

Biennial Report
of the
Public Records Advisory Council

November 2018



I. Introduction

This report is submitted to Governor Kate Brown and the Legislative Assembly by the Public Records Advisory Council, per the requirements of Section 10, Chapter 728, Oregon Laws 2017. Appendix A. 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.

II. 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 questions for an inaugural survey of state and select local public 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). It will include all state agencies, the top ten most populous cities, and a random selection of other cities, counties, school districts, and special districts.

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 advance 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 public bodies. Moreover, transparency regarding public records processes and performance of public 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 B and C.

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 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 to make policy and legislative recommendations to the Legislative Assembly 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 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 may 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 are needed. 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, reducing costs for the agencies and improving customer service.

III. The Work of the Office of the Public Records Advocate

Requests for Assistance – 90 Requests for Assistance since April 2018

Since its inception on April 25, 2018, the Office of the Public Records Advocate has handled 90 requests for assistance. These requests, detailed in Appendix D, 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 responses, 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 public bodies.

Trainings – Nearly 1300 People Trained Since April 2018

To date, the Office of the Public Records Advocate has conducted 38 in-person trainings, reaching nearly 1,300 government officials and members of the public. These trainings, detailed in Appendix E, 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. Nearly all of these trainings were conducted in coordination with records management trainings conducted by the State Archivist's staff. This ensures that both related areas of law are covered and also helps to make efficient use of travel funds by sharing car rental and fuel expenses.

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 Grants 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 the American Civil Liberties Union, the Council on American Islamic Relations, the 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, the Albany Democrat-Herald, 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.

Observations of the Office of the Public Records Advocate

The Advocate would like to thank the government employees, members of the requester community, and members of the media who contributed ideas and took the time to report their experiences regarding Oregon's public records law. The Office could not adequately accomplish its mission with their cooperation and participation. In the course of conducting trainings, meeting with stakeholders, providing assistance on public records requests, and receiving feedback from all of those involved, the Advocate has made several observations regarding the operation of public records law in the state of Oregon.

The below observations are meant to be a brief overview of issues that have been frequently presented to the Advocate. They are based purely on anecdotal evidence, which is, in itself, a problem. Currently, there is very little actual data regarding Oregon’s public records law, including data regarding how many requests agencies are receiving, how long it takes agencies to respond to those requests, what fees are being collected, how often requests for fee waiver/reduction are being granted, and what exemptions are being cited to justify withholding. This is the reason that the PRAC is conducting a survey of public bodies and has proposed basic annual reporting requirements in LC 592. Having more data will give the Advocate, the PRAC, the legislature, and the public a better sense of what aspects of the public records request system are doing well, where problems exist, and how they can be addressed.

The following observations, opinions, and comments belong to the Advocate exclusively and are not representative of the PRAC more generally.

1. Fees

Fees are a perennial source of animosity, confusion, and frustration for public bodies and requesters alike. The Advocate has observed several systemic issues with fees under Oregon’s public records law. First, the provisions regarding fee waiver/reduction are highly discretionary. ORS 192.324(5) states “The custodian of a public record may furnish copies without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public.” There is no clear statewide standard regarding when to grant or deny a request for fee waiver or reduction. Some public bodies, including many state agencies, routinely grant waivers or reductions to media requesters; others have a blanket policy of never or rarely granting fee waivers or reductions in any circumstance.¹ Additionally, even if a fee reduction request is granted, there is no clear standard for what the amount or rate of reduction should be. This ambiguity leaves requesters uncertain of what to expect, which often increases animosity between government and requester. It also results in media requesters being assessed high fees, even for requests that will clearly forward legitimate public interests. A clearer standard – for instance, one more in keeping with the Freedom of Information Act’s (“FOIA”) categorical fee-related provisions – would provide more guidance to agencies and would help to manage the expectations of requesters.

Additionally, some public bodies have begun to charge flat rate fees, often based on internal “average” cost calculations which are not always transparent to requesters.² These standard fees are then charged regardless of the actual cost of processing a particular request. ORS 192.324(4)(a) does allow public bodies to charge fees that are “reasonably calculated to

¹ See e.g. Point 4 of the City of Molalla’s Public Records Policy, available at: https://www.cityofmolalla.com/sites/default/files/fileattachments/city_recorder/page/484/molalla_-_public_records_request_form_2018_00611195xb8084.pdf.

² See e.g. *Lawsuit Against City of Portland Challenges the High Cost of Public Records*, Rachel Monahan, Willamette Week, Sept. 26, 2018, available at: <https://www.wweek.com/news/city/2018/09/26/lawsuit-against-city-of-portland-challenges-the-high-cost-of-public-records/>; *On Hold: Crime Victims, Public Wait 6 Weeks or More for Portland Police Reports*, Bethany Barnes, The Oregonian, Oct. 21, 2018, available at: <https://www.oregonlive.com/expo/news/erry-2018/10/cd13a8f84c9704/on-hold-crime-victims-public-w.html>.

reimburse the public body’s actual cost of making public records available.” However, a reasonable and fair interpretation of this provision would be that public bodies may charge a particular requester for the actual cost of fulfilling her/his request. Charging all requesters based on an “average” cost of processing public records requests removes incentives for requesters to submit narrowed requests and is unfair to a requester who submits a properly-narrowed request.

On a related note, Oregon’s law does not provide an intermediate appeal option for requesters who feel that the fees they are being charged are unreasonable. ORS 192.324(6) states “[a] requester who believes that there has been an unreasonable denial of a fee waiver or fee reduction may petition the Attorney General or the district attorney.” There is no similar authority for the Attorney General or district attorney to review the reasonableness of fees assessed – including the reasonableness of public body flat rate fees, time estimates, or hourly rates. Nor can the Advocate intervene unless the matter involves a state agency or the parties both agree to facilitated dispute resolution. Often, the only recourse for a requester who feels he/she is being charged an unreasonable amount of fees is to go to court.³ Most requesters, though, cannot afford to take a public body to court to challenge fee reasonableness, which creates a noticeable loophole in the law, allowing public bodies to charge unreasonable fees, leaving the requester no option but to give up on the request. In conversations with both public bodies and requesters, the Advocate has observed that fees have been used to discourage requests and avoid accountability. The absence of meaningful, inexpensive interim fee-related appeal options could encourage continued use of such tactics. This problem could be remedied by empowering the Attorney General or district attorney to review fee reasonableness under ORS 192.324(6).

2. *Records of Elected Officials*

Oregon’s law admirably makes the records of elected officials subject to public records requests.⁴ However, despite their inclusion in the law, there is no right to appeal elected officials’ decisions on public records disclosure to any authority other than a court. In other words, if a records request is denied by an elected official, the only option that the requester has is to take the matter to court. Furthermore, the legislation creating the Office of the Public Records Advocate did not include the option of mediating public records disputes between requestors and elected officials. Most requesters simply do not have the resources to vindicate their rights in court. This creates a lack of accountability around the decisions of elected officials as any disputes about the disclosure of public records in their possession can only be settled in court, which is an often prohibitively costly and time-consuming undertaking for most requestors.

The problems created by a lack of intermediate appeal rights are exacerbated by the habit of some elected officials who make liberal use of ORS 192.427, which allows an elected official to claim the right to withhold disclosure of documents not only in their own custody, but also documents in the custody of any other person “to which an elected official claims the right to

³ See *In Defense of Animals v. OHSU*, 199 Or App 160, 182-83, 112 P3d 336 (2005).

