

Meeting Minutes
Oregon Public Records Advisory Council
Nov. 18, 2022
Called to order at 2 p.m.

Members present: Mark Landauer, Shasta Kearns Moore, Todd Albert, Emily Harris, P.K. Runkles-Pearson, Emily Gothard, Tyler Janzen, Tony Hernandez, Steve Suo, Michael Kron.

Member absent: Andrea Chiapella

I. Approval of the agenda

Council members approved the agenda with no objections.

II. Approval of minutes

A motion to approve the 11-18-2022 Meeting Minutes was made by Todd, and seconded by Emily H. The Council approved the motion with no discussion.

III. Welcome to new members and introductions

Todd introduced P.K. Runkles-Pearson, Chief Counsel with the Oregon Secretary of State, Tyler Janzen on behalf of the Association of Oregon Counties, and Andrea Chiapella from Department of Administrative Services.

IV. Discussion of and vote on adopting the Legislative Subcommittee's legislative concept amending ORS 192.311-329.

Emily H summarized the extensive work by the Legislative Subcommittee during the past year. She said, "People found witnesses to bring in new ideas from across the country, from across the state. People spent time reviewing other people's ideas, offered concrete suggestions in writing, which made it very easy to talk through concepts."

Tyler asked if the proposal preserves the ability for already specified fees in statute to continue to be charged, such as fees for county clerks. Todd answered that if there's existing fees prescribed in statute now, such as fees for counties that exist elsewhere in state law, he has never heard of those interacting with the public records law in a way that makes those fees unenforceable.

P.K. asked if the PRAC is intending to include in the legislative record any sort of commentary on the proposed changes to state law, and what the purpose of the changes would be. She said doing so is very helpful for people to better understand the proposed changes.

Mark said the PRAC hasn't discussed how to present the bill if and when the bill gets taken up by a policy subcommittee in the Legislature, and he also said that providing readers the background and clarity is important. He suggested the council discuss the topic at a date before the 2023 Legislative Session.

Shasta asked what it would take for a public body to demonstrate that a particular request is not in a public interest. She also asked who would a journalist appeal to if there is a disagreement about their identity as a journalist, if the government is the one making the determination.

Todd said public bodies would have to provide in writing that something is not in the public interest, "whereas we hope this requirement would get public bodies to start giving more details about why they're denying it." He also said appeals would still go to the district attorney or attorney general, depending on relevant level of government.

Steve asked Michael how he would envision appeals to the denial of public records potentially changing under the proposal. Michael said the proposal changes the wording of the appeals statute only because we had made changes to what the standard is. The appeals process shouldn't change at all. What will change is the standard.

Emily G said she supported the idea of providing more information, such as a one-pager, however the subcommittee chose not to provide more definitions in the text of how and why a public body could demonstrate a request was not in the public interest. Michael said the proposal does not change the definition of public interest, but rather what the public body has to do when the standard is met.

After further discussion, Emily H made the motion to adopt the Legislative's Subcommittee's legislative concept. Tyler said he would second the motion.

Emily H., Michael, Steve, Shasta, Tyler, Tony, Mark and Todd voted in favor.

Emily G. voted against the motion, and P.K. abstained.

V. Formulating a plan to draft the Public Records Advisory Council's annual report, pursuant to ORS 192.483(2), and due 12/1/22.

After discussion, the Council supported that Todd, Steve, and Emily H would write the 2022 bi-annual report that includes information about new PRAC members, a description of the work done by the Legislative Subcommittee, and other work done by the PRAC.

No vote or action was taken during the discussion.

VI. Presentation on the Public Records Advocate's proposed budget and companion funding mechanism bill, LC 1836.

Todd reported that the new budget asks the Legislature to approve funding for two new, full-time positions for the Office of the Public Records Advocate: an office manager, and a policy analyst. The budget also includes adequate travel funding for the office's statewide trainings it provides to members of the general public and to the employees of public bodies.

The budget proposed a funding mechanism that provides 75% of revenue to come from an assessment to state agencies, similar to assessments made by the Oregon Department of Administrative Services, the Government Ethics Committee and others. The remaining 25% of the office's revenue would come from the state's general fund, if approved by the Legislature.

VII. Deliberation on whether the next council meeting should be in person (with a virtual attendance option) or remain fully virtual and, if meeting in-person, where that should be.

Mark suggested that the PRAC's next meeting be done via video conferencing instead of in person to further discuss how to present the summary and the intent behind the bill.

VIII. Public comment period (ten (10) minutes).

Jo Barker said she sent suggestions and edits to the proposal, and that she supported an effort to keep the PRAC meetings accessible with live webcasts that it has been airing online. Mark and Michael both thanked and acknowledged Jo's input and insight.

With no further items on the agenda, the PRAC voted to adjourn just before 4 p.m.

FULL TRANSCRIPT

Mark Landauer

I will call the Public Records Advisory Council to order today is November 18th. I'd like to welcome the members of the council and those who are here in the public. I am Mark Landauer, the chair, and would like to go to the first item on our agenda today, which is to approve the agenda. Are there any questions or suggested modifications to the to the agenda? I do see that Shasta Kearns Moore has joined the meeting. Thank you for joining today, Shasta.

Shasta Kearns Moore

Hi. Thanks.

Mark

Well then, I'd certainly take a motion to approve the agenda.

Todd Albert

So moved.

Mark

Second please. Well, as chair I'll second it.

Emily Harris

Yes, I'll second it.

Mark

Is there any discussion? Seeing none, the agenda is approved.

Todd

We didn't vote. Sorry, Mark. It was seconded.

Mark

I'm sorry. I got ahead of myself. I apologize. Is there any objection to the approval of the agenda? Seeing none, the agenda is approved. We will go to [agenda] item number two for the approval of our June 2nd council meeting minutes. Did everybody have an opportunity to review those, and are there any recommended changes or corrections to those meeting notes?

Hearing none, I'll take a motion to approve the meeting minutes.

Todd

So moved.

Emily H.

Seconded

Mark

Thank you, Todd, and thank you Emily. Any discussion? Hearing none is there any opposition to the adoption of the previous meeting minutes? Hearing none thank you everybody.

We have dispensed of at least two items so far on our rather aggressive agenda today. The next item that we'll be just doing quickly is welcoming our new members and just giving them a quick opportunity to introduce themselves, and so Todd I will sort of hand this baton to you and perhaps you can name our new members so that they can introduce themselves. Thank you

Todd

Will do and I'll try to only name people who have joined since our last meeting in June. If I make a mistake, please don't hesitate to correct me. So P.K., designee of the Secretary of State, would you like to just give a quick hello and introduction please?

P.K. Runkles-Pearson

Hi everybody. I'm P.K. Runkles-Pearson. I'm the chief counsel to the Secretary of State. I'm taking over from Molly Woon, her policy advisor, mostly because I'm the one in our office, who has been handling public records more than Molly has, and she has many other things on her plate. Before joining the Secretary of State, I was an attorney in private practice mostly representing public entities, although I was also the chair of the Lawyers Committee at the ACLU of Oregon, and I also did represent media entities on occasion. So, I have a little bit of all sides of the public records universe, and I'm looking forward to working with all of you.

Todd

Thank you, Tyler and Emily. Is it correct that you were here for our June meeting? I believe so but I just want to make sure that's correct.

Tyler Janzen

I believe so.

Emily Gothard

I was here and introduced myself at that meeting, although, I wasn't actually confirmed until eight days later.

Todd

Thank you and probably same for you Tyler?

Tyler

I believe that that was the case, yeah. Tyler Janzen, for the record. I'm here with, during my day job when I'm not serving as a PRAC member, I'm here on behalf of the Association of Oregon Counties.

Todd

Thank you and Andrea Chiapella from Department of Administrative Services is our other new member since June but she is not present today. I'd just like to mention I believe Tony Hernandez I think just joined our meeting too so hello Tony.

Tony Hernandez

Hi, good morning. Apologies for being a bit late but [it's] good to see everyone.

Mark

Good to have you back Tony. We've missed you.

Tony

Yeah thanks I'm glad to be back.

Mark

Very good um I believe we've dispensed, now with item number three. So, I would like to turn the next item over to the two well the chair and the co-chair of the Legislative Subcommittee to outline the work of the subcommittee over, golly how how long has it been folks? Has it been eight months or ten months?

Emily H.

Almost a year. Our first meeting with witnesses was December 7th I think last year.

Mark

Yeah, okay very good. I'm going to turn it over to y'all, and we'll take it from there, thank you.

Emily H.

Great thanks Mark. I'm Emily Harris. I am this currently the subcommittee chair of the legislative subcommittee and um Todd Albert's vice chair, so we're both going to um just introduce the concepts. Most of the members of the um full PRAC were actually on the legislative subcommittee, which is great. I know some aren't and of course there are members of the public, who may not have followed this closely so I'm just going to walk through the main points of the proposal that we're bringing for full approval today. It's also available, the actual drafted language is available on the website. So, you can click there and have a look at it yourself um there's a number of things that we sought to address. But

first I just want to lay the groundwork a little bit. We, as I mentioned, we did start this process a year ago. We met pretty much every three weeks and I want to really commend the dedication of the people, who served on the subcommittee. People found witnesses to bring in new ideas from across the country, from across the state. People spent time reviewing other people's ideas, offered concrete suggestions in writing, which made it very easy to talk through concepts. People were willing to spend a couple full meetings just discussing values and what we are trying to accomplish here and discover shared values, which was really helpful in moving forward and helping us actually narrow this proposal.

