starting point for interpretation and is the best evidence of the legislature's intent.* *State v. Person, supra*, 316 Or. at 590, 853 P.2d 813; *State ex rel. Juv. Dept. v. Ashley*, 312 Or. [317 Or. 611] 169, 174, 818 P.2d 1270 (1991). *In trying to ascertain the meaning of a statutory provision, and thereby to inform the court's inquiry into legislative intent, the court considers rules of construction of the statutory text that bear directly on how to read the text. Some of those rules are mandated by*

statute, including, for example, the statutory enjoinder "not to insert what has been omitted, or to omit what has been inserted." ORS 174.010. Others are found in the case law, including, for example, the rule that words of common usage typically should be given their plain, natural, and ordinary meaning. See *State v. Langley*, 314 Or. 247, 256, 839 P.2d 692 (1992) (illustrating rule); Just as with the court's consideration of the text of a statute, the court utilizes rules of construction that bear directly on the interpretation of the statutory provision in context. Some of those rules are mandated by statute, including, for example, the principles that "where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all," ORS 174.010, and that "a particular intent shall control a general one that is inconsistent with it," ORS 174.020. Other such rules of construction are found in case law, including, for example, the rules that use of a term in one section and not in another section of the same statute indicates a purposeful omission, *Emerald PUD v. PP & L*, 302 Or. 256, 269, 729 P.2d 552 (1986), and that use of the same term throughout a statute indicates that the term has the same meaning throughout the statute, *Oregon Racing Com. v. Multnomah Kennel Club*, 242 Or. 572, 586, 411 P.2d 63 (1966)... If the legislature's intent is clear from the above-described inquiry into text and context, further inquiry is unnecessary."

Also in *PGE v. Bureau of Labor and Industries*, 859 P2d 1146, 317 Or 606, 859 P2d 1143 (1993) the extent to required to resolve ambiguity, consideration is given in successive stages to: 1) text of statute and context provided by simultaneously enacted provisions in light of applicable rules of statutory construction; 2) legislative history; and 3) general maxims of statutory construction. The textual analysis of the plenary nature of ORS 703.480(2)(a) and ORS 703.473(3) is crystal clear, without ambiguity in text and context. "further inquiry is unnecessary. Where statutes are clear in their terms, there is no need to, rather it is improper to, proceed with the application of rules of statutory construction." Also in *State v. Hiller*, 22 Or.App. 57, 537 P.2d 571 (Or. App. 1975) In *State of Oregon v. Elliot*, 204 Or 460,465,277 P2d 754 cert den 349 US.929,75 Sct 772,99 Led 1260 (1955), "Statutory interpretation particularly implicates the rule of stare decisis... The doctrine of stare decisis wights in any context, is especially so in matters of statutory construction... when this court (OSct) interprets a statute, that interpretation becomes 'apart of the statute as if written into it at the time of it's enactment.'"

ODPSST decision directly impacts the public's legal right of access to public records. In ORS 183.333 the Legislative Assembly clearly declares: (1) *The Legislative Assembly finds and declares that it is the policy of this state that whenever possible the public be involved in the development of public policy by agencies and in the drafting of rules. The Legislative Assembly encourages agencies to seek public input to the maximum extent possible before giving notice of intent to adopt a rule. The agency may appoint an advisory committee that will represent the interests of persons likely to be affected by the rule, or use any other means of obtaining public views that will assist the agency in drafting the rule.* The rule-making procedural execute is unfounded, incomplete and legally invalid. ORS 183.341(4): *Agencies shall adopt rules of procedure which will provide a reasonable opportunity for interested persons to be notified if agency's intention to adopt, amend or repeal a rule.* In *Ore. Newspaper Pub. v. Peterson*, 244 Or 116, 123,415 P2d 21 (1966): *An administrative agency must when it's rule-making power is challenged, show that the regulations falls within a clearly defined statutory authority.* Reasonable care, fair disposition, and opportunity were not provided by ODPSST, as requested in petitioner's February 4, 2020, disregarded, unheeded petition letter. To reiterate, the Administrative Procedure Act was intended to provide procedural protections to individuals adversely affected by administrative action. *Those protections could not be dispensed with unless all interests affected by the action were within the agency.* [see *UPS v. Oregon Transportation Commission*, 27 Ore App 147, 555 P2d 778 (1976).]

In David B. Frohnmayer's *The Oregon Administrative Procedure Act: An Essay on State Administrative Rulemaking Procedure Reform*, 58 Or L Rev 411, 421 (1980). The purpose of the procedures prescribed in Oregon for agency rulemaking are to facilitate public participation in rulemaking. It is as follows:

"The policies of an agency in a democratic society must be subject to public scrutiny. Published standards are essential to inform the public. Further, they help assure public confidence that the agency acts by rules and not from whim or corrupt motivation. In addition, interested parties and the general public are entitled to be heard in the process of rule adoption under the Administrative Procedures Act."

In amending ORS 703.480(2)(a), ODPSST knowingly violated the following APA statutes:

- 1) ORS 183.330 (1), [(2)(b)],(3)
- 2) ORS 183.310 (9)(a): It clearly substantively affected the interest of the public.
- 3) ORS 183.332: non-conformity of state rules with equivalent federal laws and rule clearly petition.
- 4) ORS 183.333 (1) Policy statement; public involvement in development of policy and drafting of rules; advisory committees. (1) *The Legislative Assembly finds and declares that it is the policy of this state that whenever possible the public be involved in the development of public policy by agencies and in the drafting of rules. The Legislative Assembly encourages agencies to seek public input to the maximum extent possible before giving notice of intent to adopt a rule..* (2) Even though Mrs. Hale contends (see January 29th letter from Mr. Albert) considered regulatee impact on "lively hood" if not protected by using "unfounded" or "invalid." However, Mrs. Hale failed to seek recommendation by committee in pursuant to ORS 183.333 (3). If ODPSST did not seek recommendation even though adverse to business impact was declared, as justification to an overly broad use of "false" in a meeting with Mr. Albert, Public Records Advocate, ODPSST failed to notify interested parties of fiscal impact in pursuant of ORS 183.333(5). ODPSST declares they used the overly broad definition of "false" in ORS 703.480(2)(a) to protect regulatees from exposing dismissed cases to the public that may damage their livelihood (economic impact) ODPSST failed to do both.
- 5) ORS 183.335 (1)(c): petitioned in February 4, 2020; ORS 183.335 (1) : *Prior to adoption, amendment or repeal of any rule, the agency shall give notice of its intended action.*,(2)(a),(A)(B)(b)(A-G), (3)(a),4, 7, 8(a),(b)(A,B) and ORS 183.335(16)(a)
- 6) ORS 183.341(4): *Agencies shall adopt rules of procedure which will provide a reasonable opportunity for interested persons to be notified if agency's intention to adopt, amend or repeal a rule.*
- 7) ORS 183.355 is unknown at this time, but suspect due to blatant disregard of APA.

ODPSST new rule is invalid because it was adopted without compliance with applicable rule-making procedures in APA. 1) violates constitutional provisions; 2) exceeds the statutory authority of the agency; 3) seriously prejudice to public interest. 4) no rational basis, or legitimate governmental purpose. Laws mandating ruling authorities including obeying regulatory laws governing ODPSST, as well as, the regulatee. *"Obedience is the essence of law."* We as Americans, are a representative

constitutional democracy under the rule of law, not a law of rule. “*Respect necessary for the rule of law to endure. Abraham Lincoln* Embodied in law, regulated by law are shared in ruling and being ruled. Public authorities, such as ODPSST, must be capable of both governing as a citizen, and to obey as a citizen by upholding the oath to support and protect the Constitution; the natural virtue of ruling and obeying the rule of law. It is therefore inappropriate for this arbitrary and capricious revision to stand, to allow the inappropriate use of the *plain-meaning* of “*false*” to act as default designation, to dismissed complaints without trier of fact mandated standard of *clear and convincing* to determine “*false*” designations to public complaints filed. Unlawfully expanding the reach in ORS 703.480(2)(a) substantive plain text of a unambiguous narrow and plain-meaning statute, thereby narrowing and nullifying the broad harmonious construction of ORS 703.473(3) presupposes *presumption of transparency*: a broad tool for the broad purpose of open public records. “ ODPSST's cynically established rule, undemocratically structured, outstripping reasonable law; an altered state threatens to strange this institution. “*The reason is the soul of the law; when the reason of the law has been changed, the law is also changed.*” A state agency acting without reasonable basis in material fact, or in law, in it's revision and revocation of ORS 703.480(2) (a) constituting *abuse of discretion*. “*Unjust law is no law at all.*” *St Augustine* Laws without force to apply them are no laws. Transparency withdrawn, by a disharmonious ORS 703.473(3) construction intent, in which the true Legislative Assembly's intent of statues cannot be harmonized in ODPSST's revised state. “*Truth is always in harmony with itself.*” *Ralph Waldo Emerson* Substantive statutes in harmony with its clauses. In my opinion, the best definition for this type of misfeasance *pattern-or-practice* is “*code switching.*” *A quasi-legislative abuse of discretion* for private effect, violating the fundamental rights of Oregonians. The changing, diverting regulation, rules of procedures, or conduct for the primary interest of the agency. This is in my opinion analogous to an implicit parochial agency “*Jim Crow laws*” enactments.

Please provide documents concerning Oregon Department of Public Safety Standards&Training Policy Number 129, effective date 3/12/20. I may have added more than necessary just to receive documents under OPRL, but with the thought of possible avenues of public advocacy concerning censorship of public records it might engender from the Secretary of State.

Thank you for your attention in this matter.

Respectfully submitted,

Henry Childress
10977752
EOCI
2500 Westgate
Pendleton, Oregon 97801

August 27, 2021

Clackamas Indigent Defense Corporation
707 Main St. Suite 400
Oregon City, Oregon 97045

Dear Sir or Madam:

This is my third attempt to obtain records under Oregon Public Records Law (OPRL); ORS 192.410 to 192.505. The refusal to respond is contrary to public policy, and a violation of OPRL. *"Secrecy is generally the veil of iniquity—confident [of] some evil design."* Robert Mumford

Clackamas County Indigent Defense Corporation is a *public-body-other-than-a-state-agency*; *"a public corporation and an instrumentality of the Judicial Department of the government of the State of Oregon."* ORS 9.010. Status of attorney and Oregon State Bar, requires CCIDC be subject the following statutes: (3) (a) ORS 30.210 to 30.250.(b) ORS 30.260 to 30.300, (c) ORS 30.310, 30.312, 30.390 and 30.400,(d) The Oregon Rules of Civil Procedure,(e) ORS 192.410 to 192.505,(f) ORS 192.610 to 192.690,(g) ORS 243.401 to 243.507,(h) ORS 244.010 to 244.040,(i) ORS 297.110 to 297.230,(j) ORS chapters 307, 308 and 311,(k) ORS 731.036 and 737.600.