⁴ Although though this clearly settled area of law has recently been questioned by at least one local jurisdiction: *Ontario Takes Cautious Stand on Officials’ Records*, Malheur Enterprise, Max Egner, Sept. 13, 2018; available at <https://www.malheurenterprise.com/posts/4739/ontario-takes-cautious-stand-on-officials-records>.

withhold disclosure”. This provision invites abuse which, like other disclosure decisions made by an elected official, can only be reviewed by a court. Potentially overbroad application of ORS 192.427 may be remedied by creating an intermediate review opportunity under ORS 192 and, additionally, by creating limits on what documents are considered to be in an elected official’s custody and reasonable limits on what documents outside of the custody of an elected officials can be withheld in their name.

3. *Litigation and Attorney Fees*

The problems created by a lack of intermediate appeal options regarding fee reasonableness and elected officials could, perhaps, be mitigated by ORS 192.431(3), which allows requesters who prevail in court to be granted attorney fees and costs. However, some courts have interpreted this provision very narrowly, holding that attorney fees and costs may only be granted if a court order forced agency disclosure, not if the agency “voluntarily” disclosed records in response to a lawsuit.⁵ Other courts have more generously interpreted this provision to incorporate what is called the “catalyst theory,” allowing for attorney fees even if an agency “voluntarily” released records after the start of a lawsuit because the lawsuit was the “catalyst” for the release of records.⁶ This ambiguity discourages litigation under Oregon’s public records laws. If potential plaintiffs are uncertain about their ability to collect attorney fees even if they prevail, they are less likely to embark on potentially costly and time-consuming litigation. And if public bodies know that they can avoid paying fees by simply turning over documents at the institution of a lawsuit, it incentivizes public bodies to wait to disclose documents unless or until a lawsuit is filed, then to quickly disclose documents in order to undercut the requester’s ability to collect fees.

A similar problem arose in the Federal FOIA after the Supreme Court, in *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep’t of Health & Human Res.*, 532 U.S. 598 (2001), ruled that attorney fees will only be granted if the defendant’s change in position is the result of a court order. In 2007 amendments to the FOIA, Congress added language which explicitly incorporated the “catalyst theory,” allowing plaintiffs to obtain attorney fees even if the agency’s change in position was not the result of an actual court order. Under 5 U.S.C. 552(a)(4)(E) a plaintiff can obtain attorney fees if documents were disclosed as a result of “a voluntary or unilateral change in position by the agency, if the complainant’s claim is not insubstantial.” Incorporating a similar clarifying provision in Oregon’s law would remedy the current legal ambiguity and allow plaintiffs to make more informed decisions regarding whether or not it is worth pursuing litigation in light of potential costs and opportunities to recoup some of those costs in the form of attorney fees.

Like the uncertainty around attorney fees, the current practice of a public body suing a requester to challenge an Attorney General or district attorney order requiring disclosure of a public record at issue also chills public records requests and accountability. Filing lawsuits against requesters

⁵ See *Clapper v. Oregon State Police*, 228 Or App 172, 178 (2009).

⁶ See *Multnomah County DA Must Pay \$16,000 in Public Records Case*, Mike Rogoway, The Oregonian, Aug. 3, 2016, available at:

https://www.oregonlive.com/business/index.ssf/2016/08/multnomah_county_da_must_pay_1.html.

strongly discourages public records requests by intimidating requesters who seek to vindicate their rights under the law and saddling them with high costs of a legal battle. It also creates very negative perceptions of the public body that institutes the lawsuit.⁷ A better method may be for public bodies that disagree with an Attorney General or district attorney's opinion to sue the Attorney General or district attorney as the one who ordered the release of a public record, not the requester. ORS 192 should be clarified to ensure that requesters are not intimidated or facing needlessly high economic burdens for vindicating their rights under the public records law.

4. Exemptions

Oregon's public records law also contains a very large number of exemptions – so many, in fact, that it is difficult to pin down a firm number, but by most accounts, at least 550. New exemptions are being generated each legislative session, presently without a mechanism in place to directly inform the public and requester community that new exemptions are pending and to allow for meaningful commentary during the legislative process. Notable advancements, however, have been made in addressing the numerous exemptions in Oregon law. The 2017 amendments to the public records law created both the Sunshine Committee to review all exemptions, and the requirement that the Attorney General keep an updated publicly-available list of existing exemptions. More could be done to ensure transparency regarding exemptions, though, including creating a meaningful method for the public to track bills which create new exemptions. Currently, under ORS 192.492, the Legislative Counsel Committee and the Sunshine Committee must be notified if possible changes are introduced, but this does not necessarily ensure that the public, including the news media and requester community, will be notified in a timely manner. In order to ensure that the public has a meaningful opportunity to weigh in on potential new exemptions, timely notification to interested members of the public should be required, potentially through a public website similar to the one created by the Attorney General to list current exemptions or through a requirement that bills creating new exemptions be labeled with “confidentiality provision” or a similar designation.

Additionally, a small number of exemptions are causing an outsize amount of public distrust and animosity. The Advocate has heard frequent reports about potential overuse of exemptions related to criminal investigations(ORS 192.345(3)),⁸ personnel disciplinary records (ORS 192.345(12)),⁹ public safety employee personnel disciplinary records (ORS 181A.830(3)),¹⁰

⁷ See e.g. *Governments Turn Tables by Suing Public Records Requesters*, Ryan J. Foley, Associated Press, Sept. 17, 2017, available at: <https://www.apnews.com/7f6ed0b1bda047339f22789a10f64ac4>.

⁸ See e.g. *Why did Feds Push Out Attorney General on Kitzhaber? It's a Secret*, Rob Davis, The Oregonian, Mar. 17, 2015, available at: https://www.oregonlive.com/politics/index.ssf/2015/03/why_did_feds_push_out_attorney.html.

⁹ See e.g. *Portland Public Schools Loses Records Secrecy Lawsuit*, Betsy Hammond, The Oregonian, May 12, 2018, available at: https://www.oregonlive.com/education/index.ssf/2018/05/portland_public_schools_loses.html.

¹⁰ See e.g. *Oregon Police Misconduct: Keeping Allegations Hidden*, Carli Brosseau and Rebecca Woolington, The Oregonian, Dec. 19, 2017, available at: https://www.oregonlive.com/police-fire/index.ssf/2017/12/police_discipline_records.html; *A Controversial Portland Cop Improperly Spied on Her Former Stepdaughter*, Doug Brown, Portland Mercury, Nov. 23, 2016, available at: <https://www.portlandmercury.com/news/2016/11/23/18709089/a-controversial-portland-cop-improperly-spied-on-her-former-stepdaughter>.

trade secrets (ORS 192.345(2)),¹¹ internal advisory communications (ORS 192.355(1)),¹² and the confidentiality of Oregon Department of Human Services records (419B.035).¹³ Often public interest balancing tests are not applied consistently or correctly when withholding exempt documents from these categories and others, and the presumption of disclosure in the law is not honored. Many of these exemptions also have corollaries under the FOIA and are interpreted more narrowly in federal jurisprudence. A discussion of the impacts created and interests protected by the above exemptions is particularly urgent. It is the hope of the Advocate that the Sunshine Committee will prioritize the review of these frequently-cited exemptions and engage fully with stakeholders in the public, media, and advocacy community. In the meantime, training by the Advocate could help to ameliorate some of the issues around exemptions.

5. *Delays*

The 2017 addition of timelines to Oregon’s public records law was a very positive step to ensure efficiency and transparency. However, more could be done to ensure that these timelines are taken seriously. ORS 192.324(5) sets well-balanced deadlines. It requires that public bodies must complete a response within fifteen business days or, at very least, provide the requester with an estimated date of completion. But subsection (6) creates a very big exception to these requirements, stating that these timelines do not apply if compliance would be “impracticable” for a variety of reasons. The subsection (5) provision permitting an estimated date of completion in lieu of a full response, though, is already a meaningful enough allowance for an agency that is facing understaffing, a very broad request, a large volume of requests, or other challenges. The inclusion of subsection (6) is unnecessary and entirely undercuts the requirements in subsection (5). In practice, subsection (6) is often cited by agencies as a reason for not responding (or even provided an estimated date of completion) within the fifteen business day timeline.