We started out with many different ideas. There are many many tension points in public records policy, and you know, we, a number of times, had to recall that we were sent here with a mandate to look really at fees and so many things that are fee adjacent were set aside for future work, and there was a great appetite to take up a number of these ideas in the future, but I felt that everyone did a great job on the subcommittee remembering what the real purpose of our work at this particular time was. So, with that great agenda, you know, a great introduction what I mean to say is, we had a whole lot of stuff in front of us, and we got it down to some fairly simple concepts that stay rooted in current Oregon law but we do feel um moves the ball significantly forward in easing tension points in a mutually beneficial way for both requesters and custodians, who are all working in the public interest here.

So, specifics in overview we um clarified what the costs are that public bodies can recover. There are three different defined categories of what is allowable to recover costs for search, duplication, and review. The proposal requires public bodies to do these tasks in the least expensive manner reasonably possible, setting a specific guidance that the public body can't charge more than the rate of the lowest paid employee capable of doing these processes. It does create a new provision for public bodies to recover fees from requesters even if those the people fulfilling the tasks are unpaid volunteers. This is something that is reality in a number of small agencies around the state. So that is a new piece. We also took some significant steps in helping requesters to understand the costs that the public body is facing and also, how to file requests.

To start with, we put a little bit of teeth in current law which requires all agencies at the state and local level to have a public records policy and a fee schedule and post it. Most do and most have and most do but we did put a little bit of teeth in here that if it's not posted-- and it's specific in how it can be posted--then the body is not allowed to charge fees. So just a communication piece there.

We also required that public bodies and requesters work in good faith together to narrow requests especially when they are triggering costs. It allows a requester to ask for an explanation of charges and the answers need to be in you know a reasonable way to under understand, and if a requester has requested an explanation of fees, then while until the public agency has responded in that way the the the clock towards the 60 days non-response by the requester, it doesn't it stops at that point until that's fulfilled. That's really legalese stuff that Todd's probably going to want to weigh on on because I'm, that, I may have said some things wrong even though I think I got the intent correct.

The the area where we did the most work was um looking at fee waivers in the public interest. We retained the concept that if a request is in the public interest, then it is something that the fee can be

waived on. We did change the language to say that if the public body determines that a request is in the public interest then the public body shall grant a fee waiver, unless. This is a really important change we shall grant a fee waiver if the public body has determined it's in the public interest unless the public body finds that the interest in disclosure is outweighed by the substantial prejudice or prevention of the public body's ability to carry out other functions of the public body. So, in essence we are elevating the fee waiver in public interest but we're also introducing a balancing test because agencies have many things to do.

The proposal establishes that a request from a news media member is de facto considered in the public interest unless the public body determines that that particular request is not. We've used the federal FOIA language for defining news media. We looked at some others. We can talk about that if people are interested. And if the public interest waiver is denied, then the public body needs to explain why in writing. What was the what was the reasoning there?

And then it keeps the same appeals process, if there's disagreement over how these provisions in this statute are applied, you can go to the D.A or the A.G. That is the basic summary. Todd, can I ask you to step in and fill in all the gaps that I have no doubt left or correct any mistakes in legal language.

Todd

No. I think you delivered the gist pretty well. Maybe it'd be easier if the council members who weren't on our subcommittee ask the questions, they might have that maybe we haven't adequately addressed so that way they can feel satisfied that they understand the concept because I think you got to all the important points.

Mark

Any questions from members of the council? Tyler.

Tyler

Well first just one comment and then I'll have one question. I in the course of my work for AOC over this past week was looking at doing some background research on an advisory body similar to ours the MLAC the Management Labor Advisory Council, and I was looking back at the what they called the Mahonia Hall Agreement. And the takeaway it was basically fixing a broken worker's comp system in 1989, and I thought it was interesting to highlight that that group kind of locked, you know, away in a room for a few months came out with a product and one of the things that they said at the end was one of their successes was not the product itself but the method by which they came to that product.

I was reminiscing about our work over the past year and just want to commend everybody for coming to the table. I think it was very collaborative I've been part of a number of these groups and I think this this body did an exceptional job of working in good faith together so commend everybody on that.

I did want to ask one question just for clarification and I'm hoping somebody with with some legal understanding of this, I want to ensure that the draft in front of us preserves the ability for already

specified fees in statute to continue to be charged. I'm thinking of the things that are called out specifically for our county clerks, where they might have a fee, you know baked into 192 that they are able to charge this does not change that, correct?

Todd

I mean I could take a stab at that. I don't see why it would. If there's existing prescribed fees in statute now let's say for counties that exist elsewhere in ORS, I've never heard of those interacting with the public records law in a way that makes those fees unenforceable, and I don't see I don't see that we've done anything here that would change that because all we've really done when it comes to the public interest test is made it go from permissive to require unless there's a countervailing concern but [it] doesn't change the underlying analysis or ability to charge fees. I don't think and I don't I don't think it's going to be an issue personally.

Tyler

Oh that that was my hope and my understanding as well. I just wanted to to get my question asked. Thank you, Todd, and thank you everybody for the really great work over the past year. It's been a pleasure.

Mark

Thank you, Tyler. P.K., you have your hand up.

P.K.

Hi everybody and forgive me for if this is a silly question because I'm brand new to this committee, I realize, but I have two quick questions. The first is I wonder whether or not the PRAC is intending to include in the legislative record any sort of commentary on the changes and what the purpose of the changes would be. I'm the Chair of the Oregon Law Commission, and I know many times when we submit bills, we do that and many folks trying to figure out what those changes mean have found it very helpful.

One of the reasons I suggest that is that I had a very helpful conversation this morning with Emily, Emily Harris, about the definition of news media. It concerned me a little bit because while the idea of assuming the news media disclosures are in the public interest is you know very common, the definition opens up the possibility of a lot of people being journalists in this internet age who we might not immediately assume are journalist, and Emily helpfully reassured me that the purpose here is to allow the the public entity to make a determination about whether or not that is a news media person, but that was not immediately clear to me when I read the text. So that could either be resolved through a change in the text but might even be more helpful appearing in some sort of commentary. So, I thought I would suggest that for the group. Thanks, this is tremendous work.

Mark

Well that's an interesting point, P.K., and you know we haven't at least at this point really discussed beyond moving this product out of this council for introduction, we really haven't had a discussion about presenting this if and when the bill gets taken up by a policy committee. I think that that's a really um

important discussion that we have to undertake, and assigning who that individual or individuals are, number one, and providing the background and clarity, I think, is something that we'll have to have a discussion about. I don't think that at this point, I mean, we could certainly have that discussion now but we also have a pretty aggressive agenda and I worry that taking this topic up will take quite a bit of time and there are going to be some questions and concerns.

Todd, I would like to perhaps suggest that despite the fact that we are not scheduled for another meeting probably prior to session, that we may want to consider doing just that for the purposes of discussing, you know, presenting this proposal before a committee who would be responsible for that. It would be my humble opinion that perhaps the two co-chairs of the subcommittee would do that presentation. Beyond that though I'm certainly open to thoughts comments suggestions, P.K. and the rest of you folks, about what the next steps ought to be. The purpose of our meeting today though really was to move this to Legislative Council for the purposes of drafting, and I think that P.K. has raised a very important question a question that frankly has been popping around in my head a bit, and as a result I do think that we have to get some clarity and have some discussions about this, and as a result I think that we may very well want to convene another meeting of the PRAC unless folks have other ideas, and I see a whole bunch of hands have gone up.

So I'm going to stop speaking and go in the order that I believe hands came up and Shasta I believe yours was the first one up so the floor is yours.

Shasta

I think Tony was ahead of me but um I have a pretty quick question. So I also wanted to um just express my gratitude for the Legislative Subcommittee and all the work that went forward with this. I think it does some really impressive things that have been missing from Oregon law for a long time. I think my only real question when I started this meeting was about what it would take for a public body to demonstrate that in a particular instance it is not in a public interest. Is that a report, is that, you know what is that? And I don't know if that's something that even has to be answered by this council or um or what.

So wondering what the kind of vision was there and then now I have a question um after what P.K. just said about, who would the journalist appeal to if there is a disagreement about their identity, if the government is the one making a determination.

Mark

I will, I'm going to, Todd I'm gonna put you on the spot of course as usual, in the sense that Shasta's two questions actually I think can be addressed by you. There were Shasta some specific examples where journalists could be working for example on a book of their own that is outside of their professional duties, shall we say. I think that that was sort of the example that we were using in that particular instance on your first question but I'm going to hand this off to Todd and see if he can address your questions more succinctly, thank you.

Todd

No guarantee but I'll try. Your second question Shasta appeals would still go to the district attorney or attorney general depending on which level of government we're talking about. So that would not change, and remind me of your first question again please?

Shasta

Well so in let's see paragraph 5 sub B, a request by a news media representative shall be assumed to be in the public interest unless the public body demonstrates that in the particular instance it is not. What would demonstrate be?

