

PRAC Proposal Feedback, August 25, 2022

Emily Gothard, PRAC member representative of the public sector workforce

I am summarizing my concerns and suggestions regarding the proposed reforms to Chapter 192 below. As a representative for public employees, the proposed changes affect public employees who perform the work of responding to public records requests, including workload and resource allocation of public bodies, the costs for records for public employees' labor representatives who request records on behalf of public employees, and affects public employees through the release of their own information. Governmental transparency and access to public records is critically important for the benefit of the public, but I have several concerns regarding the impacts of the proposed expansions of fee waivers which I will outline below:

- 1. The dramatic expansion of cost waivers (the first 30 minutes / first 100 pages per 30 days) could dramatically increase public records requests without funding or staffing to support this work.** This is a concern for both small government agencies and larger state agencies that already have a large volume of public records requests. The proposal also seeks to eliminate fees if a public body exceeds 15 business days to complete a request unless the public body has communicated an updated time estimate to the requester. If public employees are overwhelmed and not adequately staffed to process these requests, we cannot expect communications with requesters to be more accurate or timely or for requests to be processed quickly. I am concerned these proposed fee waivers will negatively impact already understaffed public bodies and delay access to records by requesters.
- 2. The proposed limit on deposits (25% of the estimated cost) will require public employees to perform work to prepare responses to public records requests that may never be paid for, limiting the resources of public bodies to perform other essential work.** Limiting public bodies' ability to collect the full cost of fulfilling the request also requires processing more than one payment and additional communication and collection efforts by public employees, increasing the amount of work expended to fulfill the request.
- 3. The proposed requesting tiers are not clearly defined and would use taxpayer funds to subsidize requests which are not made in the public interest.** The proposal limits requests by "Media, public interest (affects community, requester has platform to disseminate), educational, non-commercial scientific institution" to be charged costs only for duplication of records and not for search or review, which comprise the majority of the time and expense associated with fulfilling requests. As noted above, I have concerns that by providing such substantial fee waivers that public employees will be inadequately staffed to process these requests in addition to the essential work the public body is tasked to perform and that such an expansion would actually harm the public and further delay access to requested public records. I believe it is important for such waivers of search and review fees, which are subsidizing requests using taxpayer funds, to meet a public interest requirement. A broad exemption of search and review fees for the media, where media is not defined but is also problematic to define, would open the door for abuse and taxpayer funding for requests that serve no benefit to the public. Many public

employees have also expressed concerns regarding their information being disclosed through public records requests and used in a way that at worst, could risk their personal safety for workers like child welfare workers who could be targeted because of their work or workers who have personal safety concerns related to interpersonal violence. While the PRAC is not tasked with reviewing exemptions to public disclosure, proposals which would provide taxpayer subsidization to entities to request and potentially disseminate large databases of public employee information do create concerns for public employees and the proposal as currently drafted would not even require that the subsidization of these requests be based on demonstrating a benefit to the public.

- 4. The provision of public records which relate to the requester at no cost up to a reasonable limit serves the public interest.** The proposal includes that no fee should be charged for a requester's own files or records, with a comment questioning if this should be up to a certain limit. I support the proposal that public records pertaining to the requester, or their representative, should include a fee waiver. It would be impossible to attempt to list the myriad reasons people may need their own public records and my examples are not intended to encompass them all, but public records can be needed for victims of crime, individuals who are injured, and public employees themselves often request records, or request records through their attorney or labor representative, related to employment-related disputes. While it may be necessary to limit such fee waivers to a certain amount of time even for records pertaining to the requester, it is in the public interest for fees not to act as a barrier for individuals to be able to access these important public records.