These delays can have serious impacts for requesters. Delays in obtaining police reports, for example, can make it difficult for victims to obtain insurance payments, limit the damage of identity theft, pursue civil litigation, take precautions to protect their personal safety, or vindicate their rights in a variety of other venues.¹⁴

6. *Accountability for Noncompliance*

The public records law currently provides little accountability for noncompliance. As noted above in the discussion regarding data, there is currently no reporting requirement which would

¹¹ See e.g. *Editorial: Department of Justice Orders Release of Records Related to Oregon’s Super-Secret Gas Tax*, Bend Bulletin Editorial Board, Bend Bulletin, Nov. 9, 2018, available at: <https://www.bendbulletin.com/opinion/6666678-151/editorial-department-of-justice-orders-release-of-records>.

¹² *Portland Mayor Sued for Records on Foster-Powell Homeless Shelter*, Gordon Friedman, The Oregonian, March 26, 2018, available at: https://www.oregonlive.com/portland/index.ssf/2018/03/portland_mayor_sued_for_record.html.

¹³ See e.g. *Oregon DHS Knew of Hart Family Abuse Allegations in MN*, Gabrielle Karol, KOIN 6 News, April 23, 2018, available at: <https://www.koin.com/news/oregon/oregon-cps-knew-of-hart-family-abuse-allegations-in-mn/1136220858>.

¹⁴ *On Hold: Crime Victims, Public Wait 6 Weeks or More for Portland Police Reports*, Bethany Barnes, The Oregonian, Oct. 21, 2018, available at: <https://www.oregonlive.com/expo/news/erry-2018/10/cd13a8f84c9704/on-hold-crime-victims-public-w.html>.

create accountability for poor performance (or an incentive for good performance). The avenues for appeal – including appeals to the Attorney General or district attorney or appeals to the courts – are often expensive or time consuming, and requesters are forced to bear the burden of enforcing the law. Incorporating a provision which would require agencies that act in bad faith or knowingly violate the public records law to pay a flat rate penalty or a customized penalty designed to reimburse requesters for time spent pursuing appeals and enforcing the law would both incentivize better agency performance and ensure that requesters are not burdened by these costs. The attorney fee provision in ORS 192.431(3) was intended to do this, but, as discussed above, it is often difficult for requesters to obtain attorney fees even if they prevail in court.

Additionally, in order to incentivize good performance and ensure accountability, public bodies should include in their response letters the name and contact information of the official responsible for the decision regarding the request.

7. Public Records Policies

Though ORS 192.324(7) requires that all public bodies “shall make available to the public a written procedure for making public records requests that includes: (a) the name of one or more individuals within the public body to whom public records requests may be sent, with addresses; and (b) the amounts of and manner of calculating fees that the public body charges for responding to requests for public records,” a brief survey of public bodies has revealed that many, if not most, are not in compliance with this requirement. A publicly available public records policy (specifically one posted on the public body’s website), is important for several reasons. First, public records policies encourage agency accountability and conformity with uniform rules. Second, public records policies reduce animosity by managing requester expectations, including by informing requesters how requests may be submitted and by being upfront about the fact that they may be charged fees. Third, public records policies inform requesters of their rights under the public records law. And, lastly, public records policies facilitate meaningful communication by providing requesters with the contact information of a public official who can answer their questions, including helping them craft a narrower request that is directed to the correct public body, which ultimately saves both the public body and the requester time and money.

In order to remedy this lack of compliance, the Advocate has emphasized this requirement in trainings to government officials and has offered to work with public bodies to craft public records policies. The Advocate intends to conduct targeted outreach to noncompliant public bodies in order to help them fulfill this important requirement.

8. Resources and Funding

In conversation with the Advocate, public bodies have frequently emphasized the difficulties created by resource constraints, which limit their ability to hire staff, procure technology, and institute better public records processes. Inadequate staffing is one of the most frequently cited reasons for delays in public records responses. Similarly, technologies like e-discovery software or software to effectively track public records requests are integral to timely processing of requests. E-discovery software allows agencies to more easily and efficiently search a large

volume of documents – like emails – and would cut down on both the time spent searching for and reviewing records. But most public bodies do not have access to that technology. Nor do they have effective tools for tracking public records requests. An investment in tracking tools would help to ensure that requests don't get lost in the system and could also help agencies to identify redundant requests so they aren't expending resources re-processing the same documents multiple times. Additionally, having adequate technology would ensure that agencies can respond to requests to provide information in machine-readable or electronic form, as required by ORS 192.324(3).

Providing adequate funding also lessens the necessity to charge high fees for public records requests. When public bodies are not adequately funded, then requesters are expected to make up the difference to cover the costs of public records requests. Indeed, many public bodies cite inadequate funding as the reason for declining to ever provide public interest fee waivers/reductions.

Public bodies' ability to procure necessary technology and staff depends on buy-in from leadership. Leadership buy-in would also signal to all public body employees that public records requests are not merely an afterthought, but are, instead, a primary part of every public body's mission.

9. Broad Requests and Increasing Volumes of Records

One of the most frequent public records challenges cited by public bodies is the expanding volume of records and the increasing number of frequent or broad requests. Requests for "all records related to," "all communications related to," or "all emails related to" are increasingly creating delays and backlogs. Based on conversations with both public bodies and requesters, the Advocate has concluded that there are several potential remedies to address this problem:

First, public bodies should create more opportunities for communication before requests are filed and ensure that public records requesters can contact a knowledgeable official within the public body who is dedicated to working with requesters to find ways to narrow requests. Requesters have noted that if they sense recalcitrance or a lack of cooperation by public bodies, they are more likely to distrust the public bodies and file broader requests to ensure that the public body cannot leave anything out.

Second, public bodies should manage expectations and encourage narrowing of requests by advising requesters of potential fees and delays created by broad requests. This should be done as early as possible, and preferably be noted within the public body's public records policy.

Public bodies should also institute policies that incentivize narrow, well-crafted requests, including a policy (now adopted by many state agencies) to presumptively waive fees for the first thirty minutes of time. Other alternatives include fee reductions for narrow requests or fee reductions for making a reasonable effort to narrow a request.

Public bodies should also proactively reach out, via phone, to requesters who submit broad requests to suggest potential narrowing ideas. Public bodies are often in a better position to know what information they have and how it is stored and, thus, to suggest potential narrowing. The

receipt of a request, the delivery of an estimated date of completion, and the delivery of a fee estimate are all good opportunities for proactive communication. Many requesters do not realize that the request they are submitting could implicate hundreds or even thousands of pages of documents. Once they understand this, they may be willing to narrow the request to save time and money.

Lastly, the Advocate should continue to conduct public trainings with an emphasis on how to properly research and draft a narrow, well-targeted request.

10. Future Reforms

It is the hope of the Advocate that the Public Records Advisory Council will be able to tackle some of these systemic problems in the future. But the Council ability to create meaningful reform relies on the passage of LC 590. If the Council is permitted to expire, so too will the opportunity for public records reform and the gains realized by the 2017 legislative changes.

IV. Future Goals of the Public Records Advisory Council and the Office of the Public Records Advocate

The Council intends 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 further media resources, such as a blog, to continue to 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 issue quality opinions.

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 statutory 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 Council and the Office intend to continue the important work of improving transparency and the functioning of public records laws in the State of Oregon.

Since its first meeting in October 2017, the Public Records Advisory 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;
4. Provided feedback, oversight and guidance to the Public Records Advocate; and
5. Proposed two important pieces of legislation.