Todd

Well first of all that would, well demonstrate connects with the concept that now public bodies would have to put their determination that something is not in the public interest in writing to the requester, which generally happens now but often not in detail, whereas we hope this requirement would get public bodies to start giving more details about why they're denying it. So it would exist in that form. What that form takes, a memo an email, etc., is unclear and I think it's better to give public bodies the option of a little more freedom to determine for themselves at least right now what in writing means but they will have to put pen to paper so to speak if they're denying that it's in the public interest, and like what Mark said, is sort of the primary concept in thought. If a member of the media, who would otherwise fit this definition, is now attempting to request these records for something like writing a book for themselves. I mean what's the big word? If there's a pecuniary interest --I think right? That means related to money -- they most likely would not be found to have made that request in the public interest.

Shasta

Thank you.

Mark

Thank you, Shasta. I believe that Tony you have your hand up. Why don't you go ahead with your question. Thank you.

Tony

Yeah thanks Mark and then and I echo what folks have said thanks to all council members for doing this awesome work and improvements to the public records law proposal. So I guess for my seat, I just am wondering and trying to better digest the information in terms of a member of the public, like let's just say like a non-profit or a freelancer, who is practicing journalism, it sounds like the avenues for appeal remain the same for that segment of the population. Is there any difference that someone that doesn't have the resources of just even traditional news organizations, when they have they're when a public body has a compelling reason to deny a records request, is it a fair and yeah but no offense here, but are the avenues, what's the word I'm trying to say, are the avenues for appeal equal I mean sorry excuse me I'm trying to better word my question. I guess what I'm trying to say is, is a person, does the person have the ability to appeal to their request if it's denied in an equitable manner as if a traditional journalist that gets denied um as well have? And um I guess I'm thinking of like a non-profit or a person that I'm just gonna say like a person that that has wants to get information about themselves is contained in an

agency in, and the agency might not have the time to you know comply with the request and so you know there's a a compelling reason to to not have it because of cost, personnel costs or something like that the requester might not have the resources to compromise and say you know they can maybe pay for the cost or or whatnot, and so is there a um a better way to resolve this than just having to go through the pressure of of properly wording an appeal to the district attorney or avoid having to go to court to litigate and not clearly have some maybe not have the financial resources to take it to court? And so you're kind of stuck you know in the kind of same place where where I think you know in my mind I envision that the the roadblocks of someone getting sensitive records, you know, records about themselves still kind of there, and I don't know if this is this purpose specifically addresses that but I was just kind of curious if there was any thought or consideration on on that. That was a very long-winded question and I'm happy to try to ask again the question if it didn't make any sense.

Mark

I think there were a couple of questions embedded in there so Todd or Emily do you want to try to address Tony's questions.

Emily H

Sure, I'll take a quick stab but then Todd please also. I mean a couple things you raised Tony all good questions. Any as far as being determined in the public interest, which I think you included in your questions, anybody has the right to request that they're you know to state that their request is in the public interest. Anybody that doesn't change. That includes non-profit organizations. That includes individuals that includes freelancers.

Freelance journalists are actually mentioned specifically in the definition of news media, which is lifted from the federal FOIA definition of news media just like straight up, and it allows, it's pretty flexible. It mentions that as methods of news delivery evolve different kinds of media, alternative media, shall be considered to be news media entities. So you know people sometimes say um if it's just a blogger it's not a journalist but in fact there are people who publish on regularly on things like Medium or Substack which have a considerable audience. So this is a flexible definition but to your bigger point, anybody could request a public interest, and as far as appeals go we don't really change that. So yeah, it's still go to the D.A or the A.G. first, but we do have Todd of course so anybody can also first go to the Public Records Advocate Office which is not something we had five years ago but Todd I think you can probably address the outstanding questions.

Todd

Yeah, I was definitely going to say Tony that my office continues to exist as an alternative path for people that feel like they've been denied records but don't necessarily have the interest or desire to jump right into the appellate process because of course there's no statute of limitations on when a requester can make an appeal to the Attorney General or District Attorney. So attempting to work through my office first at obviously no cost and hopefully less pressure always remains an option to requesters before they go into the appellate process but more to your other point for individual requesters, who clearly wouldn't be able to make a public interest showing under the existing test or the one that we're proposing here, you're correct that we have not specifically introduced new concepts that would level that playing field.

We do offer several examples at the outset of subsection five that talks about when a public body may choose to waive or reduce fees including when the requester is requesting their own records or for indigency, but those are merely guiding examples. An attempt to introduce actual concepts that involved either a requesters own records up to a certain monetary amount or an indigent requester's records when they affect the legal right, were found to just be likely to be too many headwinds with this initial concept that we want to introduce that would might, I mean I'm just paraphrasing here in my own thoughts, but might endanger this concept as a whole. So they did not make it into the concept we're proposing to the full council now but I'm very much in favor of continuing to work towards introducing those kinds of ideas into future legislation, and I think this concept gives us a toe hold to sort of clarifying and better expanding access to records at least when it come to media and those that have a platform for disseminating information, and I think this will demonstrate the public bodies that doing so will not break the bank and then perhaps hopefully allow all of us to expand the conversation to include additional categories as we move forward.

Tony

Great thank you. That's awesome. I appreciate it. Thank you guys. Great job.

Mark

Thanks Tony. Next, Emily I have you as your hand being the next one up and then Todd you're on deck

Emily H

I did have a quick question. You may have sort of answered, but the idea to provide commentary, I think it's a great idea. Obviously, you can state intent and you know things happen you know down the road but um I just I just wanted to clarify Mark, I think I heard you say we could still move this forward to drafting at the Legislative Council today and come back and add language to, okay, I just wanted to make sure that you weren't intending to, that you felt that we should write the commentary. Thank you.

Mark

Certainly, Todd please.

Todd

Well first of all I just want to volunteer myself as a proponent for whatever concept we finalize and gets introduced to the Legislature. I'm always on board to testify on our behalf and on behalf of the bill so I do intend to do that unless you vote to have me not do it which I will understand. That being said whoever testifies, it's you know it's traditional to submit what's known as a one-pager which tends to be bullet points about this concept that can help explain more of the thinking and what this bill does, and what I was going to say is that we are also going to be talking soon in our agenda about the PRAC's annual report, given our focus on the legislative subcommittee and not a lot of work that we've done in the full council, I think one thing we could do in the report is actually perhaps come up with the one pager there about what this bill does at least in the form that we've submitted and then anyone who wishes to testify could adopt that from the report and use it when they testify you know or obviously

work off of that they don't have to repeat it verbatim, but when we get to whatever agenda item that is to talk about the annual report, I recommend that be one of the topics we discuss.

Mark

Yeah I think that that may very well be helpful Todd um we'll perhaps um let's let's maybe take that up at our next I'm sorry during the discussion for the report but that seems to make sense to me I do think just having been up -- I'll get to you in a moment Shasta -- I do think that we would want a one-pager that describes the bill, but we would also want another document that, and when I say one pager, I use that very loosely. I consider both sides of a page to be a one-pager, folks, for the purposes of lobbying so I'm just going to be clear for the record because I don't think you can explain this thing in one page, right?

Number two I do think that there are some components of this proposal that have some intent behind them, and we're going to need to explain that very clearly on the record, and so and that's going to be really important point particularly if any challenge legal challenges occur the courts will determine. They'll look at the black and white of what the law says, but they'll also at times if the text of the law doesn't answer their question or concern they'll look at the intent behind and the proposed statute and so I think it's going to be very important for us to not only summarize the bill but also describe the intent behind the bill. I'll shut up now knowing that Shasta has her hand up. Thank you.

Shasta

Thank you. Can someone explain to me what the process is from here. Assuming we vote on it today what committee does it go to?

Mark

I'll take a shot at that Shasta, just being one of the two lobbyists here. It'll be interesting. We haven't talked necessarily to Senator Thatcher about this but I assume that she's going to introduce it on the Senate side, and as a result it would be most likely that this measure would probably go before the Senate Rules Committee. The Rules Committees have typically taken up public records, public meetings type measures, but that will be up to the new president who gets appointed or selected by his caucus members this weekend, and so looking into the crystal ball that's about as clear of an answer to that as I can give you at this time with the understanding that that we still don't have a president of the Senate. We don't have a convened session, and so we don't know what the committees are, but I can assure you they're well likely really be a rules committee, and that's the natural sort of place for it to land, I would think, but Tyler may have insight on that as well all.

Shasta

Alright thank you.

Tyler

I'll echo what Mark has said. It's my read as well.

Mark

Okay Steve. Yes please.

Steve Suo

Yeah I I did want to ask maybe Michael Kron to address this as an appellate body because a couple people now have raised a question about appeals, and I think the process is the same but we did change a little bit of the wording. How do you, Michael, envision appeals potentially changing if at all under this proposal?

Micheal Kron

I mean Steve, the short answer to that from my perspective is is very clear. We changed the wording of the appeals statute only because we had made changes to like what the standard is. So the appeals process shouldn't change at all. What will change is the standard that the appellate deciders will apply will be the new standard that we have created and because there really wasn't much of a standard before, right? It said a person who feels that -- I'm paraphrasing going from memory here -- but it said a person who believes that a waiver or fee reduction was unreasonably denied may petition, right, which made sense when the standard was whether the denial was unreasonable or not. We changed that because we are now making it mandatory in most cases to reduce or waive the fees.

