

Public Records Advisory Council  
Meeting Minutes  
October 10, 2018 – 1:00pm – 4:00pm  
Oregon State Archives Building  
800 Summer Street NE  
Salem, OR 97310

**Attendees:**

Ginger McCall, Public Records Advocate  
Todd Albert, Deputy Public Records Advocate  
Mary Beth Herkert, Secretary of State, Archives Division  
Michael Kron, Dept. of Justice, Attorney General's Office (called in)  
Liz Craig, Department of Administrative Services  
Steve Suo, *Oregonian* (news media)  
Scott Winkels, League of Oregon Cities, (representative of the cities)  
Rob Bovett, Association of Oregon Counties, (representative of the counties)  
Tony Hernandez, (public member)  
Rep. Karin Power (called in)  
Mark Landauer, special districts, (representative of the special districts)  
Shirin Khosravi, SEIU, (public sector workforce) (called in)  
Stephanie Clark and Erika Dyer, Oregon State Archives (support for council meeting)

**Not Present:**

Les Zaitz, *Malheur Enterprise*, (news media)  
Lee van der Voo, *Investigate West*, (news media)  
Sen. Kim Thatcher

**Introduction and Welcome to Deputy**

Ginger McCall introduced new Deputy Public Records Advocate Todd Albert. He spent 11 years as a public defender and is a graduate of Brooklyn Law School. He will begin providing training in November. Council introduced themselves as well as representatives attending over the phone. Public introduced themselves as well.

**Approval of Minutes from July meeting**

Steve Suo brought up DAS fee proposal and gathering feedback from committee members and stated providing this discussion in the minutes would be beneficial to the council. Mark Landauer and Liz Craig said they had notes discussing this project. Ginger McCall stated she would gather these notes and update the minutes.

**Updates by the Public Records Advocate**

Request for assistance list provided to council by Ginger McCall. This list shows what requests for assistance are being asked and she stated after the month of August the amount of requests for assistance has increased. She felt that by being more active on social media has a positive impact and is resulting in making the public aware that her office exists and is available for public assistance. Delays, fees and exemptions are the three main issues that Ginger McCall

stated she is dealing the most with and she has a plan in place to address the city of Portland to deal with some of these issues.

Ginger McCall stated she is planning on attending more conferences and attended conferences in Eugene, Bend, Portland, and other areas to try to reach larger audiences. Ginger McCall stated some of her trainings have been put online so that others can view it and receive these trainings. She currently has twenty people scheduled to attend her next training in Portland.

Mark Landauer asked about how the feedback was with Ginger McCall's training. Ginger stated the feedback was mostly positive and that she emphasizes the need for public record policies. Council discussed the use of the word "prohibited" and how certain records are prohibited from being released to the public, Ginger McCall asked about what the Federal laws were for these issues. Michael Kron stated you can only be liable if there is a prohibition, he stated this statute is not creating liability. Michael Kron stated they could make the statute clearer for the public. Ginger McCall said she could add this new portion of the law into her trainings.

Steve Suo stated this statute is confusing. Rob Bovett stated that new statutes often are met with negative reactions. Ginger McCall stated she is still working on the project for the Sunshine Committee. She stated she is working on the privacy exemptions. Legislative proposals have been sent along to Legislative council offices, the information for these have been put up on twitter.

Ginger McCall brought up lobbying for public feedback of these Legislative proposals. Mark Landauer asked if Ginger had replied to modify clauses relating to state agencies. The public stated they did not recall the vote or the discussion, Mark Landauer stated to the public to go read the minutes from the last meeting. Ginger McCall stated what he is referencing is in regard to LC 592 number 6 on page 7. Steve Suo stated that he wanted to make sure this is only the bill and additional legislative proposals for this council and other agendas should not be on this bill. Michael Kron and Mark Landauer discussed that a bill coming from the PRAC will be limited to state agencies and that this was reflected in the comments of the meeting last time. Ginger McCall also stated that this was limited to state agencies and that the clause they were discussing was only for state agencies. The discussion the council had was that the wording in this bill was strictly for state agencies.