Since CCIDC is a consortium of attorneys. The status of attorney in ORS 9.010 (1) *An attorney, admitted to practice in this state, is an officer of the court*, and a public body, *special governmental body*, as defined in ORS 192.311 and ORS 192.610, a municipal corporation, public corporation, such as the Oregon State Bar, therefore bound by ORS 9.010's mandate. As with the Oregon State Bar, CCIDC is a group of attorneys, a consortium, by its own description; *a fellowship, participation, society of attorneys*. This in essence a definition of what the Oregon State Bar in which all practicing Oregon attorneys are required to be a licensed member including CCIDC's public defenders. *"OSB is an integrated bar, meaning lawyers must join it and pay an annual membership fee to practice law in Oregon."* As in *Oregon State Bar v. Wright*, 280 OR 693, 573 P2d 283 (1977); *The Oregon State Bar does not operate as an independent licensing authority, but as an instrumentality of the Judicial Department of State; its members are not only officers of the court, but are subject to discipline by court for misconduct.*

The Public Records Law declares that, *"[e]very person has a right to inspect any public record of a public body in this state" unless that record is expressly exempted from disclosure under ORS 192.501 to 192.505. ORS 192.420. If a public body does not allow a person to inspect a public record, that person may petition for an order requiring that he or she be given access to the record."*

CCIDC is sub-contracted and consigned to a public role in providing public defenders to Clackamas County. CCIDC provides public defenders, a public service, publicly appointed by a judge for a public purpose, for public interest, for a public good. It is subject to governmental public regulations and is beholden to ORS 9.010, and subject to statutory application of a public body, specifically in this petition, OPRL. CCIDC are the custodian of the records petitioned under ORS 192. 311 to 192.478.

Oregon Public Defenders Services (OPDS) subcontracts a public function to CCIDC. A public contract that involves public funds performed by a private persons. CCIDC it is still duty bound and responsible for the actions by its attorneys. CCIDC and Mr. Seeberger are, by proxy, an agent of the state of Oregon, and therefore responsible to the *public-at-large*. CCIDS and Mr. Seeberger are required to provide public information to OPDS, and to the *public-at-large* under OPRL. Both are

consigned and obligated to the public good. Mr. Seeberger and it's fellowship of CCIDC members are private persons performing a function, and actions that are traditionally reserved to the government. Their actions constitutes state action, passing a *public-function test*. A *public-body-other-than-a-state-agency*, subcontracted to public-functions by non-governmental entities. CCIDS provides contracted public services, such as public defenders, that are publicly appointed to provide a public role for "*pro bono publico*." A public body by proxy. *State ex rel. Frohnmayer v. Oregon State Bar*, 767 P.2d 893, 307 Or. 304 (Or. 1989)

OPDS does not relinquish, or allowed to by-pass their public duty, and due diligence by "*farming out*" public duties to a private entities, such as CCIDC, that provide public service. To allow CCIDC to act as a private company of attorneys without public responsibilities, and not to be subject to certain statues applicable to public bodies under ORS 9.010. Consequently, CCIDS is responsible to the public; as a *public corporation* subject to governmental regulation, as a hired acting agent of the state of Oregon. Therefore, CCIDC bound by public contract, state rules and laws, and oversight by the Oregon Attorney General. Whether a consortium, Bar, or *wake* of attorneys, they are all a, "*a public corporation and an instrumentality of the Judicial Department of the government of the State of Oregon*." "*Special governmental bodies*" mandated, and obligated to public to provide records under OPRL.

"Our outward actions exactly agreeable to our inward purpose and intentions." Archbishop John Tillotson
A negative inference is drawn by CCIDC's refusal to respond OPRL petitions. If the OPRL violations continues, I will seek redress with OPDS under its Public Defense Complaint Policy and Procedures ORS 151.216 (g), the Attorney General under ORS 192.411 to 192.422, and Public Records Advocate under ORS 192.461 to 192.478.

Thank you for your due diligent help in this matter.

Respectfully submitted,

Added: July 22, 2021 OPRL petition
July 06, 2021 OPRL petition

Henry Childress
10977752
EOCI
2500 Westgate
Pendleton, Oregon 97801

November 12, 2020

Lindsay Hale
Professional Standards Division Director
Oregon Department of Public Safety Standards and Training (ODPSST)
4190 Aumsville Hwy

Salem, Oregon 97317

Dear Ms. Hale:

"If the soul is left in darkness, sins will be committed. The guilty one is not he who commits the sin, but the one who causes the darkness." Victor Hugo

In my February 4th petition to be kept informed and to provide public input under Oregon's Administrative Procedure Act (APA), codified in ORS 183.325 thru 183.471, to provide procedural protections to individuals adversely affected by administrative action. In ODPSST's March 12th peremptory declaration, and parochial rule change. ODPSST's non-response to my petition, improper legal rule change, and failing to follow statutory protocols for rule-making, Oregon's citizen's entitlements were abrogated without proper procedural due process under APA.

I appreciate the uncommon "*courtesy*", as declared in your March 12th letter, a policy change to ORS 703.480 (2) (a) to include "*invalid*" and "*unfounded*". The non-response to my last petition and multitude of previous non-responses to OPRL petitions, and malfeasance are more representative of responses to my public petitions. ODPSST's policies must support to preserve public entitlement to public records; to conceal represents the opposite. Instead of seeing a wrong and fixing it, ODPSST sees a wrong and makes it worse. An administrative by fiat, in which all debate about the wisdom, and fairness of this policy revision were ignored; controlling the process and therefore controlling the outcome symbolizes democracy neglect.

Virtue by calculation is the virtue of vice. Joseph Joubert ODPSST's view of law under APA as mere "*courtesy*" rather than mandatory law under APA. This peremptory *fait accompli* of bad faith confesses to routine comfort to concentrated abuses of process, discretion and complacency to violations of regulatory laws, and disregard to public guardianship by this agency. It is manifestly clear what ODPSST considers a "*courtesy*" is dictated under APA. A lowering of guardianship in this fog of collective solipsism used to blind itself to the consequences of their own actions; failing to adopt to a well established interpretation of the law A Lawful public transparency for the public to sees behind walls; forward looking to dangers of unwanted truths hidden behind walls in the shadows of arbitrary parochial rules. APA intent is draw the public closer, to participate, to examine it's institutions of the dangers to safety, voice ,and equity of the people. This action is an unlawful abrogation of regulatory laws by ODPSST. A core perverse incentive in arrogating oversight solely in the hand of the agency functionaries; to dictate changes in substantial regulatory statutes without public input. A schema of adopt, revise, amend when necessary; a systemic apparatus of corruption of procedural due process. This is an asymmetrical political advantage no longer guided by our constitution, or bound by our laws in which rule of law becomes a polite fiction when it isn't simply abandoned altogether. An illiberal advantage ODPSST intends to keep by this strategic solidarity against public complaints of misfeasance and public input under Adoption of Rules:ORS 183.325 thru ORS 183.410. Executive action directly affecting the public's legal rights, and subject to ORS 183.325 thru 183.400. Revision of law without the people having a say so, and counter to legal and ethical norms; an administrative action adversely effecting public protections, proclamation, and petitions.

In pursuant to ORS 183.390 [(A)(2)(3)] I petition to repeal of a un-codified, *sub rosa*, parochial interpretation of ORS 703.480(2)(a) in pursuant of 183.390. (1) *An interested person may petition an agency requesting the promulgation, amendment or repeal of a rule.* I petition ODPSST to adapt ORS

703.480(2)(a) as legislatively intended in which *clear and convincing evidence* of "false" as defined in order to use "false" designation, or used in "true" findings. Further, I petition to repeal rule change of ORS 703.480 (2)(a) in Policy Number 129 effective date 3/12/20, which violates and arrogates ORS 703.473(3), thus blocking all dismissed complaints under ODPSST's interpretation of "false"; and it's recent *ultra vires* rule change to include, "unfounded", and "invalid." ODPSST's policy interpolation is implausible, inconsistent in it's context or any other source of law. A parochial "*curative statutory revision*" interfering with the interpretation of ORS 703.480(2)(a), and application of ORS 703.473(3). *Westfall v. Oregon* 355 Ore 1444, 324 P3d 440 (2014) *[veer} to the [agency] interpretation as long as that interpretation is plausible and not inconsistent with the policy in it's context or with any other source of law*. Further, in *City of Portland v. Bartlett*, 304 Or App 580 (Or. App. 2020): "*As always, when construing a statute, the "paramount goal" is to effectuate the intention of the legislature.*

Gaines, 346 Or at 171. *In reaching that goal, we consider the text of the statute in context, along with any legislative history that is helpful. Id. at 171-72. If the legislature's intentions remains unclear, we then resort to general maxims of statutory construction. As the Supreme Court observed in Gaines, "there is no more persuasive evidence of the intent of the legislature than the words by which the legislature undertook to give expression to its wishes."* These interpolations violate ORS 174.010: subverting the legislative Assembly's authority and intent of ORS 703.473(3) and ORS 703.480(2)(a) of presumption of transparency of public records. ODPSST's revision is not in conformity with the governing statutes and void for lack o authority and totality without legal effect. A change in the law that is manifestly unjust and oppressive.

ODPSST's non-response to my petition of February 4th, is arbitrary, legally contemptuous. ODPSST decision directly impacts the public's legal right of access to public records. In ORS 183.333 the Legislative Assembly clearly declares: *(1) The Legislative Assembly finds and declares that it is the policy of this state that whenever possible the public be involved in the development of public policy by agencies and in the drafting of rules. The Legislative Assembly encourages agencies to seek public input to the maximum extent possible before giving notice of intent to adopt a rule. The agency may appoint an advisory committee that will represent the interests of persons likely to be affected by the rule, or use any other means of obtaining public views that will assist the agency in drafting the rule.* The rule-making procedural execute is unfounded, incomplete and legally invalid. ORS 183.341(4): *Agencies shall adopt rules of procedure which will provide a reasonable opportunity for interested persons to be notified if agency's intention to adopt, amend or repeal a rule.* In *Ore. Newspaper Pub. v. Peterson*, 244 Or 116, 123,415 P2d 21 (1966): *An administrative agency must when it's rule-making power is challenged, show that the regulations falls within a clearly defined statutory authority.* Reasonable care, fair disposition, and opportunity were not provided by ODPSST, as requested in petitioner's February 4, 2020, disregarded, unheeded petition letter.