Since its inception in April 2018, the Office of the Public Records Advocate has:

1. Conducted 38 trainings, reaching nearly 1300 individuals;
2. Has handled 90 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 inaugural survey of state and select local public bodies as soon as they are compiled and ready for dissemination.

Appendix A

Section 10, Chapter 728, Oregon Laws 2017

(Temporary provisions relating to
Public Records Advisory Council)

Note: Sections 8, 9, 10, 13 and 15, chapter 728, Oregon Laws 2017, provide

Sec. 8. Public Records Advisory Council. (1) The Public Records Advisory Council is created.

(2) The Public Records Advisory Council consists of:

- (a) The Secretary of State or a designee of the Secretary of State;
 - (b) The Attorney General or a designee of the Attorney General;
 - (c) The Director of the Oregon Department of Administrative Services or a designee of the director;
 - (d) A representative of the news media who is a member in good standing of a professional journalism association and who is appointed by the Governor;
 - (e) Two additional representatives of the news media who are appointed by the Governor;
 - (f) A representative of the cities of this state who is appointed by the Governor;
 - (g) A representative of the counties of this state who is appointed by the Governor;
 - (h) A representative of the special districts of this state who is appointed by the Governor;
 - (i) A representative of the public sector workforce who is appointed by the Governor;
 - (j) A member of the public who is appointed by the Governor;
 - (k) A Senator who is appointed by the President of the Senate and who serves as an ex officio nonvoting member;
 - (L) A Representative who is appointed by the Speaker of the House of Representatives and who serves as an ex officio nonvoting member; and
 - (m) Except as provided in subsection (3) of this section, the Public Records Advocate, who shall serve as chair of the council.
- (3) At any time when the office of Public Records Advocate is vacant:
- (a) The Secretary of State or a designee of the Secretary of State shall serve as the acting chair of the Public Records Advisory Council;
 - (b) The council shall convene at the time and place designated by the acting chair but within 30 days of the vacancy of the office of Public Records Advocate;
 - (c) The council shall take up only the question of the nomination of three qualified individuals for the Governor to consider for appointment under section 1 of this 2017 Act [192.461] as Public Records Advocate; and
 - (d) The individual who had vacated the office of Public Records Advocate may participate in deliberations and vote on the slate of nominees unless the individual vacated the office for reasons described in section 1 (4) of this 2017 Act.
- (4) The appointment of a member of the council described in subsection (2)(d) to (j) of this section is subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.
- (5) A member of the council described in subsection (2)(d), (e) or (j) of this section is entitled to compensation and expenses as provided in ORS 292.495.
- (6) A majority of the members of the council constitutes a quorum for the transaction of business.
- (7) The council shall meet at least once every six months. The council also may meet at other

times and places specified by the call of the chair or of a majority of the members of the council.

- (8) All public bodies, as defined in ORS 192.410 [renumbered 192.311], shall assist the council in the performance of its duties and, to the extent permitted by laws relating to confidentiality, furnish such information, including public records, and advice as the members of the council consider necessary to perform their duties. [2017 c.728 §8]

Sec. 9. Council nominations for Public Records Advocate. Notwithstanding section 8 (3) of this 2017 Act, the acting chair of the Public Records Advisory Council as determined under section 8 (3) of this 2017 Act shall convene the council within 10 business days following the Senate confirmation of all members of the council for the purpose of nominating individuals for the Governor to consider for appointment as Public Records Advocate under section 1 of this 2017 Act [192.461]. The council shall take up only the question of the nomination of qualified individuals for the office of Public Records Advocate. [2017 c.728 §9]

Sec. 10. Duties of Public Records Advisory Council; rules. (1) The Public Records Advisory Council created under section 8 of this 2017 Act shall periodically perform all of the following:

(a) Survey state agency and other public body practices and procedures for:

(A) 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 under ORS 192.440 [renumbered 192.324]; and

(C) Determining and applying exemptions from required disclosure of public records.

(b) Examine practices similar to those described in paragraph (a) of this subsection in other jurisdictions.

(c) Identify inefficiencies and inconsistencies in application of the public records law that impede transparency in public process and government.

(d) Make 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.

(e) Make recommendations on the role of the Public Records Advocate as facilitator in disputes between custodians of public records and public record requesters.

- (2) No later than December 1 of each even-numbered year, the council shall submit to the Governor, and to the Legislative Assembly in the manner provided by ORS 192.245, a report that describes the findings of the council since the council's last report. The report may include recommendations for legislation.

- (3) The council or the Public Records Advocate may prepare reports and studies more frequently than required under subsection (2) of this section.

(4) The council may adopt rules governing the operations of the office of the Public Records Advocate, including but not limited to rules establishing procedures for the conduct of facilitated dispute resolution under section 2 of this 2017 Act [192.464]. The council shall consider efficiencies and the preference for a policy of transparency and openness in government in this state in adopting rules under this subsection. [2017 c.728 §10]

Sec. 13. Sections 8, 10 and 11 of this 2017 Act are added to and made a part of ORS chapter 192. [2017 c.728 §13]

Sec. 15. Sections 8, 9 and 10 of this 2017 Act are repealed on January 1, 2021. [2017 c.728 §15]

Appendix B

D R A F T

SUMMARY

Eliminates sunset date of Public Records Advisory Council.

A BILL FOR AN ACT

1
2 Relating to the Public Records Advisory Council; creating new provisions;
3 amending ORS 192.461 and section 8, chapter 728, Oregon Laws 2017; and
4 repealing sections 15 and 17, chapter 728, Oregon Laws 2017.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1.** ORS 192.461, as amended by section 16, chapter 728, Oregon
7 Laws 2017, is amended to read:

8 192.461. (1) The office of the Public Records Advocate is created.

9 (2) The Public Records Advocate shall be appointed by the Governor **from**
10 **among a panel of three qualified individuals nominated by the Public**
11 **Records Advisory Council under section 8, chapter 728, Oregon Laws**
12 **2017**, and shall be confirmed by the Senate in the manner prescribed in ORS
13 171.562 and 171.565.

14 (3) The Public Records Advocate shall be a member in good standing of
15 the Oregon State Bar.

16 (4) The term of office of the Public Records Advocate shall be four years,
17 except that the advocate may be removed for cause by the Governor **or upon**
18 **motion of the Public Records Advisory Council with the consent of the**
19 **Governor**. A determination to remove for cause may be appealed as a con-
20 tested case proceeding under ORS chapter 183.

21 (5) The advocate may be reappointed to consecutive terms.

1 (6) The Public Records Advocate is in the unclassified service.

2 (7) The Public Records Advocate may hire one or more deputy advocates
3 or other professional staff to assist in performing the duties assigned to the
4 Public Records Advocate.

5 (8)(a) The State Archivist may furnish office facilities and provide ad-
6 ministrative support to the Public Records Advocate.

7 (b) If the State Archivist declines to furnish office facilities and provide
8 administrative support to the Public Records Advocate, the Oregon Depart-
9 ment of Administrative Services shall furnish office facilities and provide
10 administrative support to the advocate.

11 **SECTION 2.** Section 8, chapter 728, Oregon Laws 2017, is amended to
12 read:

13 **Sec. 8.** (1) The Public Records Advisory Council is created.

