

Biennial Report
of the
Public Records Advisory Council

November 2018



Introduction

This report is submitted to the Governor and the Legislative Assembly by the Public Records Advisory Council, per the requirements of Section 10, Chapter 728, Oregon Laws 2017. The report summarizes the work of the Council and the work of the Office of the Public Records Advocate since the Council's inception in 2017.

Work of the Public Records Advisory Council

Hiring of the Public Records Advocate

In October 2017, the Council embarked on the process of hiring a Public Records Advocate. The Council announced the vacancy for the position, drafted interview questions, reviewed applications, and selected six candidates to interview. On October 23, 2017, the Council interviewed six candidates for 45 minutes each. From that pool, the Council selected three candidates to forward to the Governor's Office for further consideration.

The candidates were interviewed by the Governor's office and Ginger McCall was selected and appointed as Oregon's first Public Records Advocate. Ms. McCall was confirmed by the Oregon Senate in February 2018. After successfully applying for membership in the Oregon State Bar, Ms. McCall opened the Office of the Public Records Advocate on April 25, 2018.

Upcoming Survey

In keeping with the Public Records Advisory Council's responsibilities under Section 10, to "survey state agencies and other public body practices and procedures for receiving public records requests, identifying the existence of records responsive to the requests and gathering and disclosing responsive records; (B) determining fee estimates and imposing or waiving fees...; (C) and determining and applying exemptions for required disclosure of public records", the Council drafted a list of questions which will be included in an inaugural survey of state and select local government bodies. The questions include:

1. Please provide the name, job title, and contact information of the person completing this survey.
2. Please provide the name(s), job title(s), and contact information of the official(s) within your agency to whom public records requests may be sent, per ORS 192.324(7).
3. Please provide a URL link or a copy of your publicly posted public records policy, per ORS 192.324(7).
4. As of the date of your response to this survey, how many requests has your agency received in the calendar year 2018?
5. How many of those requests were not completed within the fifteen day business day deadline prescribed in ORS 192.329?
6. How many of those requests were not completed within 60 days of the date the request was received by your organization?
7. As of the date of your response to this survey, how many requests for a fee waiver/reduction has your organization granted? How many requests for a fee waiver/reduction has your organization denied?

8. As of the date of your response to this survey, what is the total approximate amount of fees that your agency collected related to the fulfillment of public records requests in the calendar year 2018?
9. Do you track the costs incurred in processing public records requests? Please explain how.
10. Have members of your organization received training on public records laws during 2018? If so, from whom?

These questions will be distributed to a variety of state agencies and other public bodies (as contemplated in the statute). *More information on which public bodies after next PRAC meeting.*

The completed surveys will be reviewed by the Office of the Public Records Advocate and the Council. They will also be disclosed in full and in a summary compilation (drafted by the Office) to the public.

This survey will forward several important goals. First, it is a useful information-gathering mechanism for the Council and the Office. There is currently a dearth of actual data regarding public records request practices in the State of Oregon. Once the data is obtained, it will be used to determine what future legislative and policy initiatives and corrections may be necessary, to inform the Office about what public bodies and substantive areas of law it should focus on in its trainings, and inform the public about the public records performance of various government bodies. Moreover, transparency regarding public records processes and performance of government bodies will create accountability, which will then encourage better performance.

The survey is also designed to gather data on public records policies and public records officers (questions 2 & 3). Though ORS 192.324(7) requires that each agency make this information publicly available, many state agencies and most other public bodies do not, in fact, have this information visible on public-facing websites. This survey will remind public bodies of that requirement and will gather this information, which can then be posted by the Office of the Public Records Advocate on its own website, as a central repository of information that will benefit the public.

The Council recognizes that not all public bodies will initially have the data on-hand to answer all of the survey questions. This survey, then, also functions to encourage public agencies to practice collecting this data, much of which is already required under law or will be required under the Council's current legislative proposals.

Legislative Proposals

The Council has two proposed pieces of legislation, LC 590 and LC 592, attached as Appendices A and B.

LC 590 would make the Council permanent, with staggered terms and the same statutorily set composition.