Scott Winkels arrived and council welcomed him to the table. Mark Landauer explained to Scott Winkels the two different drafts they are discussing currently. LC 592 is was read by the council and Mark raised the question about the relating clause and how he had requested a bill requiring them to report to the attorney general and how the relating clause should be confined to just state agencies. Mark states in the bill that the bill should say accountability for state agencies. A member of the public stated that November 4th is the deadline to modify LC's. Ginger stated that she is happy to email legislative council office to make this change to LC 592 I the council can agree on the changes.

Michael Kron stated limiting the hand of the Legislators is not wise and he would vote no on this motion. Michael stated he liked the requirement as it is. Mark Landauer motioned to move to change this wording in the bill. Council agreed, Michael Kron stated he did not agree.

Ginger McCall asked the council for other feedback or questions. Ginger McCall brought up DAS fees and how they should proceed forward. Ginger asked the council if they wanted to add to these fee structures or come up with exemptions. Liz Craig stated she thought agencies would have a hard time providing this information as there was not a digital solution. Scott Winkels stated that the more they add to it the more problems could arise.

### **Discussion of Agency Survey and December 1<sup>st</sup> report to the Governor**

Ginger McCall stated the PRAC council required that they survey state agencies and that they are sending out surveys and that that is a separate thing from the requirements of the statute. Ginger McCall stated the survey was listed under the responsibilities of the PRAC. Ginger read section 10 duties of the public advisory council. Ginger McCall stated she intended to write up a cover letter to accompany the surveys sent out to state agencies. The council agreed to wait to add more questions to these surveys.

Council discussed the survey and how they have to submit a report to the Governor by the deadline. Ginger McCall stated she will be working on this and asks the council's permission that she submit this by December 1st. Mary Beth Hekert stated that the survey should be no more than ten questions and states what is the main questions that will be asked and what are they going to do with this information. She states it should be cut down and Ginger McCall states that the complaints she hears are the exemption deadlines and the meeting of deadlines. Ginger McCall stated that she wants to put up information of each agencies correct point of contact when the public is requesting records. Mary Beth Hekert stated that a question needs to be asked what the total cost is of fulfilling record requests on this survey. Ginger McCall stated that in the cover letter she wants to let agencies know what information they need to provide to PRAC now and what information they will need in the future. Mary Beth Hekert stated there are many different costs that come with record requests and that there are a lot of other associated costs with fulfilling these requests. She stated other agencies charges for certified copies and said knowing what other agencies charge for their fees is not the whole story and other information is needed.

Mary Beth Hekert stated she does not think it is possible to get all this information into a December report. Cameron Miles, member of the public, stated that itemization such as IT cost for receiving emails and that reconstruction of this for every request is impossible and that most agencies then just don't do this. Cameron Miles stated that collecting this information from agencies would be a step backwards from the policies that had been made. Emily Madison from the Governor's office stated that the governor's office waived fees a lot and this helped to eliminate time spent tracking and charging people. She stated that these fees are a burden on agencies. Tony Hernandez stated that agencies could analyze costs and that it could be optional they provide the PRAC with this schedule. Elizabeth Craig stated she thought it was too much to ask the agencies for this evaluation of costs.

Nick, a member of the public, stated that the survey should be as non-obtrusive as possible and that he was concerned this would require a bunch of research for the agencies. Mark Landauer stated the amount of revenue an agency receives for processing public records having this information is not enough unless you have the context. Steve Sou stated that this information is

important and that it gives a context of what it is costing agencies. Mary Beth Herkert stated that how you are charging people is important and this can be addressed by the council. Todd Albert stated that the information in these surveys will be beneficial and that the PRAC will be going through the policies of different agencies to help show the cost of fulfilling these requests. Todd Albert says having this information will help to start getting the necessary information the PRAC needs to report.