14 (2) The Public Records Advisory Council consists of:

15 (a) The Secretary of State or a designee of the Secretary of State;

16 (b) The Attorney General or a designee of the Attorney General;

17 (c) The Director of the Oregon Department of Administrative Services or
18 a designee of the director;

19 (d) A representative of the news media who is a member in good standing
20 of a professional journalism association and who is appointed by the Gover-
21 nor;

22 (e) Two additional representatives of the news media who are appointed
23 by the Governor;

24 (f) A representative of the cities of this state who is appointed by the
25 Governor;

26 (g) A representative of the counties of this state who is appointed by the
27 Governor;

28 (h) A representative of the special districts of this state who is appointed
29 by the Governor;

30 (i) A representative of the public sector workforce who is appointed by
31 the Governor;

1 (j) A member of the public who is appointed by the Governor;

2 (k) A Senator who is appointed by the President of the Senate and who
3 serves as an ex officio nonvoting member;

4 (L) A Representative who is appointed by the Speaker of the House of
5 Representatives and who serves as an ex officio nonvoting member; and

6 (m) Except as provided in subsection (3) of this section, the Public Re-
7 cords Advocate, who shall serve as chair of the council.

8 (3) At any time when the office of Public Records Advocate is vacant:

9 (a) The Secretary of State or a designee of the Secretary of State shall
10 serve as the acting chair of the Public Records Advisory Council;

11 (b) The council shall convene at the time and place designated by the
12 acting chair but within 30 days of the vacancy of the office of Public Records
13 Advocate;

14 (c) The council shall take up only the question of the nomination of three
15 qualified individuals for the Governor to consider for appointment under
16 *[section 1 of this 2017 Act]* **ORS 192.461** as Public Records Advocate; and

17 (d) The individual who had vacated the office of Public Records Advocate
18 may participate in deliberations and vote on the slate of nominees unless the
19 individual vacated the office for reasons described in *[section 1 (4) of this*
20 *2017 Act]* **ORS 192.461 (4)**.

21 (4) The appointment of a member of the council described in subsection
22 (2)(d) to (j) of this section is subject to confirmation by the Senate in the
23 manner prescribed in ORS 171.562 and 171.565.

24 (5) A member of the council described in subsection (2)(d), (e) or (j) of this
25 section is entitled to compensation and expenses as provided in ORS 292.495.

26 **(6) The members of the council described in subsection (2)(d) to (L)**
27 **shall each serve two-year terms and may be reappointed to successive**
28 **terms.**

29 *[(6)]* **(7)** A majority of the **voting** members of the council constitutes a
30 quorum for the transaction of business.

31 *[(7)]* **(8)** The council shall meet at least once every six months. The

1 council also may meet at other times and places specified by the call of the
2 chair or of a majority of the members of the council.

3 [(8)] (9) All public bodies, as defined in ORS [192.410] **192.311**, shall assist
4 the council in the performance of its duties and, to the extent permitted by
5 laws relating to confidentiality, furnish such information, including public
6 records, and advice as the members of the council consider necessary to
7 perform their duties.

8 **SECTION 3. Notwithstanding section 8 (6), chapter 728, Oregon**
9 **Laws 2017:**

10 (1) **The following members of the Public Records Advisory Council**
11 **shall serve a three-year term that commenced on January 1, 2018:**

12 (a) **The member appointed under section 8 (2)(d), chapter 728,**
13 **Oregon Laws 2017.**

14 (b) **One of the members appointed under section 8 (2)(e), chapter**
15 **728, Oregon Laws 2017.**

16 (c) **The member appointed under section 8 (2)(g), chapter 728,**
17 **Oregon Laws 2017.**

18 (d) **The member appointed under section 8 (2)(i), chapter 728,**
19 **Oregon Laws 2017.**

20 (e) **The member appointed under section 8 (2)(L), chapter 728,**
21 **Oregon Laws 2017.**

22 (2) **The following members of the council shall serve a four-year**
23 **term that commenced on January 1, 2018:**

24 (a) **One of the members appointed under section 8 (2)(e), chapter**
25 **728, Oregon Laws 2017.**

26 (b) **The member appointed under section 8 (2)(f), chapter 728,**
27 **Oregon Laws 2017.**

28 (c) **The member appointed under section 8 (2)(h), chapter 728,**
29 **Oregon Laws 2017.**

30 (d) **The member appointed under section 8 (2)(j), chapter 728,**
31 **Oregon Laws 2017.**

1 (e) The member appointed under section 8 (2)(k), chapter 728,
2 Oregon Laws 2017.

3 SECTION 4. Sections 15 and 17, chapter 728, Oregon Laws 2017, are
4 repealed.

5

Appendix C

D R A F T

SUMMARY

Requires each state agency to report to Attorney General, Public Records Advocate and public records subcommittee of Legislative Counsel Committee on number of public records requests received during preceding year, and number of those requests still outstanding after specified periods of time. Requires each state agency to include in report specified information on fee waivers and reductions.

A BILL FOR AN ACT

Relating to state agency accountability for public records law compliance.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS 192.311 to 192.478.

SECTION 2. (1) On or before March 1 of each year, each state agency shall submit to the Attorney General, the Public Records Advocate and the public records subcommittee of the Legislative Counsel Committee a report for the preceding calendar year that includes:

(a) The number of requests for records received by the agency in accordance with the public records policy applicable to the agency;

(b) 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;

(c) 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

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **policy; and**

2 **(d) The number of requests for a fee waiver or reduction that the**
3 **agency has granted and the number of requests for a fee waiver or**
4 **reduction that the agency has denied.**

5 **(2) As used in this section, “state agency” does not include the**
6 **legislative branch or the judicial branch.**

7 **SECTION 3. Reports described in section 2 of this 2019 Act shall first**
8 **be filed on or before March 1, 2021, for reporting information for the**
9 **2020 calendar year.**

10

Appendix D

Date	Government Body	Nature of Dispute	Assigned to	Actions Taken	Resolution	Close Date	Notes
4/25/2018	Circuit Court of Astoria	Requester wanted a copy of a file related to domestic abuse proceedings	GPM	Called Judicial Dept and was referred to Circuit Court. Spoke with clerk, she listed several possible cases. Checked with R and she identified 1998 assault charges case. Spoke with clerk who said the R could contact the court and ask for the transcript.	Referred R to the Circuit Court Case No. 98-6206.	5/17/2018	
4/25/2018	DHS	Requester had filed a request related to a benefits fraud investigation. She had appealed the agency's refusal to disclose to the AG. AG upheld agency's decision. Also ruled that the information couldn't be shared directly with the insurance bureau.	GPM	Called DOJ and DHS. Discussed possibility of information being sent directly to Consumer Business Affairs. DHS took matter to DOJ/AG. AG found that information could not be shared.	Informed R that information cannot be shared. Advised her of her right to judicial review.	5/21/2018	Follow-up with DOJ regarding cases that arise after DOJ/AG review
4/29/2018	Josephine County Commissioners	Media requester wanted emails regarding marijuana. County redacted names of constituents who emailed commissioners regarding marijuana legalization. C objected to redactions	GPM	Called the County attorney to discuss the redactions. Conducted legal research. Found that redactions were reasonable.	Informed C that redactions were likely legally reasonable, offered to assist with finding other ways to get similar information.	5/17/2018	
5/10/2018		Requester wanted to know where to find a copy of recorded easement	GPM	Researched question	Informed C that this was not a public records question, per se, but also informed him that the information would likely be with the county recorder	5/10/2018	
5/31/2018	Oregon Emergency Management	Phone call from government official regarding handling of request re: Salem Water Advisory	GPM	Researched question and responded to official	Official advised of public record law.	5/30/2018	
5/31/2018	ODOT	Agency wanted advice regarding how to count business days (per statutory requirement to acknowledge within 5 business days	GPM	Reached out to DOJ, researched question independently.	Informed A that counting should start the day the request is received, unless it is received after COB (then start the following day)	6/7/2018	
6/5/2018	City of Albany	Agency wanted advice regarding policy of partial waiver for city residents	GPM	Researched question	Informed A that this should be acceptable, but should be framed as a waiver in the public interest	6/12/2018	
6/6/2018	Bureau of Development Services, Portland	Requesters want a copy of the current city code	GPM	Contacted city. Obtained correct contact and connected requester with that person	City contact provided requester with requested information.	7/24/2018	
6/6/2018	City of Jacksonville	Requester wanted documents related to public meetings that were attended by a particular member of the press/public	GPM	Explained to requester that open meetings laws do not require that government bodies taken attendance of members of the public or press. Suggested that he ask for minutes of specific meetings, or a specific time frame	Advised requester of relevant legal requirements and ways that he could tailor request to obtain some of the information he wanted.	6/18/2018	
6/7/2018	DHS	Media Requester wants records related to child abuse related deaths. Agency is charging \$8,800 in fees. R appealed to agency.	GPM	Reached out to DHS to check on status of reporter's appeal (spoke with Christy and Caroline). Awaiting response from them. Checkin Monday	Agency promised to disclose documents in rolling format with fee waiver.	6/21/2018	
6/7/2018	OSP Medical Examiner	law office submitted request to medical examiner for an autopsy report.	GPM	Requested additional supporting documentation from R	Request was withdrawn the following Monday before action was taken.	6/11/2018	