Under the current statute, the Council expires on January 1, 2021. The continued existence of the Council, however, is important for several reasons. First, the Council, which is tasked under

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Section 10(1)(d) with “[m]ak[ing] recommendations on changes in law, policy or practice that could enhance transparency in public process and government, and facilitate rapid dissemination of public records to requesters,” is the best possible vehicle for making policy and legislative proposals related to public records law. The Council is uniquely positioned to make insightful recommendations because it is composed of a variety of government and requester stakeholders. This allows the Council to make balanced proposals based on a broad array of experiences.

The Council is also an important oversight and guidance mechanism for the Public Records Advocate. Under ORS 192.461(4), the Public Records Advocate can only be “removed for cause by the Governor or upon motion of the Public Records Advisory Council with the consent of the Governor.” The Council is, therefore, one of only two parties who can remove the Advocate. The Advocate regularly reports to the Council on the activities of her office and receives the Council’s advice and feedback on those activities. Councilmembers have provided valuable feedback about budgetary concerns, efficiencies, and training practices. The Council’s varied composition makes it a particularly valuable provider of feedback, and because of this Section 10(1)(e) specifically tasks the Council with “[m]ak[ing] recommendations on the role of the Public Records Advocate as facilitator in disputes between custodians of public records and public record requesters.”

The Council is also responsible for “adopt[ing] rules governing the operations of the office of the Public Records Advocate.” Section 10(4). This important responsibility is core to the function of the Office. Again, the Council’s multi-stakeholder composition makes it uniquely well-positioned to create balanced and thoughtful rules.

The Council’s second proposed piece of legislation, LC 592, creates four basic annual reporting requirements for state agencies. By March 1 of each year, every state agency would have to submit to the Attorney General, the Public Records Advocate and the public records subcommittee of the Legislative Counsel Committee:

1. The number of requests for records received by the agency in accordance with the public records policy applicable to the agency;
2. The number of requests for records received by the agency as reported in paragraph (a) of this subsection for which the agency had not completed its response by the date prescribed under ORS 192.329;
3. The number of requests for records received by the agency as reported in paragraph (a) of this subsection that had not been completed under ORS 192.329 within 60 days of the date the requests were received by the agency in accordance with the agency’s public records policy; and
4. The number of requests for a fee waiver or reduction that the agency has granted and the number of requests for a fee waiver or reduction that the agency has denied.

These mirror several questions in the Council’s survey. As discussed earlier in this report, this was a purposeful calculation on the part of the Council. The survey is designed to encourage agencies to begin tracking data points which will later be required in legislation.

Tracking this data will serve several purposes. First, as discussed in the survey section, it will inform the Council and the Office about what legislative and policy changes need to be created. It will also give the Office important information regarding what agencies and legal provisions should be the focus of training.

Additionally, this data will inform the public about agencies' public records processes and performance and will create accountability for state agencies. Transparency regarding public records performance will incentivize agencies to perform more efficiently and effectively.

The Work of the Office of the Public Records Advocate

Requests for Assistance – 76 Requests for Assistance since April 2018

Since its inception on April 25, 2018, the Office of the Public Records Advocate has handled 76 requests for assistance. These requests, detailed in Appendix C, include calls, emails, and form submissions from members of the public, media representatives, and state and local agency officials. They often involved issues related to fees, timeliness of responsiveness, or application of exemptions. There was a substantial uptick in requests for assistance from August onward, often averaging five requests per week.

The Office worked to resolve these requests by conducting research regarding ORS 192, facilitating communication and problem-solving between parties, and engaging in outreach to relevant government bodies.

Trainings – More Than 1200 People Trained Since April 2018

To date, the Office of the Public Records Advocate has conducted 37 in-person trainings, reaching over 1200 government officials and members of the public. These trainings, detailed in Appendix D, were conducted across the state of Oregon, as far north as Portland and as far south as Medford, west to Newport and east to Vale.

Additionally, the office has made both government and public trainings available online in an easy-to-use streaming format. These videos have nearly 250 total views to date.

