

Date: November 18, 2022

To: Public Records Advisory Council (PRAC)

From: Emily Gothard, Council Member, Representative of the Public Sector Workforce

Re: Proposed Bill on Public Records Costs

I am writing to the PRAC in advance of our November 18, 2022, meeting to explain why I intend to vote against advancing the proposed bill developed by the legislative subcommittee. I was able to attend all but one of the legislative subcommittee meetings and am concerned that this bill addresses only media concerns related to costs but does little else to address any concerns regarding public interest access to public records or to provide adequate guidance to public bodies in how to implement the proposed changes. Most of my suggestions regarding improvements were rejected by the committee because there was not adequate time to seek feedback from interested groups, but I think this is indicative that the proposal is not ready to move forward.

The proposed bill requires that if a public body determines that disclosure is in the public interest, the records shall be provided without charge. The fee waiver may be limited if the custodian determines that the public interest in disclosure is outweighed by the “substantial prejudice or prevention of a public body’s ability to carry out the other functions of the public body.” A request by a news media representative is specifically defined as assumed to be in the public interest, but no other types of requests are similarly defined. This also does not require that the news media be nonprofit or require a commitment that the information gathered will be used to produce news media that is publicly available without cost or subscription or broadly accessible to the general public. Under this proposal, a highly partisan for-profit media organization might obtain public records free of charge or receive a substantial fee waiver, subsidizing their for-profit business with Oregon taxpayer dollars, even if they had a demonstrated history of misinterpreting data and misleading the public, if the public body had concerns more public resources might be exhausted by litigating the issue, or simply because the proposed legislation lacked more detailed criteria for how the public body could demonstrate the request was not in the public interest.

Meanwhile, it is left to the public body to otherwise determine what requests are in the public interest, as no definitions were added to identify nonprofit education or scientific organizations seeking public records for research, labor organizations seeking information related to the working conditions of the public sector workforce, nor any other public interest definitions were included. While it was discussed that these types of requests likely would or should qualify, we have failed to explicitly provide that guidance to public bodies in this bill. Proposals to expand access to records for the indigent, specifically when access to those records could affect their legal rights, and proposals to expand access to records for victims of crime were also rejected, which is deeply concerning to me as I believe ensuring access to those most in need of public records is the most important public interest goal. Media entities are currently accessing public records, but we are overlooking people who do not have access or who face substantial hardship by being forced to pay and who have not had a voice in this process.

By failing to provide clearer guidelines on what is in the public interest or what “substantial prejudice or prevention” of a public body’s ability to carry out the other functions of the public

November 18, 2022
Emily Gothard Letter to PRAC
Page 2 of 2

body means, we risk burdening public employees with unclear mandates and concerns regarding facing litigation based on their implementation. Public bodies may receive higher numbers of records requests to comply with if expected to do so with waived or substantially reduced costs at the same time many public bodies continue to experience severe staffing shortages.

I do not believe that this is an incremental approach which makes sense to proceed with. I believe that this proposal overlooks the interests of the most vulnerable in our state and burdens public bodies and public employees without providing adequate public benefits to justify these concerns. As a result, I believe the PRAC should not advance this bill and should continue to work on listening to stakeholders regarding these concepts until a more fully developed proposal can be advanced.

Sincerely,

Emily Gothard
PRAC Council Member, Representative of the Public Sector Workforce