Policy and procedures of Oregon regulations were provided in a February 4, 2020 petition, under the Adoption of Rules in Administrative Procedures Act:

Since ODPSST has accepted the recommended codification, I petition ODPSST to keep me informed under Adoption of Rule in ORS 183.325 thru 183.471. Please take special note to ORS 183.330 (b)(A)(B)(3), ORS 183.333(1), 183.335(1)(a thru (d),(2)(a)(A thru G), and (3)(a). Please consider this letter, and the applicable correspondence petitions of the past two plus years as public input, however,with reserved rights for further input as further information is obtained through ODPSST's rules coordinator in pursuant of ORS 183.330 (2) (b)(A thru C) for the best possible statutory construction for maximum liberty, protection of the public; locking in the firm sense of civic duty, civic morality.

In amending ORS 703.480(2)(a), ODPSST knowingly violated the following APA statutes:

- 1) ORS 183.330 (1), [(2)(b)],(3)
- 2) ORS 183.332: non-conformity of state rules with equivalent federal laws and rule clearly petition.
- 3) ORS 183.333 (1) Policy statement; public involvement in development of policy and drafting of rules; advisory committees. *(1) The Legislative Assembly finds and declares that it is the policy of this state that whenever possible the public be involved in the development of public policy by agencies and in the drafting of rules. The Legislative Assembly encourages agencies to seek public input to the maximum extent possible before giving notice of intent to adopt a rule..* (2) Even though Mrs. Hale contends (see January 29th letter from Mr. Albert) considered regulattee impact on “lively hood” if not protected by using “unfounded” or “invalid.” However, Mrs. Hale failed to seek recommendation by committee in pursuant to ORS 183.333 (3). If ODPSST did not seek recommendation even though adverse to business impact was declared, as justification to an overly broad use of “false” in a meeting with Mr. Albert, Public Records Advocate, ODPSST failed to notify interested parities of fiscal impact in pursuant of ORS 183.333(5). ODPSST declares they used the overly broad definition of “false” in ORS 703.480(2)(a) to protect regulattees from exposing dismissed cases to the public that may damage their livelihood (economic impact) ODPSST failed to do both.
- 4) ORS 183.335 (1)(c): petitioned in February 4, 2020; ORS 183.335 (1) : *Prior to adoption, amendment or repeal of any rule, the agency shall give notice of it's intended action.* (2)(a),(A)(B)(b)(A-G), (3)(a),4, 7, 8(a),(b)(A,B) and ORS 183.335(16)(a)
- 5) ORS 183.341(4): *Agencies shall adopt rules of procedure which will provide a reasonable opportunity for interested persons to be notified if agency's intention to adopt, amend or repeal a rule.*
- 6) ORS 183.355 is unknown at this time, but suspect due to blatant disregard of APA.

ODPSST new rule is invalid because it was adopted without compliance with applicable rule-making procedures in APA. 1) violates constitutional provisions; 2) exceeds the statutory authority of the agency; 3) seriously prejudice to public interest. 4) no rational basis, or legitimate governmental purpose. It is therefore inappropriate for this arbitrary and capricious revision to stand; to allow the inappropriate use of the *plain-meaning* of “false” to act as default designation; to dismissed complaints without trier of fact mandated standard of *clear and convincing* to determine “false” designations to public complaints filed. Outstripping reason, and law, this state agency acted without reasonable basis in material fact, or in law in it's revision and revocation of ORS 703.480(2) (a). Unlawfully expanding the reach in ORS 703.480(2)(a) substantive plain text of a unambiguous narrow and plain-meaning statute, thereby narrowing and nullifying the broad construction of ORS 703.473(3). *'If agency is unable , based on available information proximate data required by provision, agency must explain reason for such inability in it's notice of proposed rule-making.'* Oregon Cable Telecommunication v. Dept of Revenue, 237 Or App 628, 240 P3d 1122 (2010)

Under administrative procedural law outlined in ORS 183.325 to 183.410 and within the parameters of 174.010: *In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has*

been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all. Also in ORS 174.030: Natural right to prevail; where a statute is equally susceptible of two interpretations, one in favor of natural right and the other against it, the former is to prevail. ORS 174.040 (2),(3): [The] remaining part are so essentially and inseparable connected and dependent upon... These are substantive statutes requiring textual, ministerial interpretation. The statutes are plain-meaning and clear; harmonized contribution of each inconsistent with the legislative intent in which ODPSST inconsistencies are not explained. The public body bears the burden of sustaining it's action.(ORS 192.411)

In Davis v. Wasco IED, 286 Or. 261, 272, 593 P.2d 1152 (1979): Statutes which are in pari materia are to be construed together so that they are consistent with and in harmony with each other. As per ORS 174.030, 174.040(2),(3)and 174.060 are mutually exclusive to and in pari materia and of the complimentary nature of affirmative statutory intent of ORS 703.473(a). [ORS 703.473(3)) and ORS 703.480(2)(a) are in pari materia]. Interlocked together, joined is such a way it is impossible to change one without effecting the whole structure of intent and function of the statute. "When statutes appear to conflict, we must first "determine whether there is any way to reconcile the apparent conflict without exceeding the bounds of the reasonable construction of the wording of the statutes." Preble v. Centennial School Dist. No. 287, 298 Or App 357, 364, 447 P3d 42 (2019). Second, if the potential conflict cannot be avoided, then we "must apply established rules of construction that give precedence to one of the conflicting statutes over the other." (City of Portland v. Bartlett, 304 Or App 580 (2020) "Policy is like a building made of diverse pieces interlocked together joined is such a way that it is impossible to move one without the whole structure feeling it. It is greatly to be doubted whether any obvious good come from changing any "traditional law" whatever it maybe compared with the evil of changing it. Though it cannot reform these other qualities so as to bring them into harmony with itself, at least it does not let itself be deform by them it plays a role apart." Michel de Mantaigne Fundamental right of public transparency, a "traditional law"; a natural right of a sovereign public deformed by ODPSST substantive statute crashing Jenga move. The very law which was made to remedy the original evil of lack of public transparency. ODPSST revision of 703.480(2)(a) is a clear violation of ORS 174.020: Legislative intent; 174.030: Construction favoring natural right to prevail; blocking access to public information, irrevocable proclamation of protections entitlement under the penumbra of First Amendment; obviating public access to "dismissed" complaints, mooting the function and intent of ORS 703.473(3) which gives people light which gives the masses the possibility of power over the abuses of power. "There are two kinds of light – the glow that illuminates, and the glare that obscures." James Thurber. ODPSST's interpretation and unilateral rule change only allowing disciplinary action imposed complaints the light of day is "the glare that obscures."

Under the color of process and law ODPSST' has a duty to justify it's practices. Buried in silence, it's faulty revision, interpretation, application, enforcement; and legally questionable, one and done, March 12, 2020, policy change. A unilateral revision of ORS 703.480 (2)(a), obviating the *equity of statute rule* of ORS 703.473(3) of it's ministerial, substantive legislative intent of *presumption of transparency* under the First Amendment of the Constitution; and OPRL's fundamental virtuous civic right to access of public records. There is no substantial evidence to support ODPSST's interpretation of ORS 703.480(2)(a). An unlawful parochial interpretation utilizing exception of employee clause in ORS 192.345(12) *Exceptions... does not apply when it does not result in disciplinary action.*); an in-house conflation with ORS 703.480(2)(a)? (See City of Portland v. Rice, 94 Or App 292, 765 P2d 228 (1988), affl 308 Or 118, 775 P2d 1371 (1989) City of Portland v. Anderson, 163 Or App 550; Regulattee are not ODPSST employees, and record must be available to the public as the legislation intended under

ORS 192.314 and ORS 703.473(3).

The above is just part of a thirty-plus page complaint I will be submitting. I petitioned Ms. White concerning other matters. No required responses at this time have been submitted. The correspondence follows. Please redress this and other issues petitioned.

Respectfully submitted,

Henry Childress
10977752
EOCI
2500 Westgate
Pendleton, OR 97801

October 27, 2020

Carissa White
Private Investigator Program
Oregon Department of Public Safety Standards and Training (ODPSST)
4190 Aumsville Hwy SE
Salem, Oregon 97317

Dear Ms. White:

"If the soul is left in darkness, sins will be committed. The guilty one is not he who commits the sin, but the one who causes the darkness." Victor Hugo

It has been a week past a month since my last letter of petition for address under OPRL and ODPSST due process complaint. This should have been plenty of time to respond. In the past I had reminded ODPSST of regulatory obligations to assigned functionary identified in ODPSST procedures under OPRL 192.324:

Copies or inspection of public records; public body response; fees; procedure for records requests. (1) A public body that is the custodian of any public record that a person has a right to inspect shall give the person, upon receipt of a written request: (2) If an individual who is identified in a public body's procedure described in subsection (7)(a) of this section receives a written request to inspect or receive a copy of a public record, the public body shall within five business days after receiving the request acknowledge receipt of the request or complete the public body's response to the request. An acknowledgment under this subsection must:

(a) Confirm that the public body is the custodian of the requested record;

(b) Inform the requester that the public body is not the custodian of the requested record; or

(c) Notify the requester that the public body is uncertain whether the public body is the custodian of the requested record.

Also previously cited multiple times when responses are seriously delayed or non-responses is ORS 192.329 Public body's response to public records request.

(1) A public body shall complete its response to a written public records request that is received by an individual identified in the public body's procedure described in ORS 192.324 as soon as practicable and without unreasonable delay.

(2) A public body's response to a public records request is complete when the public body:

(a) Provides access to or copies of all requested records within the possession or custody of the public body that the public body does not assert are exempt from public disclosure, or explains where the records are already publicly available;

(b) Asserts any exemptions from disclosure that the public body believes apply to any requested records and, if the public body cites ORS 192.355 (8) or (9), identifies the state or federal law that the public body relied on in asserting the exemption

5) As soon as reasonably possible but not later than 10 business days after the date by which a public body is required to acknowledge receipt of the request under ORS 192.324, a public body shall:

(a) Complete its response to the public records request; or

(b) Provide a written statement that the public body is still processing the request and a reasonable estimated date by which the public body expects to complete its response based on the information currently available.

As previously stated, ODPSST has been consistent in its tardiness in response to OPRL requests. It has been the worst of all state agencies in which I have requested OPRL records. Even Public Records Advocate office, with one employee for the entire state, follows the regulatory laws under OPRL.