6/8/2017	Parole Board/DOC	Inmate requester was being charged ~14,000 in fees.	GPM	Reached out to requesters lawyer, who said that requester wanted to hold off because agency had since offered to lower fees. In August, attorney reached back out renewing request for assistance. Followed up with Parole Board. Await response. Followed up again (9/21/18)			
6/9/2018	Silver Falls SD	Requester asked for copy of statement of SD official and for supporting documentation. Made fee waiver request which was denied	GPM	Contacted SD Superintendent	Discussed with school district. Reported reasons for fee waiver denial and denial. Advised requester of public records law.	7/19/2018	
6/11/2018	Polk County DA	Media Requester wanted records from Sheriff's Office. Request was denied. Appealed to DA but DA never responded	GPM	Followed up with DA and pressed for a decision date. Offered to follow up further, reporter decided to wait.	DA responded. Requester was satisfied.	6/28/2018	
6/13/2018		Caller asked a question regarding businesses and information security	GPM	Question did not relate to public records law.	Referred caller to DOJ	6/13/2018	
6/13/2018	DPSST	Media Requester wanted informaton regarding exemptions that apply to personnel discipline.	GPM	Researched question and gave requester info on relevant exemptions, informed requester of public interest balancing test and advised about potential avenues of argument. Sent relevant statutory provisions and case law.	Requester informed of relevant law. Requester was satisfied.	6/29/2018	
6/14/2018	DOJ/Bd of Psychology	Media Requester questioned agency fee assessment, specifically time spent on both staff and DOJ review of documents	GPM	Researched question and replied to requester. Discussed reasonableness of fees and made potential recommendations for fee waiver arguments.	Requester informed of relevant law. Requester was satisfied.	6/29/2018	
6/18/2018	Multnomah Co. Animal Services	Requester contacted Advocate at her personal email address regarding possible mediation	GPM	Advised requester that this was a personal email address and forwarded email to work email. Asked requester to fill out online form and submit relevant documents	Requester never responded. Case closed pending requester submission.	6/18/2018	
6/28/2018	City of Albany	Government official had question regarding record retention	GPM	Referred question to records retention staff	Gave official contact info of records retention staff, forwarded question to relevant staff	7/6/2018	
7/5/2018	OLCC	Requester wanted contract between Oregon and company. OLCC said it didn't have record but failed to provide requester with info on what Dept would	GPM	Called OLCC. Followed up to identify appropriate agency.	Identified appropriate contact and sent to requester. Requester satisfied.	7/18/2018	
7/6/2018	Legislative Counsel	Requester wanted mediation with office of Legislative Counsel regarding years old request	GPM	Advised requester of office policy to only mediate requests that are less than a year old. Requested relevant documents, including request and agency response. When requester failed to provide (and failed to fill out online form), advised requester that mediation would not be offered if he did not comply with office policy	Closed request for mediation pending necessary information from requester	7/6/2018	
7/10/2018	OSU	Requester had a question about exemptions related to police misconduct investigations	GPM	Researched and provided requester with relevant information regarding exemptions, including information about the public interest balancing test.	Requester satisfied with response.	7/19/2018	
7/19/2018	Unnamed State Board	Requester had complaint about privacy violation by state board	GPM		Informed requester that this was not within the purview of the Office of the Public Records Advocate	7/20/2018	

8/2/2018	DHS	Requester encountered delay on request and wanted assistance	GPM		Agency followed up on its own. Agency produced documents.		
8/7/2018	DHS	Agency asked question regarding contract and solicitation under public records law	GPM	Followed up with agency to get more information	agency decided to hold off on the question. Agency will follow up if it needs further assistance	8/7/2018	
8/9/2018	DHS	Requester wants to inspect his "file" at DHS	GPM	Spoke with DHS, OHA, and the Governor's Advocacy office. GAO said that first request had been fulfilled, but another was outstanding	Requester stated that he wanted proof from the agency that it had received his request. Reached out to agency and obtained this documentation. Also put requester in touch with relevant GAO contact.	9/5/2018	
8/13/2018	OPA	Agency official had question regarding email retention	GPM		referred to and answered by records retention staff	8/14/2018	
8/14/2018	City of Portland	Media requester wanted to get more information about why the city was claiming certain exemptions	GPM	Called city official and got more information about why city is claiming exemptions	Advised requester of city's explanation and his appeal rights.	8/20/2018	
8/14/2018			GPM	Asked for associated documents	Awaiting response from requester. Requester never responded. Case closed.	9/14/2018	
8/15/2018	State Fair	Requester wanted contact for State Fair public records request submission	GPM	State Fair reached out to requester	Request response sent to requester.	8/21/2018	
8/15/2018	PSRB	Requester wanted exhibit lists from agency. Agency was citing 7 weeks and \$1200 to fulfill request. Requester also asked for fee waiver.	GPM	Spoke with requester and agency. Agency explained processing issues and suggested narrowing technique. Took narrowing technique to requester.	Took narrowing request to requester and explained appeal rights and potential review by AG. Requester agreed to narrowing and agency agreed to rolling production of documents.	8/23/2018	
8/16/2018	Polk County & Oregon State Bar	Requester facing issue with fees from OSB	GPM	Arranged call with requester. Follow up with OSB and Polk Co. Touched base with AF at DOJ who is also processing appeal. Agreed to reach out to OSB. Reached out to OSB.	Reached out to agency and then to requester to suggest narrowing and focusing request. Awaiting response from requester.		
8/16/2018	City of Portland	Requester had issue related to fees and database searches	GPM	Followed up with requester to ask for relevant documents	Informed requester that because he had already pursued appeal rights (pending), it might not be useful for me to attempt dispute resolution at this time.	8/27/2018	
8/16/2018	ODFW	Media requester asked for assistance getting estimated date of completion and adjudication on fee reduction/waiver from agency	GPM	Reached out to agency and got estimated date of completion and preliminary determination regarding fee reduction/waiver. Requester also asked for search dates to continue until search is completed. Emailed agency to follow up the communicated agency response to requester.	Emailed requester will new info re: searches. Requester satisfied with outcome	8/23/2018	
8/17/2018	City of Salem	Media requester being denied fee waiver/reduction by City	GPM	Contacted city, was referred to City attorney. Left message. City Attorney agreed to waive part of the fees	Informed requester of city attorney decision. Requester satisfied.	8/24/2018	
8/17/2018		Requester associated with 8/16/18 request for assistance had related complaint.	GPM	Followed up with requester to ask for relevant documents. This requester/request is related to the Stephanie Volin request.	Combined with related 8/16/18 request. Reached out to agency, reached out to requester to suggest narrowing/focusing request. Await response from requester.		
8/22/2018	Portland Police	Requester wanted advice about how to make request to Portland Police	GPM	Spoke with requester on the phone	Advised requester of rights under public records law	8/22/2018	
8/23/2018	City of Salem	Requester made three requests to the city, was charged a large amount of fees.	GPM	Followed up with requester, left message, 9/28/18	Request closed because of lack of response from requester	10/28/2018	

