



Oregon Public Records Advisory Council
800 Summer St. NE
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November 29, 2018

To: Governor Kate Brown and the Oregon Legislative Assembly

From: The Oregon Public Records Advisory Council

Subject: Public Records Advisory Council Biennial Report Executive Summary

The Public Records Advisory Council is filing its first biennial report with Governor Kate Brown and the Legislative Assembly, as required by 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.

The Report describes the Council's work, including the hiring of the Public Records Advocate and plans to distribute a survey to public bodies regarding their public records processes and policies.

The Report also highlights the Council's two legislative proposals. The first proposed piece of legislation, LC 590, would make the Council permanent and create staggered terms for its members. Currently, the Council is set to expire in 2021. The continued existence of the Council is important because it performs several essential functions. The Council is specifically tasked with making recommendations for changes in law, policy and practice which improve transparency. Because the Council is composed of both requesters and government officials, it can draw on a variety of perspectives to craft more effective and balanced legislative proposals and policy reforms that serve all Oregonians. The Council also oversees the Office of the Public Records Advocate, offers advice and feedback on the Office's work, and adopts rules governing the operations of the Office of the Public Records Advocate. Without the Council, the reforms envisioned in the 2017 changes to Oregon's public records law would be stymied.

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 report how many requests it has received, how many of those requests were processed within the statute's fifteen business day timeline, how many requests were still outstanding after 60 days, and how many requests for fee waiver/reduction were granted and denied. Tracking this data will inform the Governor, Legislature, Public Records Advisory Council and the Office of the Public Records Advocate 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, will create accountability for state agencies, and will incentivize agencies to perform more efficiently and effectively, reducing costs for the agencies and improving customer service.

The Report also summarizes the work of the Office of the Public Records Advocate. Since the Office opened in April 2018, it has trained nearly 1300 people, including a variety of government employees and members of the public across the state. The Office has also handled 90 requests for assistance on a variety of different matters, including fees, timeliness, and exemptions. The Office has conducted

extensive public outreach, with a special emphasis on outreach to the media. The Advocate has met with representatives from news media around the state and has hosted five meet and greets for members of the media and the public. Additionally, in September 2018, the Office welcomed a deputy who has been assisting in these efforts.

In the course of this outreach and the processing, the Advocate has observed several systemic issues with Oregon's public records law. These observations are being included in the Report with the permission of the Council, but they are not made on the Council's behalf. The Report includes the following observations by the Advocate:

- *Fees:* Widespread problems with public records fee continue. Because of the ambiguous language in the public records statute, it is often difficult or impossible for public interest requesters – even members of the media – to receive public interest fee waivers or reductions. Additionally, many agencies have begun charging onerous flat rate fees. And if a requester feels they are being charged an unreasonable fee, there is little recourse but to file an expensive and time consuming lawsuit.
- *Records of Elected Officials:* Frequent problems related to the records of elected officials. Specifically, elected officials sometimes use a provision of the law to shield records that are not actually in their own custody. It is also problematic that requesters facing a denial of disclosure by an elected official have no recourse but to file a lawsuit.
- *Litigation:* Filing a lawsuit is especially burdensome because under Oregon's public records law, requesters often cannot obtain attorney fees even if they prevail in court, unless the agency's disclosure of documents was due to a court order. This allows agencies to avoid paying a requester's attorney fees by disclosing documents at any point before a court order is issued.
- *Exemptions:* Oregon's large number of exemptions are a continued source of confusion and animosity. Public interest balancing tests are often misapplied and the law's presumption of disclosure is sometimes ignored. Within the Report, the Advocate has identified particular exemptions which are a frequent source of frustration.
- *Delays:* Delays have also been a continued source of animosity. The timelines in the law are not firm enough to incentivize public bodies to improve performance.
- *Non-compliance:* There are no meaningful repercussions for poor performance or non-compliance with the public records law. Indeed, many public bodies are out of compliance with various aspects of the law, including the requirement that each public body have a publicly available public records policy.
- *Lack of Resources, Funding, and Leadership Buy-In:* In conversations with government officials, the Advocate has observed that many public bodies lack the resources, funding, and technology necessary to succeed. Public bodies face an increasing volume of very broad requests but often lack the technological tools and staff members which would enable them to process those requests in a timely manner. Adequate funding and support from organizational leadership is essential to successful public records processes.

Within the Advocate's observations included in the Report are suggestions and ideas for reforms which will address each of these problems. It is the hope of the Advocate that the Legislature, the Governor, and the Public Records Advisory Council will tackle these systemic issues in the near future.

The full Report of the Public Records Advisory Council can be found at: <https://sos.oregon.gov/public-records/Documents/final-prac-report.pdf>