I have never received an explanation, even though requested, as to why ODPSST refuses to follow the law. If delayed ODPSST is mandated to follow ORS 192.329 (5)Provide a

written statement that the public body is still processing the request and a reasonable estimated date by which the public body expects to complete its response based on the information currently available.

It stretches public's credulity that it takes months to respond to petition due to conditions under ORS 192.329 (8) "catch all" statute. 8) A public body that cannot comply with the time periods established by ORS 192.324 and subsection (5) of this section for a reason listed in subsection (6) of this section shall, as soon as practicable and without unreasonable delay, acknowledge a public records request and complete the response to the request. Mr. Todd Albert's, one-man-show, can respond within reasonable time. Why does it take months, if ODPSST responses at all, to respond to petitions? This in my opinion is a willful, and wanton misfeasance of lawful intent of these statutes. If ODPSST is abusing ORS192.329(8) notwithstanding provision as a "catch all provision." to abrogate ORS 192.329 Public body's response to public records request, it is just as bad a ignoring the law itself. If they are not true to the law, then reason itself is totally false. If so this abuse circumscribes the Legislative Assembly's due diligent intent by constructing time constraints in these statutes to prevent Machiavellian subterfuge; to prevent Fabian tactics, for public agents or agencies to avoid required due diligence in an attempt to dissuade the public's right to petition government, and public transparency to a point withdrawal of frustrated citizens attempting to practice their public rights.

Considering ODPSST's public mandate, this is a profound*** hypocrisy of purpose as regulators. Refusing to follow their own regulations. Floating through violations of the rule of law; looking for weaknesses, or openings in order to hedge the law for their benefit not the mandated public. And just as important, subordinating, circumventing and perverting the protective spirit of the law itself. ODPSST makes a mockery of our agency's mandates, subverting constitutional intended protections, confesses contempt of the public and it's laws; "Republics do not collapse because of one person; they collapse because men inside the regime look for loopholes in the law... and then seek to expand the loopholes until the law itself has not meaning." Timothy Snyder *Infect the whole commonwealth with their vices; and not only because they are corrupt, but also because they corrupt others, and do more harm by their bad example than by their sins.*" Cicero

Please fulfill my September 21st petition for Mr. Coates new business address, and respond to the complaint detailed in the letter: *Please provide the current business address of Mr. Coates, and explain why this false anonymous letter was sent. Consider this a formal complaint of ODPSST practices. The right to confront our government when they are wrong is our most fundamental right as Americans. Born out of revolution, and our first right.*

Respectfully submitted,

Henry Childress
10977752
EOCI
2500 Westgate
Pendleton, OR 97801

September 21, 2020

Carissa White
Private Investigator Program
Oregon Department of Public Safety Standards and Training (ODPSST)
4190 Aumsville Hwy SE
Salem, Oregon 97317

Dear Ms. White:

"If the soul is left in darkness, sins will be committed. The guilty one is not he who commits the sin, but the one who causes the darkness." Victor Hugo

I received on June 17th, an anonymous letter, (no signature, name and title) dated June 11, 2020, mail stamped June 15th (four days to mail). I am at a loss why this letter states I submitted a complaint alleging a violation by Daron Coates, PI-ID 02236. It states the following: *The Department of Public Safety Standards and Training (DPSST) is in receipt of complaints submitted by you, dated February 18, 2020 and March 5, 2020. Your complaint alleges a violation by Daron Coates, PI-ID 02236.* More confusion without reason, without solutions, I will attempt to apply facts and common sense to slice through this confusion.. This is also request for business address for Daron Coates, PI-ID 02236. Previous responses were an invalid address no longer Mr. Coates business address supplied by your office.

Starting with the letter itself contains the following error: 1) My simple name "Henry" was misspelled "Hendry" 2) February 18, 2020 date cited doesn't exist 3) March 5, 2020 is non-existent. 3) Alleged I filed a complaint of Daron Coates in these letter is untrue. 4) Complaint was reviewed; what complaint? 5) No typed name. 6) no title of author 7)No hand signature 8) Filed without submission of (Professional Standard Forms (PSF), as required in accordance with Mrs. Boatman in her June 23,2017 declaration. Thwarting administration policy, ODPSST was unable to process letters without completed PSF without a signed permission by complainant. Its as if the author wishes to remain anonymous knowing the underhandedness of the document.

In this June 11th, is a stock, *pro forma*, boilerplate missive, in which only a few items needed changing. Name, address, dates, complaint target, signature and senders name and title etc. The rest in boilerplate. The majority of these few items needing changing were flawed. The anonymous ODPSST sender/drafter of this letter is careless for an agency in which oversight of regulates is a major part of it's mission. Detailed investigations require accuracy for a forthright trustworthy outcomes. This letter undercuts public confidence a complete, and error-free investigation will be performed.

Again,to be clear, I had not submitted letters of complaint alleging violations by Mr. Coates, dated February 18, 2020 or March 5, 2020. In case the years were a typo, I had reviewed all file dating back to May 31, 2017 and found no documents dated February 18, or March 5th. The last four petitions filed (no responses) were February 4, 2020, February 12, 2020 February 14, 2020 and February 28, 2020, addressed to Lindsay Hale, Kristine Boatman, Rebecca Hannon and Kristine Boatman respectively. None of the petitions were complaints against Mr. Coates. As per policy and procedure, and reason, please provide the letters of complaint against Mr. Coates, as cited in this June 11, 2020, dictates.

Since these letters cited in ODPSST's anonymous letter dated June 11th do not exist, and noting the *pro forma*, boilerplate nature of ODPSST correspondence, I will assume these dates could have meant to be "received" not "dated." (Received and dated are not the same) Allowing for a much longer than response and draft-to-mailing times than any other state agency (seven days), the letters cited are possibly letters dated February 12th and February 28th both addressed to Ms. Boatman. It would reasonable to assume that the anonymous ODPSST agent was Ms. Boatman. Furthermore, due to the issues described in my June 27, 2019 in response to Ms. Boatman's demonstrated unreasonable arbitration in her May 9, 2019 denial of petition, and to avoid and minimize any conflict of interest, or subjectivity, this was not addressed to Me. Boatman. As of this date, I have not received a response to the June 11th anonymous letter if any review was completed, as intended in this letter.

Ms. Hale concerned Adoption of Rule under ORS 183.325 thru 183.471 compliance. Ms. Boatman concerned failures by ODPSST to pursue ORS 703.460 1(b), (3); to maintain and pursue current business address after multiple attempts and documentary evidence of outdated address of Mr. Coates. Also in this February 12th petition was a redress to a perplexing decision in an unsolicited, misdirecting letter by Ms. Boatman for not providing any information, including Mr. Coates business address. Furthermore, in your May 9, 2019 letter, when I requested a redress due to the facts submitted, Ms. Boatman declared I was not entitled on the unfounded, invalid premise that I was not the client of Mr.

Coates, and inexplicably claim the following:

DPSST will not initiate a preliminary investigation into complaints against private security providers, security businesses, private investigators or polygraph examiner, except in cases where an objectively reasonable basis exists to show a violation of law or rule related to an individual's certificates or licensure.

1. You were not a client of the Mr. Coates, you were a client of attorney Jerry Seeberger
2. Mr. Coates has no requirement regulated by this Department to respond to your request for information.
3. The complaint case was closed on May 8, 2019

In a June 27th letter addressed to you I provided solid documentary factual evidence that I was a client of Mr. Coates. Again, I will provide as documents in this mailing. This is a statement in that letter: before these

Second for clarity of your arbitrary supposition, without authority of law conclude that I was not a client of my private investigator Mr. Coates. it is a mind-boggling claim, however, what is surreal to me and the public, it maybe just another Thursday to OPDSST functionaries in a personnel-is-policy culture. I have provided documents that unequivocally prove that Mr. Coates was my provider and his

On it's face, client.

Please note the following documents supplied in this petition:

Public Defense Services Commission Non-Routine Expense Preauthorization and Fee Statement: 230417 It shows front and back--Provider: Daron Coates/ Internal Affairs Inc.; Client: Henry Childress.

Voucher 7 of 12 : Client Name/ Desc: Henry M Childress-- Provider: pay Internal Affairs Inc.

Oregon Public Defense Services: Note statement in second paragraph: First we have provided you, with all of the records that we have pertaining to the work on Mr. Coates on your case. Paul Levy: OPDS General Counsel provided what records OPDS had. They were the agency that paid Mr. Coates on my behalf for investigatory service in my defense.

Letter from Oregon State Bar instructing Mr. Seeberger his commitment requirements:

Sec 6 OBLIGATIONS OF PDSC: ... providing one copy of a client's or form client's case file upon client's ... request. (f) records.

May 5, 2017 letter to Mr. Seeberger requesting entire file: note enumerated item (5) Mr. Coates witness reports, documents, business record and audio/video.

October 10, 2016 letter to Mr. Coates requesting to be informed and indicating he was part of my defense team.

August 15 2017 letter to Mr Coates requesting records, and informing Mr. Coates of FOIA and OPRL availability to force compliance.

May 3, 2017 letter from Mr. Seeberger informing me giving Mr Coates a request for investigatory records and Mr. Coates response to provide records.

December 19, 2018 letter from Mr. Seeberger informing him of non-compliance by Mr. Coates and address check due to non-response to record requests.

June 20, 2017 letter to Mr. Coates requesting documentation of investigation reports.

All documents, and actions clearly indicate that I am the client of Mr. Coates, and Mr. Coates is my provider of investigation services. The OPDS's contract with Mr. Seeberger, and Mr. Coates requirement, require records to be supplied to the client on written request; Oregon State Bar reinforces this requirement with disciplinary action; Mr. Seeberger relayed this commitment to Mr. Coates; Mr. Coates agreed to provide documents, and finally, OPDS documents show clearly all authorities involved considered Henry M. Childress was the client of Mr. Coates, including Mr. Coates. How is it that OPDSST's discretionary ruling contradict all engaged. What is the policy that allows such interference of due process with all parties, and the law?

Contrary to your statement, outlined in previous and post petitions to OPDSST, there is more that "reasonable basis to show a violation of law or rule related to an individual's certification or licensure." So far, OPDSST has failed to follow the laws concerning ORS 703.401 to 703.995. I petition OPDSST to redress the concerns of address request for the client obligations in under ORS 703.450 and OPDSST regulatory requirements under ORS 703.460.