8/27/2018	City of Molalla	Requester complained that city has a form that says it doesn't waive/reduce fees. Requester wants PRA to look at Mollalla's public request form regarding fees and reach out to the regarding that.	GPM	Called Dan Huff (503-829-6855) City Manager, left message, followed up. Schedule time for call.			
8/27/2018	Irrigation Dist.	Media requester was concerned because irrigation district had said emails were unavailable because they had changed systems. Requester asked if this was permissible	GPM		Informed requester that district still has obligation to retain public records, even if it has transitioned to a new email system	8/27/2018	
8/27/2018	Ontario City Councilor	Media requester wanted to know if city councilors are subject to public records law	GPM	Reviewed statute, reached out to other public records experts to attempt to locate case law. Conducted research.	Informed requester that city councilors are subject to public records law	8/27/2018	
8/28/2018	Legislative Counsel	Requester felt she was being overcharged and records were not being disclosed	GPM	Spoke with legislative counsel's office to clarify history of request.	Informed requester of several details regarding request processing and directed her to website where much of the information she was seeking was posted	9/10/2018	
8/31/2018	Portland Independent Police Review Board	Media requester complained that IPR is denying request for complaints from recent protest.	GPM	Spoke with requester, researched relevant exemptions	Advised requester of relevant exemptions, discussed potential avenues with requester.	9/7/2018	
9/3/2018	DHS	Request made pursuant to Privacy Act (5 U.S.C. 552) to DHS	GPM		Informed requester that this office does not assist with Privacy Act requests and recommended that he seek an attorney	9/4/2018	
9/5/2018	Douglas County District Attorney	Requester had issue with County records response	TMA	Followed up with requester to get more information. LM CB. Requestor CB to discuss his request. Called Tamara Osborne, Douglas County PIO re: Mr. Geddes' outstanding requests. LM CB. TO CB. CB TO. Spoke w/ TO re: DG request. Spoke w/ DG - he wants to follow up w/ TO to see if she will affirm that all docs delivered to date & to provide names of other agencies that might have docs of interest.	Informed requestor of current state of his request, future disclosure of geological report, and steps he could take w/ Douglas County to answer his two outstanding questions. Upon receipt of report, informed requestor additional steps he may take as he was dissatisfied with the report received, believing it to be incomplete.	10/4/2018	
9/10/2018	ODOT	Requester wanted information from ODOT, unclear if request has been filed or what the specific issues are	GPM	Followed up with requester to get more information	Requester decided to pursue another avenue	9/11/2018	
9/12/2018	Federal	Requester wanted information about mortgage bailout programs, likely held by Federal agency	GPM	IDed potential Federal agency	Emailed requester and let him know this was not within PRA's authority (because it was a FOIA request), directed him to proper Federal agency FOIA liaison	9/18/2018	
9/13/2018	State Lands	requester wants information regarding the agency's investigation of his alleged violations.	GPM	Followed up with Andy Foltz (requester has appeal pending), at Andy's recommendation called Matt Devore at DOJ. Follow up.			
9/15/2018	Elected official	Requester had question about retention records of elected officials	GPM	Forwarded email to records manager	Records manager replied to requester	9/17/2018	
9/20/2018	ODFW	Media Requester wanted an estimated date of completion from agency, as well as an explanation of why records were being withheld.	GPM	Reached out to agency to discuss both issues. Received relevant information	Informed requester that exemptions were not being cited and request would be fulfilled the following week.	9/21/2018	

9/24/2018	ODFW	Prior media requester had followup question (with new issue) related to ODFW request. This time issue was delay in response, particularly from ODFW commissioners	GPM	reached out to agency to discuss timing, inquire about commissioners' non response.	Informed requester of status of request.	9/28/2018	
9/25/2018	State Library	Question regarding libraries and privacy	GPM		Informed requester that this was outside of the office's purview	9/26/2018	
9/26/2018	Northern Wasco Co. PUD	Government official had questions regarding public records policy - include exemption information? Where do appeals go?	GPM	Looked up relevant statutory provisions	Replied and provided government official with information about statutory requirements for policies, including requirement to include exemption information and appeal information.	10/1/2018	
9/26/2018	City of Newberg	Government official had questions regarding whether or not to include appeal information in response letter	GPM	Looked up relevant statutory provisions	Responded and informed government official of relevant statutory requirements regarding appeal rights	10/2/2018	
9/28/2018	City of Portland	Requester wanted to know what exemptions were being applied to withheld documents	GPM	Reached out to city to discuss. Got information about which exemptions were being applied	Informed requester of exemptions applied and conveyed city's reasoning for using exemptions	10/1/2018	
9/30/2018	City of Portland	Requester has unresolved 2016 request re: Portlandia statue.	TMA	Reviewed documents sent by BH. TC w/ BH to discuss request. He needed to finish conversation later due to prior obligations. BH will provide City's responses and his follow up questions for assistance getting additional answers from the City.			
10/4/2018	Marion Co. Sheriff	Media requester had a question regarding exemptions related to juveniles	GPM	Discussed issues with requester	Discussed issues with requester, including appeal rights and exemption	10/4/2018	
10/9/2018	Josephine County Commissioners	Media requestor. Elected County Counsel claims to be custodian of records and, as such, any appeal must go to Circuit Court	TMA	Researched question and spoke with requester to provide answer	Informed requestor of potential options to pursue records or appeal from County Counsel's decision. Requestor will follow up if she has further questions		
10/16/2018	Medical Examiner	Media requester seeking information from medical examiner. Examiner cited exemptions (but not specific ones)	GPM	Requester asked to hold off on follow-up. Requester then later checked back in and asked for Advocate to follow up with medical examiner. Follow up.			
10/16/2018	Oregon DOJ	Media requester had question about documents from Dept of Justice related to the agency's prior investigation of a company and currently subject to litigation	GPM	Called requester and discussed matter with him. Discussed alternative search methods to get at information, including FOIA and other state open government laws	Informed requester of exemptions and other search options	10/31/2018	
10/16/2018	Multnomah County	Requestor is seeking info from the county about a concrete culvert build in 1925 and eventually transferred to ODOT jurisdiction. ODOT has minimal information and said anything else would be with county. County has told requestor there is no index for documents from that era and no public access to it.	TMA	I advised requestor - who has not yet made a formal public records request to the county - to follow up with one as the county would be required to provide the information if they still possessed it. I also offered to assist in formulating the request or speaking with the county to clarify there stance on the information.	Requestor will follow up with the County and contact our office if he needs further assistance.	10/16/2018	
10/18/2018	Marion County	Media requestor seeking settlement agreement with former County employee. County (and DA appeal) cited ORS 192.345(12) as reason for not releasing.		Contacted requestor and discussed different ways to request disclosure of documents with County	Requestor will follow up with County and contact our office if he needs further assistance.	10/19/2018	