So what we said instead was that a person who feels that a public body has failed to comply with the new requirement can file an appeal. So my interpretation would be that the appeals process has not changed. The appeals statute language had to change because the existing language was tied to a standard we were getting rid of.

Mark

Emily

Emily G

So I agree that more explanation like in the form of a one-pager would be needed. I submitted concerns about the bill to PRAC members which hasn't been posted to the website yet because I just submitted it this morning. I'm not sure if any if everyone has had the opportunity to review that.

One of the concerns I would have about explaining these issues in a one-pager is that the Legislative Subcommittee discussed and chose not to provide more definitions in the text explaining what would or would not qualify in the public interest and how and why a public body could demonstrate a request was not in the public interest or that if the fee waiver would substantially prejudice carrying out the other work of the public body. I'm not certain since the Legislative Subcommittee didn't reach agreement to provide those kinds of definitions in the text whether we all have an agreement on what those, how that would be explained in a one-pager which is part of why I have concerns about advancing it at this time.

Mark

Steve I think um I Todd or Michael or both of you probably be better positioned to answer this but I mean my sense is that the existing standard for what constitutes public interest is what prevails, that

with the exception of the new addition for news media. The language still in statute benefits, it primarily benefits the public or the general public. So that, am I right in thinking that we don't need to define it because it exists the definition exists already.

Michael

I'm happy to take that invitation too. I mean I think that is right and again what I would say what has changed here is not what the public interest means. It's what the public body has to do, right, when the public interest standard is met. So what we've changed is from an existing law where if the public interest standard is met, then the consequences that the public body has discretion whether or not to waive or reduce fees, which is a decision that then gets reviewed on a very deferential abuse of discretion standard, right, where the public body has to have affirmatively been unreasonable in order to be reversed to one where the public body has to actually like make a real showing for why it's not waiving fees even though the public interest would be served by doing so.

So I agree that we haven't changed anything particularly about the public interest. I know that we did consider whether we wanted to further illustrate examples of the public interest in the law. I think there was a good case to be made that that could be helpful but having that in statute could be helpful. I agree we didn't agree on that but I don't feel that there's really a change in the public interest standard that we need to explain because we're not in my view making one.

Mark

All right awkward silence, I don't see any additional hands. Emily, did you want to follow up on anything along your lines of your previous question and points?

Emily G.

No, I think I outlined all of my concerns in what I submitted. I mean we we have changed and expanded to make it really clear um regarding media well in some ways really clear and in some ways not totally clear, based on that it is assumed but giving public bodies more understanding of when they would be able to demonstrate that it was not in the public interest, and you know, maybe that could be clarified through a one-pager, but I still have a lot of concerns about it, and that we have only made that assumption in that one instance and still leave a lot of ambiguity for public bodies.

Mark

I don't entirely know how to necessarily respond, Emily. I would say a couple things first of all I think that a lot of the issues that you had and have raised are very valid. At the same time I do believe that that we've been pretty darn consistent in the appeals process with the current system so forth so. I would also say that you know this is our first shot, and I believe that we're going to learn quite a bit if this thing were to pass and be implemented. No legislation is perfect, having done this for 24 years now. We always see bills being fixed a year or two after they have been passed it's very common occurrence, and I don't think this is the end of this discussion by any means either. It depends though, you know, if the Legislature refuses to do anything on this, well that'll be an interesting little fork in the road for all of us, but I do think that they'll give it um some serious consideration and discuss it. Having said that, I see some more hands up and I'm going to go right to Emily please.

Emily H

Thank you Mark and thank you Emily. I have read your letter and understanding that you know if they came in at the last minute um you raised really valid points. I want to respond to specifically your worry that this elevates media in the public interest without expanding definitions to individuals and indigent people, and I I just want to review some of the discussion.

There was first of all even a discussion whether indigency or someone seeking their own records should be considered in the public interest. There is an argument to be made for that because as a society obviously we need a safety net for people who cannot access basic services because of their income, and we also need to preserve the rights of individuals to you know have full access to government records about them, however that traditionally hasn't been the public interest as has been defined under public records law at the federal level. Media has been a much just sort of the the watchdog, touchstone, you know fourth estate, has been much, there's much longer tradition of that being a public interest thing. So that was the first cleavage in our discussion subcommittee as you'll remember, and then um even considering requests based on indigency or personal individual, related to an individual, there was a lot of discussion about whether this like how disruptive this might be.

The unknown consequences seemed much more potentially a Pandora's Box. I was just in a meeting um with Open Oregon, the group that I participate on which it brings together um similarly to the PRAC, a discussion forum, people who both are requesters and are custodians of public records, and I learned that actually a great number of appeals right now, it's echoing what we heard at the federal, when we had a witness testify about the the way the, what's going on at the federal level, very few appeals right now in this particular jurisdiction that we've heard from were from media on on denials of records requests but there were a lot an overwhelming majority of them were from, I mean really overwhelming, what was Todd, like something like 70 to 4 or something, were individuals and not for things that had to do with how the government was treating them but divorce cases, other things where public records might serve an individual's interest.

My point is not to say whether that is valid or not, my point is that this just illustrated for me even deeper that the questions that were raised during the subcommittee discussion really need to be plumbed much more before we go into indigency and individual as how they apply to public interest and how they specifically apply to fee waivers. So I do think there was a great energy to go forward on some of those things as Mark has laid out this is step one, and I think that there is a there are very legitimate reasons to actually focus on news media because of the role that they serve in in disseminating information. You raise some questions about you know whether somebody's disseminating information that's false and that's a bigger question than this committee or any legislation. It's a whole different, that's a whole different piece of legislation that would run right up into free speech things and you know that's we're not that's not what this is about. This is about fees. So I really want to commend you on um continuing to raise your concerns, and I know you raised some points during the subcommittee also about unions and when they have when they don't have access to records that they need because of specific specific things in labor contracts, and I think that's a valid thing to return to as well. So I appreciate you bringing these things forward, and I do think there's appetite to return to all these um the next time around.

Mark

Thank you Emily. Michael.

Michael

Yeah just Emily's comment about falsity being a bigger question than than this legislation. I just wanted to point out that from my perspective anyway, one of the reasons we're giving public bodies the opportunity to demonstrate that in a particular case waiving a fee for a media requester is not in the public interest is because so that they can say look this is actually a purveyor of misinformation, and it's not going to serve the public interest. I mean whether in a particular case the public body is right or the media is right is something that can then be sorted out in the particular case, but I actually think this this legislation does provide public bodies to avoid an opportunity to avoid subsidizing like misinformation and disinformation campaigns.

Mark

Emily I assume you still have a legacy hand up so I'm going to Steve please.

Steve

Yeah I was just gonna say that I think probably you know the probably most of us on the committee felt, would have liked to have gone further than we did. So I'm speaking for myself I you know we looked at some state models such as Connecticut where essentially nobody pays fees, and that would be, you know talking about individuals and indigency, those are things I support it in discussions.

I think we got what we could get as a foothold. I think Todd described it well this is this is a first step. I hope we keep moving, and I will support and look forward to being part of those discussions.

Mark

Thank you Steve. Tony.

Tony

Yeah I keep turning on and off the hand-raising, debating whether or not I wanted to just to say something but I just wanted to say, I really appreciate the the attempt the the effort to define news media. In the early 2000s, I think um the largest [group] that represents journalists made an attempt to. The Society Professional Journalism at the national board at one point was debating changing its name to the National Society of Journalists and it was this big debate over um practicing journalism versus being a journalist. It kind of was popular at the time and it reminds me, this kind of reminds me of of that debate and I look forward in the future just to have it, but the fact that there's an attempt to differentiate and kind of I guess have a way for public bodies to discuss or to debate what is truth-telling and what is misinformation and how that relates to public interest and public disclosure is really awesome. I just wanted to say thank you for for initiating it and it's good to hear that it can be changed um or amended or or this is kind of like a good test run. I think it's really exciting. Thanks.

Mark

Thank you Tony. Let's see. I'm going to in the interest of time folks, I'd like to bring us to a conclusion of this agenda item however I don't want to cut off discussion or debate and so I'm going to perhaps say last call for comments at this point if that is acceptable to the members. Tony is that still a legacy hand that you have up. Oh Tyler. Mr Janzen.

Tyler

Sure, I'll jump in with one final comment. Just to once again as Emily brought up some of these concerns that she's mentioning today at the meeting before, I appreciate the concerns that are outlined. As I said at the last meeting, I think it is an excellent jumping off point for where we go from here. This PRAC is going to be around for a while I think. My ethos has always been not to make perfect the enemy of the good.

I think we've threaded a needle here pretty well between being too prescriptive and too agnostic. I think we have left and preserved some flexibility. You know the expression at the county level is if you've seen one county, you've seen one county. This does not constitute in my view a one-size-fits-all approach. It's and what it does in my view is foster a lot of communication between the requester and the public body and gives both entities a set of common language to refer to that has been sorely lacking for years and years because what the status quo has been has been arguing over what reasonable means.