The February 14th letter directed to Ms. Hannon's was a petition for OPRL records of complaints of Mr. Coates from inception to present (not response). The final letter dated February 28th was directed to Ms. Boatman. It concerned a non-compliance to February 12th petition. It containing OPRL statutory regulations and court precedence notifications related to Ms. Boatman's non-compliance to OPRL statutes, such as, ORS 703.460(3)

The February 12th letter concerns petition to confirm business address of Mr. Coates, in pursuant of ORS 703.460 (1)(b), (3). And petition a redress of Ms. Boatman's May 9, 2019 misprision disallowing request for address, and defending Mr. Coates' non-compliance to investigation records request under ORS 703.450 (9)(b). (see above) It is clear this was February 12th petition letter was directed to the maladministration by OPDSST agents not a, "complaint alleges a violation by Daron Coates, PI-ID 02236." The redress on both, February 12th and February 28, was to redress violations by OPDSST not Mr. Coates. The February 28th letter concerns a non-compliance/non-response to the February 12th petition. It contains, as mentioned earlier, ORS 703.401 thru 703.995 and OPRL violations by OPDSST with some case law. The letter also includes ethical violations dealing with public virtuousness and lack of probity by OPDSST. Further more, this letter also contains no complaints concerning Mr. Coates as cited by this June 11th claimed, "receipt of complaints submitted by you."

On February 12, 2020, I petitioned for a redress response to unresponsive petition to Complaint Investigator Assistant, Mrs. Kristine Boatman for current updated address of Mr. Coates and to explain her unexplained refusal to initiate a preliminary investigation against Mr. Coates when I never requested an investigation. I initially address this petition for address to Ms. Hannon, requesting only current address when it was clear through non-response letter to Mr. Coates, a process server and attorney that the address that OPDSST provided was invalid. Ms. Hannon did not respond, so I requested a formal complaint on Ms. Hannon to Ms. Lindsay Hale: Professional Standards Division Director on June 8, 2019.

A response was submitted on May 9, 2019 by Ms. Boatman, misdirecting a complaint of Ms. Hannon, for non-response to petition not the addressee, Ms Hale. Ms. Boatman's head-spinning, absurd, crazy crayon argument, of falsely claiming I was not entitled to an investigation(which I did not request), and informing me that Mr. Coates was not obligated to respond in pursuant of ORS 703.450(4)(8)(9)(b), and 703.460(1)(b),(3) because I was not a client of his. On May 8, 2019, Ms. Boatman peremptorily closed the petition, intimating that the public was not entitled to Mr. Coates business address. On June 27, 2019, I petitioned again Ms. Boatman; providing document that designate without a doubt I was the client, and Mr. Coates was the provider qualified to redress the issues. I have not received a response. On July 15, 2019, I petitioned Ms. Hannon of my concerns, however, I never received a response to Ms. Hale, Ms. Boatman, or Ms. Hannon concerning these petitions. This precipitated my February 12th petition, and February 28th which may have elicited the June 11th response from "anonymous" Ms. Hale eventually responded five (5) months later on August 8th, providing no meaningful response to

the complaint. Just the same platitudinous refrain of placating dispensation bias to conspicuous violations by ODPSSST functionaries previously cited.

Please review these letters and all the letters received by ODPSSST in which a formal complaint was filed against Mr. Coates. In particular, please note the June 27, 2019 letter, starting in the fourth paragraph of 1 of 6, it states the following:

Going back two years ago your letter dated June 23, 2017 it stated clearly: Unfortunately, we are unable to process your letter without a completed Professional Standard Complaints Form, signed and submitted pertaining to this matter. This policy corresponds to ODPSSST Private Security Form, Authorization of Release Confidential Information, and ODPSSST Professional Standard Complaint Forms (PSCF) are required for proper petitions for regulate complaints. It states in the PSCF: Complaints will not be accepted without a signature or contact information. How is it to be that a March 11th letter with no requests formal complaints against Mr. Coates illicit a response from you without proper legal protocol according to your own policy, when six petitions for other information were ignored, and only after a official misconduct complaint against Ms. Hannon address to Ms. Hale which as of this date has not been answered? [The petitions were contents were pretermitted or non-responses are as follows: June 8th -Hale, May 29th -Hannon, April 30th -Hannon, April 4th -Hannon, March 21st -Glick, and your prevaricating, peremptory, pretermitted responses to a very dated March 11th petition in back of multiple petitions that were ignored, violating OPRL and other regulatory statutes. Please review, I will be happy to send you copies of these petitions.

Why was a supposed investigation done contrary to policy and procedure by you when an investigation was not requested, other than to confirm Mr. Coates business address when multiple attempts to contact failed by me, a process server, attorney, and statutory regulations in ORS 703.460 (1)(b),(3)? Why were all these petitions ignored by pretermission or in toto non-response? including a OPRL violation complaint against Ms. Hannon? Is this another ORS 162.415 violation? Since you did not get my permission and I request no complaint at this time against MR. Coates, only Ms. Hannon, and by failing to follow ODPSSST policy. I did not give permission to become part of the official record as it pertains to complaints of regulatees, as per policies stated and written and declared by your perfunctory reply in your last sentence.

I contend that ODPSSST's duty is to assure regulatee's business address are up to date. ODPSSST's response to Mr. Coate's business address check inquiry should be a self motivated, to -get in front of it- approach if evidence suggests otherwise. ODPSSST has been passive, and in my opinion, idle to these inquiries; responding with indifference, only by repeating what ODPSSST had on file without active inquiry to Mr. Coates if his address was current. Correspondence records indicate that six letters of inquiry were sent, including a letter from Michelle Burrows, an attorney declaring that a process server that Mr. Coates moved his office with no forwarding address, and the law firm he was renting space from had no idea where he went. This particular letter indicated that Mr. Coates was avoiding service of affidavit with a suspicious home address, "like a fortress. All windows are covered by brown paper obscuring the interior. There are 'high tech' surveillance cameras everywhere." Even with this information and six letters (Initial March 11, 2019, April 4, 2019, April 30, 2019, May 29, 2019, June 8, 2019 and June 27, 2019) requesting business address check and redress, only cavalier indifference non-compliance, and repetition of old business address were provide, with no indication of active inquiry to confirm other than a cursory records check.

ODPSSST is entrusted to deliver, "to promote excellence in public safety...developing and upholding professional standards for...private investigators in Oregon." I do not believe it for the public to be the sole active responder to all violations by regulatees, such as ORS 703. 460(1)(b), (3). I believe it is ODPSSST's duty to ensure address are up to date if information is provided indicating other wise. Taking the actions to inquire and correct regulatee if evidence is warranted. The implication is the public determines complaint action of regulatees, not ODPSSST. This puts and undue burden on the public to insure compliance. This positions ODPSSST in a less culpable, passive role in oversight of regulatees. Intimating it is the public complaining not ODPSSST. Instead of putting more weight on the shoulder of the public, it should be lifted by ODPSSST doing the heavy assist. Off the shoulders and carried for all of the states citizens as designed. I contend ODPSSST should get out in front of these issues and should not require formal public complaints to promote and uphold professional standards is such a passive manner.

In this case, a letter by ODPSSST to Mr. Coates after notification of address non-response and evidence the address no longer valid would be the proactive professional response. To take action to correct the business address filed, and put Mr. Coates in compliance. Not the requirement of multiple formal complaint by the public in order to motivate a ODPSSST response with dogged repetition of same outdated business address, and ignoring the petitioner without an active inquiry of current true business address. Lack of proactive probity in minor situations; lack of probity in major situations. An agency ethos, or *pattern-or-practice* can be extrapolated and reasonably inferred by their actions.

Going back to Ms. Boatman's June 23, 2017 statement "*Unfortunately, we are unable to process your letter without a completed Professional Standard Complaints Form, signed and submitted pertaining to this matter.* This is the second recorded execution by ODPSSST that contradicts their policy according to Ms. Boatman. Is this another example of *personnel-is-policy*? Rules, policy, and law disregarded by arbitrariness functioning as proper discretionary means? This *pattern-or-practice* is evidenced throughout my transactions with ODPSSST.

As one can see, this sophistry to misdirecting dissemble of actual complaint with non-existing complaints of Mr. Coates has been attempted before by ODPSSST functionaries. A confusing combination of brazen corruption and sheer incompetence founded on injustice and bad policy? Machiavellian methods parrying to direct questions. Direct complaint targets that do not fit the complaint narrative ODPSSST wanted to illuminate. "If they can get you asking the wrong questions, they don't have to worry about answers." Thomas Pynchon Coincidence? I think not. I will walk up to these questions, of which I perceive as *monkey tricks*. Distortions thwarting portentous administration policy, by authority outrunning discretion, inconsistent with the strict rule of integrity of office. Public body process playing tricks with reality in a deliberate exercises of tamping truth, and preventing the search of records that would provide the truth. Previous documented malfeasance, affords reasonable speciousness of ODPSSST's aims and motives.

This agency can do only what the law and the people, through the legislative Assembly, allow them to do when it comes to substantial regulatory statutes. It seems that ODPSSST's canting hypocrisy, masters of misdirection in which perception is more important than reality. Appearing to appease the public through proper due diligence requirements, while in reality private policies of *personnel-is-policy* . ORS 244.010 (6)... a public official has no private word that can be binding on public duty.7) The Legislative Assembly recognizes that public officials should expose corruption wherever discovered.(8) ... ever conscious of the public's trust. Reviewing correspondence history one can see civic virtue demeaned in typical backhanded way. A strategic obfuscate of self-interests *pattern-or-practice* cloaked in due diligence garb to confuse the true motives to casual oversight review. The means of reading it and a means can never be considered in isolation from their purpose; a means illuminating the aim; an instrument of private policy. A means to an end all bearing the face of public virtue, without its essence. It lacks not only the practice of public virtue, but the very idea of it.

