



August 26, 2022

Dear Members of the Oregon Public Records Advisory Council,

Members of the Greater Oregon Chapter of the Society of Professional Journalists use the public records law frequently to provide the public with needed information about their government and their communities.

We applaud the efforts of the Public Records Advisory Council to fulfill its statutory mission by tackling one of the most pernicious problems in the current Oregonians' public records law: Onerous fees that prevent the public from obtaining public information.

In response to Public Records Advocate Todd Albert's draft outline describing potential legislation, we'd like to offer observations in three areas: Scope, cost and framing.

Scope: First, we strongly recommend that any legislation crafted by the PRAC to address fees restrict itself to the topic of fees. For example, the section of the outline that considers extending adjudication time is problematic at best. Here's why: Despite the clear intent of the Legislature and statutory language to the contrary, some agencies routinely refuse to disclose certain types of clearly public information until an appeal is filed and adjudicated—punting their obligations, in other words. Currently the law provides scant accountability to deter this practice despite the waste of time and money it incurs for county district attorneys, other public employees and members of the public. These delays often mean that public information is not released until well *after* related policy decisions have been made.

This unfortunate and common practice often transforms the adjudication timeline into the real-life timeline under which many clearly public records are disclosed. Extending the adjudication or real-life timeline for public disclosure by two weeks or more, as the memo considers, is unacceptable given the delays already allowed under the law. Based on the description of what this provision seeks to address, we are confident other, better solutions exist. This legislation, however, should stay focused on fees.

Cost: In the past, SPJ has proposed and engaged with legislation to encourage efficiency in the implementation of Oregon Public Records Law, including not just its support of creating the Public Records Advocate Office (SB 106 in 2017) but for several other bills as well, such as those incorporating the principles of "Transparency by Design." A bill we supported to reduce fees for requests made in the public interest using a model shown to save time and money for government by the Legislative Counsel's office, Rep. Karin Power's [HB 2485](#), was scheduled for a hearing last year in House Rules. Unfortunately it fell victim to a last-minute lobbying push by local governments who we feel had not fully understood how the model could empower them to use waivers to save money and build trust with the public while honoring the intent of Oregonians' law. The conceptual framing of this potential legislation now under consideration by the PRAC seemingly reduces the cost to the public of accessing public information, which is an excellent outcome. We believe that this change would result in Oregon government pursuing the principles of Transparency by Design to lessen the need for the public to file records requests to access relevant public information held by government agencies, such as records related to expenditures, data and good policymaking. This in turn would lower cost.

That said, we'd suggest adding language to help facilitate the narrowing of requests in the public interest, which lowers cost. Currently, some agencies, such as the City of Portland, explicitly refuse to help members of the public narrow their records requests to reduce costs, saying the law does not require their public employees to help the public in this way. This practice flies in the face of common sense, fiscal responsibility and principles of public service. Legislation should address this, at the least with clear legislative intent language.

The PRAC also should consider a phased-in approach, such as beginning with state agencies and the largest local governments, then expand to all governmental bodies in, say, 2026 or 2027. This would provide time for local governments to adjust their records practices and learn from the earlier phases of adoption, and more cost-effectively implement a new law.

Framing: Contrary to the clear intent of the Oregon Legislature, the current implementation of Oregon Public Records Law allows agencies to consider openness and public transparency as something other than a core function of Oregon government. It does so by allowing them to calculate and charge so-called "actual cost" to any members of the public who ask to see

records — despite the fact that these are records that the public has already paid for and owns.

The one-sided calculation employed by agencies improperly dismisses the substantial public benefits of transparency. Transparency deters waste and exposes it, often creating tangible public benefit for Oregonians and the public at large in the form of better outcomes, exposing fraud, and more efficient government — such as when public access to records directly led to the state recouping more than \$13 million as well as two public corruption convictions in Oregon not too long ago:

<https://www.youtube.com/watch?v=5ezzbjFWpQo> (5-minute video).

We therefore suggest that this bill avoid the use of misleading "actual cost" terminology to facilitate a stronger culture of openness as envisioned by the Public Records Advisory Council's authorizing legislation.

Thank you for your consideration of these observations, and for your efforts to improve transparency in fulfillment of the Legislature's intent in creating the PRAC. We'd be happy to discuss this further.

Sincerely,

Nick Budnick

Co-chair, Freedom of Information Committee of the Greater Oregon
Chapter of the Society of Professional Journalists