What we have before us, yes there's there is sort of the shallow unless with the the public interest test but there is also I would remind everybody, we did go through and specify some examples of what public bodies may wish to consider. That's a new change in something that has been lacking before, and I my hope with that even though it preserves discretion at the government level, my hope is that it does create more avenues for communication ultimately preserving some of that flexibility while gently guiding folks towards what they may wish to consider. I think it's going to lead to lower fees and better outcomes for requesters so I'm enthusiastic about this work. Mr. Chair whenever you're you're ready for a motion, we'll see if other people want to comment.

Mark

All right um going once going twice I do not see any further hands. So I'm going to ask for a motion. Okay. Let's be clear what we're doing here. Before we do that though, I do want to um Emily and Todd thank you for the summary. I did want to recognize two other people that I think we do need to thank.

The first is Melissa Leone with legislative research and policy. As you recall Melissa led the effort on doing a sort of a comparative analysis of other states in the union and their public records laws related to fees. So I wanted to call out her work to help our discussions. The other one of course is Senator Thatcher, who has committed to getting this proposal introduced provided the PRAC approves it, which is now on the table, and I'd certainly accept a motion for the approval to submit this to Senator Thatcher for submission to Legislative Council as the proposal to address fees by the Public Records Advisory Council.

Emily H.

So moved.

Mark

Is there a second?

Tyler

Second

Mark

Discussion. I know we've had a long discussion but here's your last chance to discuss. I do not see any hands at this time.

Todd

Mark, sorry, Mark quick point of order. For the record, can we vote one by one?

Mark

I was going to suggest that Todd, and I would ask that you'd be our, shall we say, vote taker if you will.

Todd

I shouldn't have opened my mouth, but I'll do it.

Mark

That's how it works baby. Thank you.

Todd

All right, starting with the Vice Chair, Emily Harris.

Emily H.

I vote Yes. We should adopt this and send it to the, ask Sen. Thatcher Thatcher to move it forward to the LC, so yes.

Todd

P.K. Runkles.

P.K.

I'm so new that I think I'm going to abstain at this time no offense to anyone.

Todd

Michael Kron

Michael

I vote yes.

Todd
Steve Suo

Steve
Yes

Todd
Shasta Kearns Moore

Shasta
I vote yes.

Todd
Tyler Janzen

Tyler
Yes

Todd
Emily Gothard

Emily G
No

Todd
Tony Hernandez

Tony
I vote yes

Todd
Mark Landauer

Mark
Aye

Todd
And I'm going last as a register, and I vote yes. Therefore we have eight votes in favor. Motion passes.

Mark
All right folks, I want to thank every member of the subcommittee at this point. As Emily pointed out have spent nearly a year on this. I think we had some very excellent discussions. I think everybody did

their best to listen and learn and I just want to really thank each of you for the hard work you put into this. This isn't easy stuff, and there's some pretty strong sentiments held by many of us. I'm sorry that we couldn't get Emily's support on this, although I certainly understand, and as chair, I really do try to, I've tried at least historically for this council to work in the most inclusive, collaborative and typically unanimous ways although there are times when we just can't get there, and Emily I want to just express my appreciation to you. I certainly can understand why you have concerns, but you also I think made a real difference in our discussions as well, and so I want to thank you and I certainly respect the position that you've taken. I wish we could have addressed the concerns that have resulted in your no vote at this time, but it is my intention that again this is the first step, and if we have that opportunity to improve upon what we've done here, I'm going to be very interested in getting your feedback so that we can do better. Having said that Emily, please go ahead.

Emily G

Thank you, and despite having voted no, I do hope that we can continue to collaborate as was suggested about a one-pager and hopefully some of the concerns that I have can be addressed through that. I think that we've had a lot of good discussion around those concerns and that we can help address some of those concerns.

Mark

And I for one would hope that we may very well want to include some of the concerns in our background information to be as transparent as we can as a council to the policy makers, who will ultimately be dealing with this matter. So Emily, again thank you, both Emily's and Todd, thank you, and for the rest of those who served on the subcommittee. I think we'll be able to take a little bit of a break for a little while but we'll discuss that some more. So enjoy the time off in the every-three-week meetings at least for a short period of time.

So knowing that the we have about 20 minutes to wrap up, and it is my hope that we can cover at least two things. I would like to get to item number five, Todd, the presentation of the Advocate's proposed budget and companion funding mechanism. I do see some hands up so before we do that let me dispense of Steve, go ahead please.

Steve

I was just going to note I think the schedule runs till 3 p.m.

Mark

Oh well look at me I I was trying to cut us off by a half hour I feel much better now knowing that I have an extra 30 minutes. I hope we don't use it all. Let me put it that way, okay. Friday, right? And we've got a product so that we can push away now. Okay Todd. Emily I saw your hand was up. I think you were going to say the same thing that Steve was. Thank you for everybody keeping a close eye on me. Todd why don't you take it away with agenda number, I believe it's six, no five, the annual report. Thank you

Todd

Oh thanks. Okay the annual report. Well as members who have been on this council might recall, pursuant to our creating statute, that's not what it's called, but the statute that created the PRAC requires us to submit a bi-annual report to the Legislature on December 1st of every even number year. Just to be clear because we've had discussions like this in the past it is the PRAC's report. So it's supposed to come from the PRAC, and it's supposed to be about the work that the PRAC has done over the intervening two-year period. Again as I noted, you know, the full council hasn't done a ton because we've devoted a lot of our time and attention to the Legislative Subcommittee, which of course has done the lion's share of the work recently, and so I did have a suggestion for topics we could include that are not too cumbersome and might allow whoever is writing and formulating submitting it, etc., to get it done in the time we have a remaining, especially and because of the intervening holiday like, for instance I am off all of next week. So if I were required to put together the form or the report and submit it to the legislature, which I'm more than happy to do, I wouldn't be able to start on that until November 28th.

So that being said the four suggested topics that I have in mind are, one, members who have left and who have joined the Public Records Advisor Council, number two, the creation of subcommittees and a little bit of the discussion of the work that was done, number three, of course specifically focusing on our legislative concept and all the detail we wish to provide there, and then potentially a fourth category could be hopes and plans for future work.

And this report, I don't have the statute in front of me, but it definitely goes to the legislature and possibly elsewhere and again I was able to do that for us in 2020, so I will be able to dig up how I did that and went into whom, and I'd be happy to send off the report once it's ready to go.

Mark

Well being the chair I guess I can call myself even though I raised my hand. Todd I do have one question and I appreciate the four sort of sections that you had covered. I guess a question of mine is the progression of your office to independence.

I think that that is a component that would be missing from your four items, and I think probably deserves at least a paragraph I don't know. That would just be from my personal thirty-thousand-foot perspective. I do think that that's something that's relevant because you did become independent after I believe the '21 Session, if I recall correctly. So I do think a paragraph or two on that transition would be relevant for this report as well. Are there any suggests other comments or suggestions on this folks? Steve please.

Steve

I just wanted to clarify Todd. Were you volunteering to doing do the writing or we you looking for a volunteer from the council?

Todd

I was not. One because it's supposed to come from the council, and we do now have a leadership structure and so I feel like we even for the sake of just like formality and regularity, it should maybe come through the council, although obviously, I'm happy to assist in any way I can, and of course I I guess I'm the executive director so it's on me for the admin work. If three people wrote the report, I'd be happy to put the sections together, edit you know for flow, and all that and then do the actual work of submitting it to the appropriate channels, and of course I will write that paragraph about the progression of our own office to independence and assist where I can. Like for instance if Emily as the chair of the Legislative Subcommittee is going to draft the portion about our concept, of course I will assist there as well if she wants me to or what have you, but I am not volunteering to write the entire report.

Steve

I am happy to, well not happy, but I will help in the writing of that and if that if that's needed and if I guess really that's the chairs call, and I was just gonna mention I guess maybe in the discussion of, I mean one additional activity that the PRAC engaged in in the past two years was the was the selection of the Public Records Advocate, and that's would go in the section on independence.

Todd

Actually Steve I looked back at the prior report, and it was covered there because I think we got in it was a wire because if I recall correctly, yeah, at least the PRAC portion of that. I was subsequently confirmed by the legislature but the PRAC's activity related to that was covered in the previous report.

Steve

All right, great, less writing.

Mark

Indeed. So it it sounds as though Todd needs some help, and I'd like to cover all five topics that, oh I'm sorry Emily, you had your hand raised. I apologize. Please go ahead.

Emily H

No problem. I was just looking at a calendar, and having Todd out next week and you know it's a two-day holiday for everybody. December 1st is a Thursday so Todd's back three days after you know before it's due. So let's say clearly we need some folks to step up here. I would be happy to take on a initial drafting of part of this obviously. I'm most familiar with the legislative concepts. I think some of the hopes and plans you know there's there's certainly leftovers from the Legislative Subcommittee that would fall into the hopes and plans but anyway I do have some time I can help draft if that's useful.

Mark

Very good. I'm going to start, we're going to start assigning things out, but I still see hands going. Michael you're next and then Shasta please.