The previous history of misfeasance, blanket obstructionism dictates a reasonable suspicions of ODPSSST aims and motives. A *thin blue line* ethos of relativistic bias running in the veins of ODPSSST's systematic peer and regulate protection and dispensation. A full panoply of documented material under girds the accusations of contempt of OPRL complaint requests. Previous correspondence is replete with reasonable inferences of maladministration. A history hidden by an agency that utilize repetitious Machiavellian method to obstruct public due process access to it's government. This is another attempted facade of narrative, dis-collated, out of context of the true subject of the complaint, which was to petition a complaint of ODPSSST agents statutory violation, not Mr. Coates. If one was to read only ODPSSST's "anonymous" letters, the complainant's context narrative could not be deciphered from the true intended narrative, by the complainant, from reading ODPSSST's June 11th subrogating letter. In my opinion, a sophistry constructed to mislead, circumscribe, or/and mitigate culpability of the agency misfeasance, if reviewed by oversight authority. A false narrative to cover-up over the true narrative by a non-contextual response to the true actual complainant's subject. *Expressio unis est exclusio alterius* This obfuscating, non-transnational narrative, communication by passing fictitious narratives to mislead, misrepresentation clouding truth and equity. An illusion of public integrity evinced by the record. This I believe is one of the most common, malefic form of obstructive misrepresentation of due process entitlements for it's own interests and convenience. An entrenched bureaucratic clot *patterns-or-practices* pathology, who has forgotten they work for the public, is just as hard, may be harder to repair as it was to become established. "Men, it has been well said, think in herds; it will be seen that they go mad in herds, while they only recover their senses slowly, and one by one." Charles Mackay

A public virtuousless, venturesome forces of law and order, to expedited in a swift and arbitrary fashion for their own interest and convenience by an agency that refused to follow statutory obligations. An unbridled agency lacking a healthy respect for the law is a triumph of injustice. Ruthless in purpose, and insidious in method, is in itself a case study of public malfeasance. Excessively attached to such errant *personnel-is-policy* is a retreat into a dim public contempt of vital elements of commitment in which the public

cannot trust the agency to guide our policies. *Our outward action exactly agreeable to our inward purpose and intention.* The public must trust the conclusions of this agencies investigation, that nurture such corruption, and refuses to provide the public complaints of regulatees for the people to judge for themselves. A trust not warranted due to the historic precedence of public interests taking a back seat to expediency. An echo chamber of conformation bias relativism linked to a paralyzing chain of conformity to *pro forma* inured actions by a public agency desensitized to it primary mandate. Shamelessly, openly and corruptly, abandoning civic duty and oaths to serve the public with abuse of discretion and private interest unchained from the scope of precedence, law and civic merit. Arrogating to themselves the abrogation of duly authorized statutes under OPRL. Becoming a repressive corrupted, corrosive, and deluded apparatus of the state in which people don't feel represented by anything or anyone. Either you are protected by the law or subjected to the law. *"Few if any emperors who willingly set aside powers poisoned chalice."*

I believe truth and right will prevail eventually, and the proper moral course is to push for truth in order to achieve right. Citizens must not lose this right of the crucial element of the rule of law. We must puncture our complacency. Our institutions are failing us by breeding public cynicism leading to public malaise of "*it is what it is*" after such illiberal behavior. Thereby losing the vital ideas of civic life, losing trust in self-governance of this once golden country.. The trust and respect for our governing institution's key pillar of this public agency's mandates is to ensure policy, investigations, public safety and to protect the weak from the strong.

Mokusatsue, a Japanese word for, *to kill with silence*, best describes ODPSST's *sub-rosa* policy towards OPRL requests by the public on regulatee complaints. Ignoring, misdirecting, obfuscating, peremptorily closing request cases etc... *To kill with silence.* If left unchecked this *pattern-or-practice* will continue elimination any accountability to the public and power of oversight. Nothing is so void of sincerity to public virtue as silence to public safety concerns.

This begs the question by such *pattern-or-practice*, how many of the misconduct complaints from the public ends with disciplinary action ? And what has bee the most common punishment recommended? A complaint-to-disciplinary action ratio. Disciplinary protection are easily given way to almost blanket protection of regulatee by simply looking the other way.

How long will ODPSST abuse public trust? How long will this subterfuge mock public interest? To what limit will this agency's unbridled audacity to manipulate it's public mandate. Has not the three years of petitions and correspondence exposed the regulatory statutory, constitutional, and ethical lapses moved the agency to amend and correct it's transgressions? Do you not realize your misconduct lies exposed? Do you not see that your complicity, duplicity is now held constrained by the knowledge to all? Why do you continue when it is abundantly clear to all? Why risk more exposure? Is it the sheer arrogance of authority accustomed to a culture conditioned to it inured autonomic bureaucratic lethargy that lacks the probity to stop it's momentum of maladministration? *"Republics do not collapse because of one person; they collapse because men inside the regime look for loopholes in the law... and then seek to expand the loopholes until the law itself has no meaning."* Timothy Snyder

ODPSST is consigned to establish, administrate and maintain and utilize the best precedence and law to guide a public standard and principles. *"It should constantly looked to, constantly labored for, and even never perfectly attained, constantly approximated and thereby constantly spreading and dispensing its influence and augmenting the happiness and value of life to all people."* Abraham Lincoln. ODPSST must act as committed community protectors, rather than act as regulatee advocate, as clearly demonstrated by there actions, and to repair the breach of incuriousness towards agency peer malfeasance.

Please provide the current business address of Mr. Coates, and explain why this false anonymous letter was sent. Consider this a formal compliant of ODPSST practices. The right to confront our government when they are wrong is our most fundamental right as Americans. Born out of revolution, and our first right.

Respectfully submitted,

Added to bottom of this document:

2/12/2020, 2/28/2020 letters to Ms.Boatman

Henry Childress
10977752, EOCI 2500 Westgate
Pendleton, OR 97801
February 28, 2020

Kristine Boatman
Compliance Investigator Assistant
Oregon Department of Public Safety Standards and Training (ODPSST)
4190 Aumsville Hwy
Salem, Oregon 97317

Dear Ms. Boatman:

This is a petition to respond to a February 12th OPRL request for an updated, valid, current address of Mr. Daron Coates, redress factual discrepancies in your May 9, 2019 refusal to provide a valid publicly entitled records, failure to follow laws outlined in ORS 703.401 to 703.995, and OPRL ORS 192.311 to 192.460. The precedence of continued past delays, and misfeasance of regulatory statutes, outlined in OPRL, specifically, ORS 192.324 and 192.329, compels and requires it.

Political language is designed to make lies sound truthful and murder respectable, and to give an appearance pf solidity to pure wind
George Orwell

In pursuant of ORS 192.329 (5)(b): *"Provide a written statement that the public body is still processing the request and a reasonable estimated date by which the public body expects to complete its response based on the information currently available."*, please acknowledge receipt of delays due the possible consequences outlined in ORS 192.329 (6). Please justify the delay in pursuit of ORS 192.324 (2). *"...acknowledge receipt of the request..."*, and ORS 192.329 (5)(b): *"Provide a written statement that the public body is still processing the request and a reasonable estimated date by which the public body expects to complete its response."*

Please review the following statutes and supreme court precedence:

ORS 192.324 Copies or inspection of public records; public body response; fees; procedure for records requests (Oregon Revised Statutes (2019 Edition) (2) If an individual who is identified in a public body's procedure described in subsection (7)(a) of this section receives a written request to inspect or receive a copy of a public record, the public body shall within five business days after receiving the request acknowledge receipt of the request or complete the public body's response to the request.

ORS 192.329 Public body's response to public records request. (1) A public body shall complete its response to a written public records request that is received by an individual identified in the public body's procedure described in ORS 192.324 as soon as practicable and without unreasonable delay. (5) As soon as reasonably possible but not later than 10 business days after the date by which a public body is required to acknowledge receipt of the request under ORS 192.324, a public body shall: (a) Complete its response to the public records request; or (b) Provide a written statement that the public body is still processing the request and a reasonable estimated date by which the public body expects to complete its response based on the information currently available.

Procunier v. Martinez 416 US 396, 40 Led2d 224,94 Set 1800 (1974). A prisoner is not stripped of constitutional protections at the prisoners gate.
Johnson v. Avery, 393 US 483, 21 Led2d 718, 89 Set 747 (1969) Prisoner has a constitutional right to petition the government or redress of their grievances.
US v. Morale, 173 F3d 1213 (9th cir 1999) Internal agency regulations cannot legitimate the violation of constitutional or statutory rights

The silence is in essence a confession to complicity to malfeasance. By controlling the process ODPST controls the outcome. Obfuscation by silence can only be negatively assumed. The public and I have a right to know what is going on. This silence raises troubling question of public protection and trust. Silence is not the prescription for malfeasance when one cannot defend the indefensible. *"When something important is going on; silence is a lie."* A.M. Rosenthal

Those laws which are enacted for the advantages of those to whom injustice has been done, and those unwritten laws; the breach of which incurs shameful disgrace.

Pericles

I fail to understand and refuse to accept ODPSST not doing what the law demand, and the public deserves. An confessional indictment through cavalier indifference, going thru statutory violations like going thru salsa. A documented, demonstrable contempt of facts and law; willingly and wantonly circumventing the rigorousness of the law. The perils of *personnel-is-policy* paradigms by ignoring the law, and injuring the integrity of a governmental agency, which impairs and injures the protections of the people of Oregon. Without law and excuse, defying OPRL in a series of obstructive acts, undermines mandated public interest of our institutions, and the governance of it. Through these actions ODPSST arrogated the law for it's own private interest over the authority of law. Absent of any factual or legal support, disqualifies your arbitrary capricious decision. As long as laws are enforceable, public interest can be enforced through honest oversight of regulatory laws that force public fortitude and devotion for the public good if public virtuousness is weak or absent. *"What people want is very simple, they want an America as good as its promise." Barbara Jordan*

Truth has a despotic character. It is therefore hated by tyrants, who rightly fear the competition of coercive force they cannot monopolize.
Hannah Arendt

Facts are stubborn things; stubbornness when facts speaks is to be obstinate to reality, creating invented reality. Let us not abandon our reasoning and common sense. The Administrative Procedure Act was intended to provide procedural protections to individuals adversely affected by administrative action. Remember professional ethics should defend the public. By constitutional blessing, OPRL requests are for the benefit of all the people of Oregon. ODPSST exists for the protection of the public not for the alliance and security of regulatees over the security demands of the people from injustices through special treatment, and unequal application of the law. Please conform to the regulatory statutory requirements with prompt replies.

Every man has a right to be wrong in his opinion. But no man has a right to be wrong in his facts *Bernard Baruch*

Respectfully submitted,

Henry Childress
10977752
EOCI
2500 Westgate
Pendleton, OR 97801

February 12, 2020

**Kristine Boatman
Compliance Investigator Assistant
Oregon Department of Public Safety Standards and Training (ODPSST)
4190 Aumsville Hwy
Salem, Oregon 97317**

Dear Ms. Boatman:

In a petition to Mrs Rebecca Hannon, dated April 04, 2019, I requested the business address of Mr. Daron Coates. The response was a defunct address not longer valid. Mrs. Hannon responded on April 10th stating, *"The business address we currently have for Mr. Coates is : Internal Affairs Pvt Investigations, 11073 SE Maintained Milwaukee, OR 97222."* This is contrary to my attempts to contact Mr. Coates, Michelle Burrows: attorney at law and a licensed process server. (I have enclosed this email) *"What people want is very simple, they want an America as good as its promise."* Barbara Jordan

Where there are fundamental laws reserving certain rights as unalterable, nothing but a manifest necessity can justify any step beyond the tenets of those laws; otherwise all faith in such treaties of coalition is gone.