10/19/2018	Washington Co. Sheriff	Media requester seeking information regarding exemptions related to juveniles.	GPM	Contacted requester and discussed request. Conducted legal research to answer questions about exemptions and appeal rights	Advised requester of appeal rights and exemption details	10/24/2018	
10/22/2018	University of Oregon	Requester had appealed and prevailed before DA. University was now planning to sue. Requester and University wanted to explore mediation options in lieu of litigation	GPM	Discussed with both parties, reached out to others with knowledge of ORS 192, conducted research to evaluate mediation possibilities.	Informed both parties that the Advocate can offer advice and informal dispute resolution of both parties are interested. Parties indicated that they may be able to reach an agreement outside. Await update from parties.		
10/24/2018	University of Oregon	University reached out to ask question related to mediation services between university and media requester (related to 10/22/18 request for assistance)	GPM	Discussed with both parties, reached out to others with knowledge of ORS 192, conducted research to evaluate mediation possibilities.	Informed both parties that the Advocate can offer advice and informal dispute resolution of both parties are interested. Parties indicated that they may be able to reach an agreement outside. Await update from parties.		
10/26/2018	School	Media requestor seeking documents related to sudden resignation of local principle denied due to personnel record exemption	TMA				
10/26/2018	Pain Management Board	Requester had a public meetings issue, related to record retention of audio recordings of board meetings (and associated omissions from minutes)	GPM	Reach out to board to discuss.			
10/26/2018	Redistricting Reform Task Force	Member of the public had a question about the task force membership	GPM		Informed requester that the task force and its membership was not within the Advocate's statutory purview.	11/5/2018	
10/27/2018	Representative Sherry Springer	Unnamed caller left message wanting assistance with an ethics complaint about an elected official	GPM		Called caller back and informed her that this was not within my office's purview	11/5/2018	
10/29/2018	PSRB	Agency called with question regarding board member emails	GPM	Check with State Archivist about policy regarding board members using personal email addresses for gov't business	Informed agency that state email addresses should be assigned to board members and that personal email addresses should not be used.	11/5/2018	
10/30/2018	Marion County	DA called to ask a question about appeal rights on requests sent to elected officials	GPM	Researched question and replied to DA regarding appeal venues for public records requests to elected officials		10/31/2018	
10/30/2018	General	Requester had question about exemption related to concealed carry permits	GPM	Researched exemption	Sent requester a link to the relevant statutory exemption.	10/31/2018	
10/31/2018	St. Helens Municiple Court	Gov employee reached out with question regarding public records request	GPM	Reached out to requester to schedule phone call	Discussed with requester how to handle broad, multiprong request.	11/6/2018	
10/31/2018	DHS	agency has question regarding records retention and voicemails.	GPM	Referred question to records retention staff		11/5/2018	
11/5/2018	Eugene Police Department	Requester had issue with Police Department's response to public records request	TMA				
11/8/2018	Washington Co.	Question regarding fees for public records	GPM		Discussed issue with gov org, made some recommendations	11/19/2018	
11/8/2018	Marion Co. Sheriff	Question by requester regarding Marion Co. Sheriff	GPM	Researched relevant legal provisions	Advised requester of appeal rights and exemption details	11/20/2018	
11/12/2018	Port of Coos Bay	Requester was unhappy about gov org's lack of response, but request was only mailed 14 days before	GPM		Informed requester of deadlines (15 business days) and offered to assist once deadline had run	11/13/2018	

11/12/2018	DOJ	Media requester had filed request, then third party company sued after DOJ agreed to release. Requester wanted information regarding how these sorts of lawsuits proceed	GPM	Spoke with requester, then called DOJ to get more information about third party company lawsuits in public records law.	Communicated to requester what DOJ had conveyed, recommended the requester obtain an attorney in order to respond to the lawsuit	11/13/2018	
11/12/2018	City of Salem	City was charging \$15 for a single piece of paper and a flat up front fee for police reports. Requester wanted to know if this was permissible and wanted to know if first 30 minutes free policy applied to localities/cities	GPM		Emailed requester to answer question regarding flat fees (this is legally questionable under the law), informed him that 30 minutes free policy is a DAS policy that applies to state agencies only	11/13/2018	
11/13/2018	Washington Co./DHS	Requester wants a document, both gov bodies are claiming that it is in the custody of the other	GPM	Called relevant public body and left message. Await response. Follow up.			
11/16/2018	DHS Vital Records	Requester was seeking a death certificate and did not know where to look	GPM		Referred requester to DHS Vital Records website with info regarding requests	11/16/2018	
11/19/2018	Happy Valley	Government official seeking advice on when to grant fee waiver/reduction	GPM		Discussed factors to weigh when considering fee waiver/reduction	11/20/2018	
11/20/2018	Lane County	Requester concerned about potentially excessive fees	GPM	Reached out to requester to schedule phone call			
11/21/2018	Governor's Office	Requester was having a difficult time getting information in response to his request	GPM	Reached out to Governor's office	Governor's office has provided a partial response while it searches for additional records	11/26/2018	
11/26/2018	Portland Police	Requester had questions regarding the criminal investigatory exemption	TMA				
11/26/2018	Secretary of State	Government official had question regarding exemptions related to collective bargaining	TMA				
11/27/2018	FOIA	student had question regarding FOIA Exemption	GPM		Referred to attorney with knowledge of relevant exemption	11/28/2018	
11/28/2018	City of Portland	Media requester with question regarding fees - can public bodies split fees between two requesters? Also question regarding fee waiver	GPM	Researched relevant legal provisions	Reported to requester that fee splitting seemed permissible, discussed fee waivers	11/27/2018	

Appendix E

Date	Location	Officials in Attendance	Attendees
5/11/2018	Salem	Military Department, OEM	8
6/5/2018	McMinnville	City of McMinnville, Dayton, Lafayette, Yamhill County	37
6/7/2018	Eugene	Lane County Transit District	8
6/11/2018	Salem	State Lands - all staff	60
6/14/2018	Newport	City of Newport	30
6/15/2018	Bend	Oregon District Attorneys Assn.	25
7/10/2018	Burns	Harney Co, Panoramic Access Special Road Dist.	13
7/11/2018	Vale	Malheur Co., Ontario, Vale, Hyssa	9
7/11/2018	Vale	Public	4
7/12/2018	Baker City	Cove, Baker Co., La Grande, Halfway, North Powder	5
7/13/2018	Pendleton	West Ex. Irrigation Dist., Umatill Co., Hermiston, DOC, Pendleton, Umatilla City, Ione-Lexington Cemetary Dist., Milton-Freewater	25
7/13/2018	The Dalles	Cascade Locks, Norcor, Dalles Irrigation Dist., Odell Sanitary Dst., Dalles, Dufur Recreation Dist., Hood River Co., Mid Columbia F&R, Columbia Gorge CC, Gilliam Co., Port of the Dalles, North Central Publi Health, Dufur, White River Health Dist., Wasco Co., DEQ	25
7/23/2018	DC	Federal Officials	150
7/24/2018	DC	Federal Officials	150
7/25/2018	DC	Federal Officials	150
7/26/2018	Bend	City of Bend, Deschutes Co., City of Sisters	12
7/26/2018	Crooked River Ranch	Public	15
7/27/2018	Redmond	City of Redmond Officials	3
7/31/2018	Salem	NW Pacific Power Association	20
8/9/2018	Salem	ODFW	15
8/16/2018	Portland	Oregon Public Broadcasting	25
9/12/2018	Bend	911 Operators Conference	20

9/20/2018	Portland	OAMR Conference (Municipal Recorders)	100
10/6/2018	Eugene	Society of Professional Journalists	40
10/8/2018	Milwaukie	Mixed local government	4
10/8/2018	Milwaukie	Public	15
10/11/2018	Portland	Mixed local government	30
10/15/2018	Salem	DHS	15
10/15/2018	Portland	Public	20
10/18/2018	Bend	School Public Relations Conference	30
10/31/2018	Eugene	University of Oregon	40
11/8/2018	Portland	Oregon School Boards Association	61
11/8/2018	Roseburg	Mixed local government	20
11/9/2018	Medford	Mixed local government	20
11/15/2018	Albany	Students, college officials, and the public - Linn Benton Community College	15
11/15/2016	Albany	Students and Public - Linn Benton Community College	3
11/16/2018	Eugene	Oregon County Counsel's Association	50
			1272