Michael

Well I was just wondering given the timing and sort of the, I mean I feel like we've seen, the only report that I really remember was Ginger McCall's report in 2018, and I believe we saw a draft of that report and proved it and also authorized her to add sort of her own section to the report, and that would be just sort of her own views and it was submitted that way I guess I'm just trying to figure out if our timing here is very short which it feels like it is. Are we going to formally sort of delegate this task as a council to one or more of our members? Is that how we're gonna have to proceed here? I assume we're not going to meet again.

Mark

I don't think we're going to meet between now and December 1st I think we could all probably agree to that. Although at the same time, it may make sense for us in the event that we can get a draft put together in advance, that everybody has an opportunity to review what has been written and provide any thoughts, comments, suggestions, edits, what have you. But let me let me get through, Emily do you still have, okay your hand is down. No you're back up.

Emily H

Yeah I do have a question. I mean I know sorry I know that's statute but can you get an extension on statute, just a like non-lawyer asking here?

Mark

I don't think so because it's statutory and in order to avoid that, you would have to change statutes. So I think we have ...

Emily H

Could you, sorry, I didn't mean to interrupt.

Mark

Nope that's quite all right

Emily H

Could we submit a report that says like ...

Mak

Sorry we're late ...

Emily H

Well this has not, you know, this has not been fully, the PRAC is going to endorse this at X, Y meeting, or something like that. These are important things that go into writing, and it does provide like it provides some view into like what people thought, and want to do, and issues and especially if we're going to put the guidance you know the intent guidance on this legislation in there. It's pretty tight turn around so I just wonder ... like this report correctly.

Mark

Yeah, I'd like to just perhaps be a little bit more clear about that. I don't think we necessarily have to go into great detail about the legislative concept. I think that we just provide the discussion on the lengths to which we went to get to the point that we are today. I don't think the report necessarily has to cover the details of the proposal. That is for a later time. And this is my view I'm happy for anybody to contradict or disagree with me, but from my perspective I don't think the report necessarily is going to have to delve too much into great detail about the concept itself. I think we are more trying to describe the process by which we got to the concept if that makes sense. And then, Steve, I will review the five topics, but I do see Shasta's hand is up and I want to recognize her.

Shasta

Thank you. Yeah I think I think two phenomenal journalists do a tight deadline turnaround is going to work out just fine. Complete confidence in their ability to do that.

Mark

I second that motion.

Shasta

My only question is whether this body, and I don't know if there was some um maybe part of the change with the independence legislation, but do do we have an oversight role of the Public Records Advocates Office. Are we supposed to be doing anything?

Mark

We do indeed.

Shasta

Should that be included in the report?

Mark

We should probably suggest that the Public Records Advocate has been doing a tremendous job, that would be my suggestion but I know others may feel differently. But that's sort of a joke, Todd, I see your hand up.

Todd

Well I'll second your motion on the tremendous job, thank you very much. I was going to say in terms of hopes and dreams or even just future work, one thing Mark, that you've pointed out we need to do is create if not an administrative rule then bylaws about how this how the council does oversee my office because I now am an employee of the Public Records Advisory Council, where you can appoint renew or terminate me, terminate of course only for cause, except at the end of my four-year term, etc., but yes that needs to be spelled out, Shasta, and I wholly support putting that in writing as part of our future plans.

Mark

Okay so that would be under the hopes and plans portion. All right, so I'm going to repeat, I don't see any additional hands up at this point but I'm going to repeat the five areas that I think we wanted to cover within the report. It would be my hope that individuals would be able to help in the drafting of the components contained in these five chapters, shall we say. The first is who has left and who has joined. I'm going to volunteer to do that one. I'm kidding. Todd I think that that's probably what three or four sentences. It's probably not a big deal, right. I think that's a pretty short little chapter there. I'm actually writing these down folks. The creation of a subcommittee, boy, that has a lot of history to it it probably goes back a couple years. Todd?

Todd

I was gonna say during my brief rain as chair that was my idea that I introduced to the PRAC and then it was accepted so I would be happy to write that section too.

Mark

I love how this is working out everybody. We'll continue with the legislative concept, and I believe Emily has and perhaps Steve have volunteered themselves for that, and if that's okay to do, Steve. Emily, I know you gave a thumbs up but it's always wonderful to have two esteemed journalists put it put this together. I think that you'll do a wonderful job. The hopes and plans portion, I think that this is probably going to be a combination a little bit, but I do think that, um what do we want in there? What is going to be in there besides the bylaw versus admin issue. I think perhaps, Todd, is that something you could do the bylaw admin question that we need? I think that's probably pretty short by law.

Todd

Just to be clear I'll talk about the PRAC is interested in developing bylaws for its own operations and oversight of my office, right?

Mark

Go ahead Steve.

Steve

Yeah I was thinking rather than trying, since we haven't exactly endorsed like next steps for the council or or the subcommittees, we maybe we could enumerate kind of what was discussed in the subcommittee and that didn't get addressed. I think generally there's a desire it seems like for members of the subcommittee to continue talking about those topics but you know just captured as these are things that remain, and we're discussing ways to address them.

Mark

Michael

Michael

Yeah I have pasted into the chat the statute that is the report were required, and it really is just to describe the findings of the council since the council's last report, and I guess my recommendation

would be given the timing on this that we scrap hopes and dreams. It's a strange thing for us to submit without actually all talking about and agreeing on.

Mark

I tend to agree with that Michael, and I see a couple head nods as well, and thank you for going back and actually looking at the statute and the requirements of the report. That's very helpful and makes I think our homework a little bit less complicated. So perhaps I'm gonna I'm gonna take Michael's suggestion perhaps as a direction rather than um a suggestion but before I do so Emily, I see your hand up.

Emily H

Yeah that is great to know, and I yeah I don't think anything should go in this report like as a conclusion that isn't concluded, but I wonder if it would be appropriate if we set aside hopes and dreams, which I feel really agnostic on, but if it would be appropriate if we set it aside in somebody to list like things that, you know, we found that there was interest in potentially talking about this. I'm also thinking about the non-legislative subcommittee I know that there was a bunch of things sort of on that plate that for various reasons weren't able to mostly because the Legislative Subcommittee sort of sucked the air out of the room, but would there be any way to use this as a sort of a capturing of, you know, one of the PRACs findings was that there's interest in this or this or this. Is that, would that be appropriate or would that be not helpful?

Mark

You know I would almost suggest that, I'm almost of the opinion that we go little, go small and keep it confined and brief because I do think that we as a council at our next perhaps meeting need to talk about okay where do we go from here. I don't know if we have a real clear idea as to what next steps are, and I think we should have a discussion about that and try to form some unanimity around the direction that we take. I do believe though that we do need to talk about the bylaw versus administrative rule issue because that is something that I think is important, and we're going to need to address that.

Beyond that, the independence part Todd, I know that you can probably take care of that. The one thing that I do think that we as a council will need to do but I will push this off for a later discussion is that some of you who have been on this council for some time recall that we did do a survey to check the responsiveness of various state and local agencies, and I think that it may be time to perhaps do another survey just to see um you know where things stand, but again that's a discussion for a later day. So perhaps we keep this as confined as Michael described.

I see Emily's hand up again, I'll I'll be quiet, I apologize. Emily go ahead. Oh okay legacy hand. Okay I but I'd welcome any input. Short and concise. but I thank you so much Michael for looking up at this statute. Is there further discussion or are we comfortable where we stand at this point?

Thank you, Shasta, thank you, Michael, thank you, Emily. I don't see Steve's eyes or you're okay?

Steve

I just want to clarify. So we the report by shorter we mean we're dropping hopes and plans.

Mark

I think so for the time being.

Steve

We're keeping everything else.

Mark

I think so and I'll just I'll quickly review the assignment before we dispense of this agenda item. Todd will cover who has joined and who has departed our esteemed council. He'll also describe the creation of the subcommittee, the Legislative Subcommittee, and I don't know if we need to cover the Non-legicidative Subcommittee because I don't know if they've done anything quite honestly at this point. Emily and Steve will cover the process by which we came to the legislative concept that we voted upon today. Todd will discuss the bylaw versus admin rule issue, and he will also describe his offices march towards independence if that makes sense. Go ahead Todd.

Todd

Yeah I'm sorry I thought we dropped bylaws versus admin rules as part of removing the hopes and future plans section.

Mark

Okay. Do council members feel as though we need to include a discussion of bylaws and or admin rules or is that something that does not need to be addressed? Go ahead, Emily. You're on mute.

Emily H.

Yeah sorry thanks. I pretty agnostic on it. I just wonder since it's like a kind of a core function of self-governance, if that would like just even a line saying, we know that this is a gap that we need to address would be ...

Mark

Yeah I think perhaps just mentioning Todd that the council does intend to have a discussion about whether the council should be operating on a bylaw basis or an admin rule. That'll be an agenda item on giving this a heads up to you now for our next full PRAC meeting, if you could please.

Todd

Sounds good Mark. Looking at the concluding summary from our 2020 report, that looks like a good place to put that notion so I could do that.

Mark

Okay is everybody comfortable. Okay go ahead, Michael, I see your hand.

Michael

Can I move that we adopt this plan and delegate to the people that our chair has identified the tasks that he has?

Mark

Somebody second it please.