DPSST will not initiate a preliminary investigation into complaints against private security providers, security businesses, private investigators or polygraph examiners, and will not take any action against a provider for a violation of law or rule related to an individual's certificate or licensure.

s where an objectively reasonable basis exists to show a violation of law or rule related to an individual

1. You were not a client of the Mr. Coates , you were a client of attorney Jerry Seeberger
2. Mr. Coates has no requirement regulated by this ?Department to respond to you request for information.
3. The complaint case was closed on May 8, 2019

In a June 27th letter addressed to you I provided solid documentary factual evidence that I was a client of Mr. Coates. Again, I will provide as before these documents in this mailing. This is a statement in that letter:

Second for clarity of your arbitrary supposition, without authority of law conclude that I was not a client of my private investigator Mr. Coates. On its face, it is a mind-boggling claim, however, what is surreal to me and the public, it maybe just another Thursday to ODPSST functionaries in a *personnel-is-policy* culture. I have provided documents that unequivocally prove that Mr. Coates was my provider and his client.

Please note the following documents supplied in this petition:

Voucher 7 of 12 : Client Name/ Desc: Henry M Childress-- Provider: pay Internal Affairs Inc.

Oregon Public Defense Services: Note statement in second paragraph: *First we have provided you, with all of the records that we have pertaining to the work on Mr. Coates on your case.* Paul Levy: OPDS General Counsel provided what records OPDS had. They were the agency that paid Mr. Coates on my behalf for investigatory service in my defense.

Letter from Oregon State Bar instructing Mr. Seeberger his commitment requirements:

Sec 6 OBLIGATIONS OF PDSC: ... providing one copy of a client's or form client's case file upon client's ... request. (f) records.

May 5, 2017 letter to Mr. Seeberger requesting entire file: note enumerated item (5) Mr. Coates witness reports, documents, business record and audio/video.

October 10, 2016 letter to Mr. Coates requesting to be informed and indicating he was part of my defense team.

August 15 2017 letter to Mr Coates requesting records, and informing Mr. Coates of FOIA and OPRL availability to force compliance.

May 3, 2017 letter from Mr. Seeberger informing me giving Mr Coates a request for investigatory records and Mr. Coates response to provide records.

December 19, 2018 letter from Mr. Seeberger informing him of non-compliance by Mr. Coates and address check due to non-response to record requests.

June 20, 2017 letter to Mr. Coates requesting documentation of investigation reports.

All documents, and actions clearly indicate that I am the client of Mr. Coates, and Mr. Coates is my provider of investigation services. The OPDS's contract with Mr. Seeberger, and Mr. Coates requirement, require records to be supplied to the client on written request; Oregon State Bar reinforces this requirement with disciplinary action; Mr. Seeberger relayed this commitment to Mr. Coates; Mr. Coates agreed to provide documents, and finally, OPDS documents show clearly all authorities involved considered Henry M. Childress was the client of Mr. Coates, including Mr. Coates. How is it that OPDSST's discretionary ruling contradict all engaged. What is the policy that allows such interference of due process with all parties, and the law?

Contrary to your statement, outlined in previous and post petitions to OPDSST, there is more that "reasonable basis to show a violation of law or rule related to an individual's certification or licensure." So far, OPDSST has failed to follow the laws concerning ORS 703.401 to 703.995. I petition OPDSST to redress the concerns of address request for the client obligations in under ORS 703.450 and OPDSST regulatory requirements under ORS 703.460.

Where there are fundamental laws reserving certain rights as unalterable, nothing but a manifest necessity can justify any step beyond the tenets of these laws; otherwise all faith in such treaties of coalition is gone.

Frances Hutcheson

As of this date, you have refused to respond to my lawful petition. Nothing is so void of sincerity to public virtue as silence to public safety concerns; the silent true narrative unstated, unexamined vacuum of injustice. Please provide the address information petitioned for redress. With great alacrity, and vigilance of the public eye, the truth will out; the truth will stand up to scrutiny, for the truth that lives, truth that dies; the records will show where they lie.

Those laws which are enacted for the advantages of those to whom injustice has been done, and those unwritten laws; the breach of which incurs shameful disgrace.

Pericles

Due to the historic precedence, please conform to the regulatory statutory requirements of prompt replies, stipulated in OPRL, and other statutory response requirements to public requests.(previously provided) *Qui non negat fatetur. "What people want is very simple, they want an America as good as its promise." Barbara Jordan*

Respectfully submitted,

Henry Childress
10977752
EOCI
2500 Westgate
Pendleton, OR 97801

The above is a true statement of my experiences with the named agencies and pseudo public agents to the best of my knowledge.

Respectfully submitted,



Henry Childress
10977752
EOCI
2500 Westgate

Pendleton, OR 97801

Copy from
the ver Reg
3/12/20

	Department of Public Safety Standards and Training POLICY	Policy Number: 129
		Effective Date: 3/12/20
SUBJECT:	Public Records	Supersedes: 4/5/19
SIGNATURE:	Signature on File Eriks Gabliks Director	Division(s): All

APPLICABILITY:

All Department of Public Safety Standards and Training (DPSST) employees.

PURPOSE:

The goal of this policy is to ensure public records are managed and maintained appropriately within DPSST and consistently across the enterprise of state government.

This DPSST Public Records Management Policy, adopted according to the requirements of DAS Statewide Policy 107-001-020 and ORS 192.018, addresses the following components:

- Public Records Maintenance;
- Roles and Responsibilities;
- Education and Training;
- Access and Ownership;
- Integrity;
- Retention Generally;
- Storage and Retrieval;
- Disposition and Destruction; and
- Public Records Requests.

AUTHORITY:

Director

REFERENCES:

ORS Chapter 192

ORS 703.480(2)(a)

OAR Chapter 166 Division 300

OAR 259-025-0000

Department of Administrative Services (DAS) Statewide Policy # 107-001-030 (Public Records Requests Fees and Charges, including the Statewide Standardized Fee Schedule)

DPSST Procedure #129a (Submitting a Records Request)

DPSST Business Continuity Plan

DPSST Policy #351 Social Media

DEFINITIONS:

“Authorized Retention Schedule” means either a General Schedule published by the State Archivist in the OAR in which certain common public records are described or listed by title and a retention period is established for each; or a Special Schedule approved by the State Archivist for the public records of a specific agency.

“Cloud-computing” has the meaning established in the National Institute of Standards and Technology (NIST) Special Publication 800-145.

“Custodian” means a public body mandated, directly or indirectly, to create, maintain, care for or control a public record. “Custodian” does not include a public body that has custody of a public record as an agent of another public body that is the custodian, unless the public record is not otherwise available.

“Instant Messaging” means real-time text communications between or among computers or mobile devices over the Internet or functionally similar communications networks.

“Metadata” means data that provides information about other data. Metadata assists in resource discovery by allowing resources to be found by relevant criteria, identifying resources, bringing similar resources together, distinguishing dissimilar resources and giving location information.

“Official Copy” or “Original Record” means the version of a public record that has been designated by DPSST as the record of a transaction or event, and which is subject to the requirements of laws, rules and the records retention schedule authorized by the State Archivist.

“Public Record” has the meaning established in ORS 192.005. In general it refers to information that is prepared, owned, used or retained by a state agency or political subdivision; relates to an activity, transaction or function of a state agency or political subdivision; and is necessary to satisfy the fiscal, legal, administrative or historical policies, requirements or needs of the state agency or political subdivision. Refer to the Secretary of State’s guide for determination of a public record:

<https://sos.oregon.gov/archives/Documents/recordsmgmt/train/brm/managingrecords.pdf>

“Social Media” means web-based and mobile communication technologies that allow the creation and exchange of user-generated content such as comments or responsive postings. Examples of social media include but are not limited to Twitter, Flickr, blogging sites, Facebook, YouTube and Instagram.

“Text Messaging” means messages exchanged between fixed-line phones or mobile phones and fixed or portable devices over a network. Excluded from the definition of “text messages” are electronic mail (“e-mail”) communications, whether such messages are exchanged among or between official state government e-mail accounts or e-mail accounts maintained by private entities.

“Unified Communications” means a service of IBM; the packaged services or user profiles available to agencies (e.g. instant messaging, video conferencing, telephony, call management and call control across multiple systems, etc.). Also known as IMB Unified Communications.

GENERAL:

PUBLIC RECORDS MAINTENANCE

Public records must be maintained and managed in a manner that protects the integrity of the records within DPSST without regard to the technology or medium used to create or communicate the record, from the time of creation of a public record to the time of final disposition of the public record as determined by their authorized records retention schedule.

ROLES AND RESPONSIBILITIES

Oregon law requires agencies to designate an Agency Records Officer “to coordinate its agency’s Record Management Program” (ORS 192.105(2)(a)). The DPSST records officer will

serve as primary liaison with the State Archivist and receive training from the State Archivist in performing their duties.

DPSST will ensure agency public records are managed in accordance with their authorized records retention schedules, from the time of creation to final disposition, by assigning designated staff/positions with the following responsibilities:

- The Professional Standards Division Director will serve as DPSST's official Records Officer.
- The Records Maintenance & Control Specialist will:
 - Regularly review records, regardless of format to determine if records should be retained or destroyed;
 - Identify and develop retention schedules for new records series;
 - Maintain a filing system of the agency's paper and electronic records, based on authorized retention schedules, which includes the description and location of public records, including records the agency is required to retain due to litigation and/or special audit;
 - Account for records that must be retained beyond their authorized retention period due to mitigating administrative need and submit written justification of the mitigating administrative need to the State Archivist for approval;
 - Develop and implement internal processes and procedures for the transfer, retrieval and destruction of records in accordance with authorized retention periods;
 - Ensure that records are destroyed according to their authorized retention period; and
 - Document the destruction of public records and retain that documentation according to the authorized records retention schedule found in OAR chapter 166 Division 300.
- The Director's Office will:
 - Coordinate and track employee completion of public records management training to ensure agency staff understand how records are properly managed in compliance with authorized records retention schedules;
 - Review and update internal public records management policies and procedures; and

- Obtain State Archivist approval of revisions to the agency public records management policy.

EDUCATION AND TRAINING

Basic public records training will be completed as a component of DPSST new employee orientation training; and incorporated as part of regular employee training, completed once a biennium.