Council discussed what questions should be on the survey and cutting down the questions to be easier to fill out. Council discussed how they want to proceed and what they feel is important to put in the December 1st report. Council also discussed who will receive these surveys and Ginger McCall states that under the statute it says state agencies and other public bodies. Michael Kron stated he believed the council should meet again or have a phone meeting before the December report is turned in. Ginger McCall stated she believed this should be a telephone meeting and to be kept shorter. Council agreed to also list on the report all the conferences, training, and things the PRAC is doing in this report and not just the survey. Ginger McCall stated to the council that the results of the survey will not be ready to be reported by the December deadline but that the questions of the survey will be included in the report.

The council talked about including a comment box with the survey so agencies can explain what methods they used. The council stated they wanted to ask the question about if members of an agency receive training on public records in the survey. Mary Beth Herkert stated it would be hard to track people's time especially if all the staff do public records requests a quarter of their time. The public stated that it will be easy to track who of the agencies is a bad apple by using certain questions in the surveys. Mary Beth Herkert stated that she does not agree with this as you could have a high salary employee in an agency who is the only one doing the public record requests. Mark Landauer stated that the questions on the survey will be helpful to a certain extent but do not get to the root questions that need to be answered.

Council said they needed to make it a goal in the future to do a separate survey that focuses just on fee related issues that agencies charge in the state of Oregon. Council agreed on all questions for survey and agreed on a short telephone meeting before the December report is submitted.

### **Follow-up on DAS Fees Policy**

Nick, a member of the public, stated that society of professional journalism had discussed fee reform which would help to inform the public and get rid of some of the bureaucracy and that it would help save the government time and money. This discussion he stated is not on paper anywhere yet, and they are discussing penalties for delaying record requests and that the language is being worked on to not trigger any unintended consequences. Nick asked the PRAC council to think about these things and informed the public he is here to talk about these issues. Ginger McCall says the disadvantages of penalties is this could further restrict agencies budgets and even hurt the people who are fulfilling these requests. Nick stated to the council that other states have already accounted for these issues such as with penalties like Washington State. He stated this would prevent agencies from ignoring the law. Mark Landauer stated that the issue with this is many public records requests have simply been sent to the wrong person and no that the agency is trying to withhold from the public.

Scott Winkels stated that the council request some advice from the Department of Justice about personal liability of the council members and is not interested in violating his personal liability by violating his job through this meeting.

Council discussed the statewide fees for the draft of the fee structure. Liz Craig discussed this fee guidelines draft and that agencies should reduce or waive fees to the media. She discussed the major changes made to this fee structure and that they were waiting to discuss this in more detail and asks the council's opinion about the changes to this fee structure. Steve Suo stated he thinks this is a huge improvement and that the way it is worded now makes it more clear and helpful to news media personnel. Tony Hernandez asked if there was a definition for what a news media is and Liz Craig said this was not defined. Steve Suo said while improvements have been made that he thinks there could be a bigger reduction in fee waivers for news media personnel.

#### **Discussion of Legislation regarding Executive Sessions – led by Scott Winkels**

Council moved on to discuss Scott Winkels' proposal. Scott Winkels discussed an incident in Lake Oswego where a person developed a blog and wanted to attend an Executive session but was denied as not a member of the media. Scott stated that city councils could adopt an ordinance that determined who the media is. Scott said the ethics commission does not agree with this. Scott said they were just wanting the news media to be held to an ethical standard because of incidents they have had. The council discusses the different definitions different counties have for what a news media is. Scott Winkels said what he hopes to accomplish is the ending of abuses of the statute and to keep people out of executive sessions who should not be there. Tony Hernandez said his concern was that journalists who do not have high profile newspapers backing them and instead are laid off journalists or starting their own business would then be prohibited from attending these executive sessions. Tony Hernandez stated everyone who has the right to attend these sessions if they are practicing journalists and should not be prohibited if they lack the backing of larger media agencies.

#### **Concluding Remarks**

Ginger McCall then asked the public if they have any comments, no comments are made. Ginger McCall stated that she is going to update the minutes to include more fee related issues, and that the council agreed on survey questions and agreed to meet again before report of the governor over the phone, Ginger McCall will draft up report. Ginger said the council has not agreed upon who to send this report out to. She asked the council when they would like to agree on this. Council stated they will discuss this at a later time.