Tony

I'll second.

Mark

Thank you, and for the record that was Tony seconding. I don't think we're going to have much debate so why don't we do it this way. Any further discussion? Seeing none.

Todd

I want to talk getting stuff to mean that allowing me to submit it on my own once it's ready after the vote.

Mark

Very good. Any further discussion, seeing none, all those in favor please say, aye.

Group:

Aye

Mark

Any opposition seeing none ... let the record reflect that that was a unanimous approval. Thank you everybody and Todd you wanted to talk about timelines real quickly before we move to our next agenda item.

Todd

Yes if Emily and Steve can get me their section by the end of the day on the 28th I think I can put it all together and get it submitted by the 1st [of December] with the understanding that my sections are fairly bloodless and uncontroversial and that I have your support and approval to submit them without further review. Thank you.

Emily H

Just Steve and I have the same like we'll give them to Todd and ...

Michael

That was the delegation part of what y'all just approved, yes.

Emily H

Okay we'll try to be bloodless also.

Mark

Great everybody clear on their assignments and timelines? Thank you very much we will dispense of item number five now and move to number six. Todd, presentation on the advocate's proposed budget and companion funding mechanism bill.

Todd

Yes and by presentation I'm just going to provide a stumbling description what my office is trying to do but Emily has a question.

Emily H

In the chat, a member of the public was trying to find the posting, and I don't think it was attached to the agenda. Can I drop a link in? There's a comment on the draft, where's the posting of the presentation of the LC draft. Was it, I don't think it was posted to today's meeting.

Todd

No, I think I failed to post that so I will post that immediately after this meeting, and I could share my screen which isn't great for anyone that wanted to review it ahead of time but I will do that as I talk about it.

Emily H

Did you post it earlier?

Todd

The concept? I may not have actually. I'm sorry. Let me take a look at our website really quickly and see if I in fact

Emily H

I thought somehow you did but maybe not.

Todd

I might have included it in an email to the council but then forgot to actually put it with the meeting materials for today. I think that's what happened I think I emailed the full council but not I didn't put it on our website so I will get that up after the meeting.

Mark

Thank you Todd and sorry Mr Rourke for that.

Todd

For those who can view what we are discussing, I will attempt to locate the concept that I had a moment ago and then post and then share my screen as we talk about it. Sorry everyone give me one moment.

Okay well by way of introduction, the office starting so the office has been an independent state agency since the governor signed the bill making it so at the end of the 2021 legislative session, however, for budgetary purposes our office has still existed under the Department of Administrative Services Chief Operations Officer Budget. So they were allocated specific money dedicated to the purposes of the Office of the Public Records Advocate and the PRAC but then but the DAS COO actually held that funding paid all our bills, etc., and so in that regard this office is not did not operate as its own state agency.

So starting with the upcoming '23 Legislative Session, the office now like any other state agency is going to go to the Legislature to request funding for its own services rather than being included under the DAS umbrella when requesting funding, and so along those lines two particular things have been developed, actually three I suppose.

One is that the office, when possible, despite the pandemic, does a fair amount of traveling in order to fulfill its statutory duty of providing trainings, and so it's very necessary to make sure that we had sort of an outsized budget for travel that would allow us to do so because given the geography of Oregon, we often end up staying overnight when we travel to provide these trainings and there are also some conferences out of town that are really important for us to attend in terms of furthering our own education and experience and ability to do this work. So we need to make sure any budget included appropriate amount of money for that kind of travel.

Second, the office will be requesting two additional positions. DAS in its previous legislative submission on behalf of the office already requested these positions, and they were not funded by the Legislature. The hope is that now that I'm advocating on behalf of the office myself I'll be able to make an adequate showing why the office needs, number one, a manager, an office manager that can handle a lot of the administrative tasks that currently take up a lot of my time including initial contact with members of the public who need assistance, who could ask preliminary questions and request basic documents about a request, essentially establish a file on behalf of the deputy advocate and I that gives us the information we need to start offering assistance.

The other position would be a public records analyst. You know both just, well I should say on my own, hearing from other stakeholders and from this council, there are a lot of good ideas that have been bandied about how my office can take a larger holistic view at the system of public records in Oregon and make grander recommendations about how, you know, best to administer the law. We really haven't had the capacity to do these kinds of research projects, but if we're able to handle or hire what I'm calling a public records analyst, I think they could build support on our most core basic work and do a deep dive into these more these other important questions that we can't regularly address, and create things like, you know, best practices, guidance, white papers, model policies and so forth.

So we will be requesting those two additional positions, but then finally the question that arises is well how do you fund this work? Do we maintain a kind of a standard agency model where we get money

from the general fund, which you know without besmirching the process, is somewhat more subject to the winds of change when it comes to finance and politics or do we attempt to sort of further this notion of an independent agency that is insulated from some of those politics and concerns with the funding model that keeps our funding steady and isn't as subject to those kinds of changes.

So I'm going to share a draft legislative concept that Senator Thatcher has agreed to introduce on behalf of the office that would address that sort of special or unique funding model that we are seeking. So I will share it and then continue talking about it. I think after doing this online for so many years, it should be a little clearer and easier to me but somehow this is just a blind spot for me that I'm still working on. I'm sorry everybody I will find it momentarily.

Ah finally okay you should can everyone see the LC 1836 that's now being shared? Great. Okay so in working with our advisors at the Department of Administrative Services, who are of course budgetary and financial experts. We've come up with this notion of a split budgetary model. Seventy-five percent of the office's funding would come from an assessment to state government. It's similar to what the Oregon Department of Administrative Services does, the Government Ethics Committee does and probably some other agencies that have sort of the Statewide mandate. Each agency would pay into the agency's budget based on the number of FTE that they have in the office, and that would be 75 of our funding.

The other 25% would come from the general fund, and there was a discussion of considering whether or not to extend this assessment model to local government, which I personally was not in favor of and we ultimately did not go with one because that represents sort of sometimes problematic funding stream I've been informed in terms of you know justifying and getting payments on time but also I want our office to be a place where any public body can come and get assistance without feeling like they have to pay for that service or otherwise be hampered in asking us for assistance. I mean it's it's a matter of maybe constituent service but also I don't really have any sort of authority to compel anyone to do anything outside of the state level so I want them to come to me. They're not required to come to my office for assistance, and so they're not being asked to pay into our work at this time, whereas at the state level, we're a state agency I have some ability to compel state agencies to do something in a limited fashion, and it just made more sense to only charge state agencies for our services.

So that's it in a nutshell. I'm happy to answer any questions if I'm able to or take note of them and get back to you with an answer later.

Mark

Questions. Steve

Steve

I think it's really intriguing, Todd. I know we've talked in the past about an independent funding mechanism to you know as kind of the next step in achieving true independence, and that's something I've been supportive of, and I think starting with the state, or you know focusing on the state level funding makes a lot of sense. It's interesting you know we talked in the subcommittee about the

desirability of having dedicated public records officers in every agency possible and including local governments. We talked about a concept of possibly some kind of centralized like state funding for kind of regional records officers that would be available to local governments, and I don't know, I just I'm just observing that this like might be the kind of mechanism we might look to in the future and viewing this as kind of a statewide role that the state government fulfills. So thanks for moving forward with this it sounds sounds good to me.

Todd

Well thanks Steve and my desire to pursue this kind of funding model of course not knowing what the Legislature will do with it was largely inspired by our conversations in the council. So I'm really appreciative of those those thoughts that everyone has shared as well.

Mark

Further discussion this is not an action item. This is a legislative concept that has already been submitted. I don't know whether, well, I don't know really what to say at this point except to say, good work Todd. Any further discussion at this time? Todd do you need anything from us at this point on that? Shasta please.

Todd

Oh I just answer your question quickly I don't at this point when the bill goes before committee of course any and all testimony especially that which is supportive is welcome, and I'll let you know when those things are going to happen.

Mark

Forgive me, Shasta. I'll just say, Todd, thank you for not including local governments as being a part of the financing for the Public Records Advocate because I know you would have gotten some push back there. Shasta please, thank you.

Shasta

Yeah thank you. So I saw the companion funding mechanism bill um but is there a proposed budget that we're also going to see like amounts and ...

Todd

Fair, yes. Yes of course, it has to go through the governor's process for finalizing a budget, and so once we have an actual budget that will be submitted, I will provide it to the PRAC, I can provide the draft version at this time but it's you know largely. It tracks our prior numbers, and isn't anything too controversial even the extended or expanded money for travel is something that we've always had to use and has been part of our funding model. So I can provide the draft now, or I will certainly provide the final version when it's approved.

Shasta

Yeah this is I'd love to just hear like really broad strokes of like how many requesters does your office handle? And you have two staff members still and ...

Todd

Yes we have two FTE and obviously we're seeking funding to continue those positions separate and apart from the two additional positions. In terms of the numbers of who we serve and things like that, that is not in the budget and that has become a standard item for full council meetings but given how much else we had to deal with today it was torpedoed for this particular meeting because of the lack of time that we had.

Mark

And I will take full responsibility for torpedoing that Shasta but I do want to sort of reiterate what Todd said is that at our full PRAC meetings, a typical agenda item is Todd reporting on all the work that he has done since our previous one. So um that is a part of our regular meetings. Emily, please.