ACCESS AND OWNERSHIP

Without regard to how public records are being stored, DPSST will have custody and control over public records. Through on-going review of technological advances, DPSST will ensure all public records are maintained and accessible for as long as required by authorized retention schedules or litigation holds.

DPSST's disaster mitigation processes are addressed in the DPSST Business Continuity Plan (BCP).

INTEGRITY

DPSST will ensure appropriate access and version controls are applied to all electronically stored records from record creation to final disposition.

The authenticity of each record can be demonstrated either by certified copy of paper records or via accompanying metadata for all electronic records.

RETENTION GENERALLY

DPSST will preserve and classify public records according to ORS Chapter 192, OAR Chapter 166 Division 300 and DAS Statewide Policy 107-004-050 regarding information Asset Classification.

DPSST will work with the Archives Division to establish retention practices to ensure compliance with ORS Chapter 192 and OAR Chapter 166 Division 300.

- **Cloud Computing:** DPSST practices and procedures, with respect to public records management in the Cloud, will comply with DAS Statewide Cloud-Computing Policy (DAS Policy 107-004-150) and OAR Chapter 166 Division 300.
- **Email:** When DPSST receives a public records request, all official email accounts and systems used for official state business are subject to search and production.

- **Official Email Accounts:** In most circumstances, emails sent to or from a state employee's official email account will meet the definition of a public record. Therefore, this policy requires that virtually all email messages composed or sent using employees' official equipment or official email addresses be for primarily business purposes.
- **Personal Email Accounts:** If employees must use personal email accounts to conduct state business, DPSST's requires that employees copy their official email accounts on all such outgoing communications, and forward any received messages on which their official email accounts are not copied immediately or as soon as practicably possible.
- **Instant Messaging:** DPSST's policy regarding Instant Messages is the same as that recited below regarding text messaging.
- **Social Media:** Any content placed on any social media platform must be an accurate copy of an official record that is retained elsewhere by DPSST per the authorized records retention schedules.
- DPSST will develop practices and procedures to manage agency use of social media to ensure public records are accurately captured and retained per authorized records retention schedules. Reference DPSST Policy 351 Social Media.
- **Text Messaging:** DPSST employees may use text messaging to communicate factual and logistical information related to official state business, only if that information has been documented elsewhere or will be documented and retained as a separate public record according to the agency's authorized records retention schedule.
- In the absence of separate documentation, DPSST employees are not to use text messages for official purposes other than for routine communications that do not meet the definition of a public record.

Examples of Acceptable Uses:

- Scheduling.
- Requesting a call or email on a matter, without substantive discussion.
- Requesting or offering logistical assistance ("Can you help me get these boxes to the Capitol?")

- Forwarding a person's contact information ("I'm at 503-378-6002.").
- Explaining your current whereabouts, or inquiring about someone else's ("We're at the meeting discussing this morning's announcement. Are you around?")
- Describing facts or events that do not relate to the substance of the agency's work ("Spilled coffee all over myself right before my presentation!"), or that have been or necessarily will be separately recorded ("Mr. Jones just testified to the committee that our bill would cost taxpayers \$3 million.").
- Inquiring about events like those in the previous bullets ("Has Mr. Jones testified in committee yet?").

Unacceptable Use:

- DPSST employees must avoid communicating official state business or engaging in discussions regarding primary business of their work over text message.
- As noted above, relevant facts pertaining to official state business may be reported only if they are already documented in separate public records or they necessarily will be documented in a separate public record.
- If, notwithstanding this policy, an employee uses text messages to communicate information (not otherwise documented) relating to official state business or the primary business of the employee's work, such discussion is to be immediately converted and saved in a separate public record format (e.g., by forwarding the relevant text messages to their official state email).
- Because DPSST requires that no text message-based public records be created or if they are created, that they be converted and saved in an alternate format, which would serve as the official copy of the record - DPSST will not retain text messages.
- DPSST employees' personal electronic devices should not be used to transmit text messages related to state business. Personal devices are subject to search if used to transmit text messages regarding official state business or information related to an employee's work that rises to the level of creating a public record.

• **Unified Communications:** DPSST must identify public records created by use of active Unified Communications features and ensure those records are appropriately managed

according to authorized records retention schedules as well as other applicable state and federal policies and laws.

When a public record is created by the use of active Unified Communications features and that public record is not subject to a specific retention schedule, DPSST will maintain the public record in accordance with the email retention schedule.

- **Voicemail:** Unless otherwise required, DPSST will not retain messages on voicemail. Email transcriptions of voicemails that are determined to be public records must be retained according to authorized records retention schedules and may be subject to public disclosure upon request.

STORAGE AND RETRIEVAL

- **Paper Records:** DPSST will maintain a filing system of the agency's paper records based on authorized retention schedules. The filing system will include the location of records, retention periods and procedures for retrieval to ensure accessibility of agency records.
- **Electronic Records:** DPSST will maintain a filing system and naming conventions for all agency records stored in electronic format based on the agency's authorized retention schedules. The filing system and naming conventions will include the location of records in agency directories, retention periods, access controls and privacy conditions to support management of the agency's inventory of electronic records.

DPSST will work with the State Archivist to ensure the agency meets retention periods for all records before any data is destroyed and prior to deleting any large electronic record system.

DISPOSITION AND DESTRUCTION OF PUBLIC RECORDS

DPSST will dispose of or destroy public records according to the requirements of authorized records retention schedules and OAR Chapter 166, Division 300.

Pursuant to ORS 357.855, DPSST employees will consult the State Archivist for advice and assistance with determining the disposition of certain record types not accounted for in state Agency General or Special Retention Schedules, and reconciling unforeseen public records issues.

PUBLIC RECORDS REQUESTS

DPSST must manage public records requests in accordance with ORS Chapter 192 and the Attorney General's Public Records and Meeting Manual.

The following guidelines are established for DPSST's application of this policy:

- OAR 259-025-0000 has been adopted for the protection of DPSST's records and to prevent interference with the regular discharge of DPSST's duties.
- DPSST will require requests for records to be submitted in writing.
- DPSST will make a procedure available to the public for submitting a records request. The procedure must include DPSST's fee schedule. The procedure must be made available to the public on DPSST's website and upon request.
- DPSST will determine whether fees for public records are necessary to recover the actual costs for staff time or materials needed to complete a public records request. DPSST must calculate those fees in accordance with the DAS Statewide Policy # 107-001-030 for Public Records Requests Fees and Charges and the Statewide Standardized Fee Schedule.
- Whenever practicable, DPSST will provide a copy of the record in the form requested. If DPSST determines that the record cannot be provided in the form requested, then DPSST will make the record available in the form in which DPSST maintains the record after considering any steps necessary for the protection of the record and to prevent interference with the regular discharge of DPSST's duties.
- If the public records request is a request to inspect and examine the record instead of being furnished a copy of the requested record, DPSST will furnish reasonable opportunity for the inspection and examination of the record within DPSST's facilities during usual business hours. DPSST may require and designate a DPSST employee to supervise the inspection of requested records.
- DPSST will review all records prepared for release through a public records request for content contained in a record that is exempt from disclosure.
 - When a record is exempt from disclosure, DPSST will notify the requestor, identify the exemption and include direction on how to request review of DPSST's determination.

- When a portion of the content contained in a record is exempt from disclosure, DPSST must redact the exempt content and provide the requestor with access to or a copy of the redacted record including the process of identification of the exemption as noted above.
- A practicable and reasonable response or completion of a records request may be affected by, but is not limited to, factors such as interference with the Department's other duties, the volume of records requested, the staff available to respond to the request, and the time needed to assess the application of exemptions from disclosure.
- Whenever practicable, DPSST will respond to a public records request within five business days of receipt of the request.
 - The request will not be considered received if the designated staff member for processing a public records request is on leave or not scheduled to work.
 - Response means acknowledgement of receipt of the request that includes:
 - Completion of the records request;
 - Confirmation that DPSST is the custodian of the record;
 - Notice that DPSST is not the custodian of the record; or
 - Notice that DPSST must conduct more research to determine if DPSST is the custodian of the record.
- Whenever practicable, DPSST will complete a public records request within fifteen business days of the receipt of the request. If DPSST is unable to complete the records request within the fifteen business days, DPSST will inform the requestor that the records request is still being processed and provide an estimated date for the completion of the records request.
- The fifteen business days do not include any period of time following DPSST's notification and requirement of a fee charged for the completion of the public records request or DPSST's request for additional information or clarification of the records request.
- Completion of a records request occurs when DPSST has:
 - Provided the non-exempt records or the requestor has been directed to where the records are already publicly available; or
 - Asserted records exemptions.

- DPSST will close a public records request without completion of the records request under the following conditions:
 - 60 days have lapsed since DPSST requested additional information or clarification from the requestor and the requestor has not responded to DPSST's request;
 - 60 days have lapsed since DPSST provided the requestor with notice of fees required for completion of the public records and the requestor has not paid the fees; or
 - 60 days have lapsed since the requestor was informed of the denial of a fee waiver and the requestor has not paid the fees.
- DPSST may close a public records request after notifying the requestor that DPSST is unable to complete the records request after the requestor affirmatively declines to provide additional information or clarification requested by DPSST in order to process the records request.

~~✓~~ **RECORDS RELATING TO ALLEGED VIOLATIONS OF ORS 703.401 TO 703.490
(PRIVATE INVESTIGATOR LICENSING).**

The DPSST interprets the public records exemption found in ORS 703.480(2)(a) to include allegations that the DPSST determines to be false, unfounded and invalid. ~~✓~~

Rule change without APA guidelines

SHEMIA FAGAN

SECRETARY OF STATE

CHERYL MYERS

DEPUTY SECRETARY OF STATE



STEPHANIE CLARK

DIRECTOR

800 SUMMER ST

SALEM, OREGON 97310-0722

503-378-8161

August 24, 2021

Henry Childress
10977752
EOCI
2500 Westgate
Pendleton, OR 97801

Dear Mr. Childress,

Thank you for your letter requesting rulemaking records for the Oregon Department of Public Safety Standards and Training's Policy Number 129, which was effective 3/12/20. I was able to locate a copy of their policy and it is not filed as an administrative rule – it is solely an agency policy. Therefore, the agency did not file any rulemaking materials with our office. I am including a copy of the policy for your reference.

Please let us know if you need any further assistance.

Sincerely,

Stephanie Clark
Director
Oregon State Archives
503-378-8161
stephanie.clark@oregon.gov
800 Summer St.
Salem, OR 97310