Public & Press Outreach

The Office has conducted extensive public outreach, with a special emphasis on outreach to the media. The Advocate has met with major press outlets, including Oregon Public Broadcasting, The Oregonian, The Bend Bulletin, The Grant's Pass Daily Courier, The Roseburg News Review, and The Salem Reporter.

The Advocate also hosted five meet and greets (plus one virtual meet and greet). These were hosted at a variety of times, some during the workday and some on evenings and weekends, in order to maximize opportunities for public participation. These meet and greets offered an opportunity for interested members of the public, media, and government to hear about the Office's services, ask questions, and provide feedback about how the Office could be most useful.

The Advocate has conducted several public trainings, including a presentation at the Society of Professional Journalists conference, two presentations at University of Oregon journalism classes, two public presentations at Linn-Benton Community College, and a series of public trainings at Crooked River Ranch, Portland, Milwaukie, and Vale. These trainings covered both the Oregon Public Records statute and the Federal Freedom of Information Act. They gave members of the public basic information on both laws and a step-by-step tutorial on how to draft a public records request. This is essential to the Office's mission because better public records requests will result in easier processing and better outcomes.

Additionally, the Office has also engaged in purposeful outreach to stakeholders in the advocacy and media community, including Council on American Islamic Relations, Freedom Foundation, the Society of Professional Journalists, the Oregon Newspaper Publishers Association, and Open Oregon. These relationships have resulted in invitations for additional outreach and public education.

The Advocate has also provided expert commentary in the Oregonian, Bend Bulletin, and Malheur Enterprise, and on Oregon Public Broadcasting's Think Out Loud. This commentary helps to raise awareness of the Office and its services and inform the public about important public records issues.

Hiring of Deputy Public Records Advocate

In September 2018, the Office of the Public Records Advocate welcomed Todd Albert as the Deputy Public Records Advocate. Mr. Albert has experience in several Oregon government offices and more than a decade of experience as a public defender at the Legal Aid Society in New York.

Mr. Albert has provided valuable expertise on Oregon government, has already begun managing requests for assistance and trainings, and will be leveraging his expertise in Indian Law to work on a concentrated program of outreach to Oregon's Native American tribes.

Future Goals

The Council intends to continue to move forward with future legislative proposals, including possibly expanding the annual reporting requirements contained in this year's proposed legislation. Additionally, the Council has identified fee-related issues as an area for potential reform. The Council may also need to address several ambiguities in the statute which created the Office of the Public Records Advocate.

The Office of the Public Records Advocate will continue to expand its training program and public outreach. The Office will set up a blog to further engage with the public. It will also use its website as a platform to inform the public about public records laws, including potentially hosting a central repository of agency public records contacts and policies (as provided in response to the survey).

Additionally, for public bodies that don't yet have public records policies, the Office will endeavor to work with those offices to create public records policies that promote transparency and are user-friendly.

ORS 192.475(3) also empowers the Advocate to issue written advisory opinions. The Office would like to begin issuing such opinions, providing that it has sufficient staffing and resources to provide a high quality of opinion.

The Office of the Public Records Advocate has also requested additional funding for the hiring of two additional staff and training-related travel. The Office has seen a huge growth in requests for assistance and training over the past few months and will require additional staff to fulfill its obligations if that growth trend continues, as it is expected to. As the Office continues to raise public and government awareness of its services, it can reasonably be expected that requests for assistance and training will continue to increase accordingly. The expansion of the Office would allow for more public outreach, more training, more assistance, and more research-based policy proposals.

Summary

Both the Office and the Council intend to continue this important work to improve transparency and the functioning of public records laws in the State of Oregon.

Since its first meeting in October 2017, the Council has:

1. Hired a Public Records Advocate;
2. Engaged in meaningful discussions regarding fee-related issues in Oregon Public Records Law;
3. Drafted survey questions for a statewide public records survey; and
4. Proposed two important pieces of legislation.

The Office of the Public Records Advocate has:

1. Conducted nearly 40 trainings, reaching more than 1200 individuals;
2. Has handled 76 requests for assistance;
3. Engaged in purposeful outreach to stakeholders in government and the public; and
4. Hired a Deputy.

We look forward to continuing this work and will provide the results of the survey as soon as they are compiled and ready for dissemination.