Emily H

I just wanted to say that Mark just jumping off your comment of, I know I'm taking up time to do this but I think it's really important, jumping up off your comment of you're glad that Todd didn't um put the local government, I mean I just want to remind people that one thing that came up in this year of discussing fees for public records is a great lot of thought that this may be something we need to at some point come to the state to fund because of the burden that it creates you know on especially smaller governments.

So I just I do feel that's a really important concept for the general public and so I know it's a joke and it was a nice one and just there's serious stuff behind that. Yes, we should we should put that, you know, that's in our hopes and dreams.

Mark

Thank you, Emily. Is there further discussion at this point or Todd are you satisfied that you've covered this agenda item?

Todd

I believe I have, and I just want to say to everyone I appreciate your ongoing support for this office because obviously we can't do our work without our deep bench of bipartisan public records experts. So I welcome these conversations and they need to continue to occur.

Mark

And I will remind the council, Emily I'm sorry forgive me, before I lose this train of thought. Todd has submitted what we call an agency requested budget that is being reviewed by the Department of Administrative Services. I'm sure Todd will be if he hasn't already been called in to justify his numbers and then what will happen is all that information will be taken to the governor-elect. They will propose a new budget which will be due on February 1st, okay. I will avoid that sticky wicket of whether or not Todd has to follow the governor's recommended budget because he is an independent agency. So having said that Emily.

Emily H

I assume that those comments were meant to respond to the comment in the chat that the draft is, could be posted easily at this point. So I assume that's covered but I was just monitoring the chat and wanted to share that.

Mark

Thank you. Okay folks I'm gonna move quickly now to deliberation, item number seven, deliberation whether the next council meeting should be in person. I'm gonna actually as the chair suggest that our next meeting probably will need to be over video, and the reason for that is as we discussed under item number four, we're going to need to put together not only an outline or summary of the proposed bill but also some of the intent behind that bill. I believe that is worthy of a full PRAC meeting. I also believe that we'll need to do that prior to the probably the beginning of the 2023 Legislative Session as a result that sort of will lead us to our item number nine, but before we get to item number nine, Emily I just want to make sure that's a legacy hand still. I want to just check in with anybody to see whether or not they have a different feeling. I will tell you that during session it's going to be very difficult for both Tyler and myself to necessarily participate. I do think though that it's important for us to convene the full PRAC probably for a short period of time to discuss the summary of the bill, the intent behind the bill, so that we can hopefully come to some sort of a consensus on what is contained in those documents. Does that make sense? Am I off base?

And then perhaps at that time Todd we can have a discussion at that next meeting whether or not our subsequent meeting ought to be in person, when it should be and whether or not, how we conduct that if that makes sense to everybody. Seems like it I see a couple thumbs. So good. As a result I think we have dispensed of item number seven at this time. It will be my intent though folks to convene a meeting, I'm looking at my legislative calendar here, please just give me a moment. 2023 session. We actually begin legislative session January 17th, I would probably be shooting for a meeting the first week of January, that would be the week of January 2nd even though we will be honoring New Year's Day on Monday my intent would be to find either the third, fourth, fifth, or sixth of January for that meeting.

It would be a short meeting certainly not the amount of time we had today, just to really address a couple of items that I shared with you and Todd as well. Todd I hope you're keeping a list. Sort of kind of good. All right so at this point it is 2:51 and as a result we have nine minutes. Everybody is going to still be here but I want to open up the meeting to the public. I don't know how many folks out there would like to address the council but if you are interested in doing so please raise your hand so I can get a sense for how much time I'm going to allow each individual to address the council.

I have Joe Baker. Is there anybody else at this time who would like to speak? Joe I'm going to recognize you for as much as three minutes please. Thank you

Jo Barker

Thank you, chairman of the board. I did submit a written comment regarding agenda number seven deliberations for whether meeting in person or video and that's based upon past experience from

having the multimedia in person as well as video meetings. I did also make two additional comments one dealing with ORS 192.324 subsection 5e, and that's the news media section, I just basically broke it down into a more palatable structure instead of one whole paragraph, and then I also made a comment to subsection seven. Just minor nomenclature issues, and that's basically all I wanted it wanted to say. Thank you.

Mark

Thank you Jo and thank you for the documents that you submitted I certainly did review them, and I want to acknowledge the notion that we want to be as transparent as possible as a council. In the event that we do have in-person meetings it would be my intent to also make those available on a streaming platform so that the public may participate as well. I recognize the challenge of the long distances here in the state and the financial consequences of having to travel as far as you might have to and so it would be my intent that if we do hold those meetings in the future in person that there will be an opportunity for the public to participate virtually.

Jo

My comment was also directed towards as Todd stated that the proposed budget with conferences going all over the place, traveling expenses, this and that. Even though everybody would be in different locations the video option would still be available to them and would not compromise you know. So that's I mean it's both sides of the story. You know those who have an income and those who don't have the ability to attend.

Mark

Understood and I thank you again for the comments that you provided. I think it's important. I do see a couple of quick hands here. I am going to go quickly to Michael and then Shasta and I saw Mr. Rourke had his hand up as well briefly. Mr Rourke, I don't see your hand up again but go ahead please, Michael.

Michael

Yeah I just wanted to thank Ms. Barker too for her comments and I definitely, especially the comments regarding the proposed legislation. I took them in the spirit of like good edits. I just wanted to clarify that at this point what we're proposing is going to go to Legislative Council and we'll be redrafted by a Legislative Council anyway so it didn't feel to me like the kind of thing we needed to take up as a committee but that's not to say that anything other than that those were thoughtful suggestions. So I just wanted to thank you for them

Mark

And and I will note for everybody's recognition that Miles Cameron happens to be in attendance today, and he is one of the drafters in Legislative Council. Just a shout out to Mr. Cameron. It's nice to have you here. Go ahead Shasta, thank you.

Shasta

Yeah thank you very much. Yeah I also like virtual meetings, and it makes this council much more accessible to me personally to be able to attend with the various needs of my household, but I do also

feel that you know an in-person something or another with the council would really be a great way to kind of further relationships and we were just talking about you know kind of that future planning and that future discussions of what our goals are, and something like a government retreat kind of a thing, and I don't mean that as far as going to a resort but just some sort of meeting where we all come together, I think, would be very helpful in trying to figure out where the next steps are for the council.

Mark

We'll see how Todd's travel budget works out with the Legislature, but I'm all for having a meeting over in Ontario, just myself speaking. Todd go ahead please.

Todd

Thanks Mark. Well two things, one my legislative concept and Emily's comments are now up on the PRAC website for anyone who wants to take a look. Sorry we weren't able to get them up sooner. What was my other question, oh, am I now authorized to send our approved legislative concept to Sen. Thatcher's office?

Mark

That's the vote we took on item number four

Todd

Okay I wasn't sure of that piece thank you.

Mark

All right folks. I think I don't see any further requests by the public to speak at this time. Again it is my intent to hold a brief full PRAC meeting in January, or first week of January. Either the 3rd, 4th, 5th or 6th, I think that Todd will need to probably put out a quick doodle poll to check on folks's availability. I'd like to schedule it for an hour and a half, but it would be my hope that we can complete that work within an hour as time. It may make sense for us to think about who ought to begin composing those two documents and perhaps myself, Todd and Emily can have that discussion. Perhaps it may be the three of us doing doing that, and I'm sorry I'm missing things in the chat here apparently. Emily I'm sorry what is that comment?

Emily H

I don't think you've missed anything that's it relevant to any decisions that have been made. Emily Gothard pointed out that access to public meetings is required now, and it's to the degree reasonable possible, and I was just asking some clarification on that, but we didn't make any decisions about ending virtual access, I don't think it's material to any decisions what's going on in the chat.

Mark

No it would be my hope that we continue virtual accessibility even when we have in-person meetings for those people, who are either members of the public or members of the PRAC, who just for whatever reason can't make it. Again I want to make this as easy as possible and get as full participation as possible but at the same time I think Shasta's points about meeting in person, getting that face-to-face

interaction, is really important for the work that we do. It's building trust and relationships and for two-and-a-half-plus years, we've been meeting in a virtual environment, which is terrific but at the same time we lose that um in person touch, I guess is the only way to describe it for the time being.

Before we conclude I just want to ask the members of the PRAC is there anything else for the good of the order? It would be my intention to conclude our meeting after this point.

Shasta

Thanks for having a great meeting.

Mark

Thank you. With that folks thank you very much. I know that everybody has put a lot of time and effort into the work that we've done. Not everybody is 100 percent satisfied and that's usually the sign of some good work for the most part and again I want to assure all those members that this is just the beginning of the discussion and I want to continue the discussion. P.K. welcome. Shasta welcome, again and for all you old salts out there, thank you for your efforts. I think this has been a really good process, and I'm proud of the product that we've produced. I think it's a really good effort and really appreciate the dedication you've put into this. So with that I'd take a motion to adjourn.

Shasta

So moved.

Emily H

Seconded

Mark

Thank you. I assume we all approve of that with a thumbs up. Everybody have a wonderful weekend and more importantly have a wonderful holiday with your families. Thank you very much, and we'll see you soon.