

Meeting Date	4/25/2016	Time	2:00-4:00pm	Location or Call In	Hearing rm 343 @ Capitol
Meeting Name	Public Records Task Force				
Meeting Owner	Michael Kron		Minutes: Molly Manos		
Attendees	<p>In person: Michael Kron, Molly Manos, Jeb Bladine, Keith Shipman, Noah Ellenberg, Les Zaitz, Josh Nasbe, Rob Bovett, Betty Reynolds, Jeff Kruz, Ellen Rosenblum, Robert Taylor, Mary Beth Herkert, Scott Winkels</p> <p>By phone: Ken Helms</p>				

MK – *Begins meeting with introductions*

Three agenda items:

1. Deadlines/ timeframes for responding to PRR's. *offers handouts*
2. Exemptions the sub-groups have been working on (combining exemptions for public body's business transactions)
3. Update on the progress of the overall cataloging project

Invites Mary Beth to talk about TRIM and electronic public records management

MBH- Explains the process and reason for creating the electronic library; affordability and increased efficiency/ record management. Had been actively searching for a system since 2001, software is incredibly expensive so in 2007 went out to bid on TRIM by implementation in SOS's office first. This program meets all the needs which is records management solution from creation to disposition. 2009 we looked to implement it state wide. TRIM is \$37/user/month through ACE software, costs will decrease as users increase. TRIM is now HPRM, as agencies join they do so through a master services agreement. Biennial savings of \$185,000 by being in ORMS. Doesn't decrease the number of requests, in fact it may increase because accessibility has been greatly improved. Agencies are joining incrementally; currently have 37 agencies, 1,500 users, price break at 2k and 3k users.

MK- Have any agencies said why it wouldn't work for them, I'm wondering if we might be one?

MBH- There are almost 500 levels of security and a separate publicly accessible page.

BR- Seems like a nice service for the public. Does 'user' mean employee or agency.

MBH- Employee

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MCK:ejr/7242842-v1

BR- How is the public accounted for in your monthly charges?

MBH-They're not, it's free access to them, it's just a web portal that they can go in to and start their searches.

BR- Are these only the records that are managed by the archivist, in other words the agency records that have been turned over based on a retention schedule.

MBH- No, in fact we have 2 really good examples of turning it out to the public. Tillamook County, their commissioners, they were the first ones to come on, because they didn't want to have to answer all the requests they got for commission meeting tapes and exhibits. All that stuff on the night of the meeting goes online so it's immediately available to the public, so that's how they're handling it. City of Milwaukie does something similar with their city counselor's hearings and stuff is they make as much of that information publicly available right away so the public has access to it. That frees up their staff to do other things than fulfill the same request over and over again.

BR- One last question, I think you already answered the security question. Others were the accessibility by the public. Is it as simple enough system so that the general public maybe limited technology capabilities can access it and then also is there any issue with capacity cloud based solutions can run out of room.

MBH- Usability; it is pretty user friendly and we have informational pamphlets to help users. For the most commonly searched items we've created links that will generate all available information on that particular request. There really isn't a capacity we have provisions in place because this is a private government cloud, the vender who is hosting us has provisions for expanding. We're a very small footprint in his data center. Each agency gets 10GB of storage per user for free license. We're just now starting hit our limit after importing all the legislative recordings but we will just buy more, it's very inexpensive to do.

MK- Oh yeah, Les, sorry.

LZ- The cost, does this cost include the processing of getting the records in there in the first place? Scanning ect.

MBH- Yes, to some degree, it just depends. If you have a scanning project that would be outside of what it is but once you send the records in there, the importing of the records into the system it's all part of that.

LZ- Well I'm thinking about what the agency objection would be the cost of moving from paper to electronic.

MBH- One of the things we work with agencies in general on is, it's very rarely effective to back-file or convert. So you have 50 years of case files that are all paper you really need to do a cost/benefit analysis to see if it's cost effective to even do that. Scanning is one thing but you

have to index the scanned images because they're just pictures unless you're OCR scanning which then is very costly to do as well. So we work with them to figure out the best way to do it. We have one agency that was going to that for all of their inactive files and we basically told them don't scan them unless you have an activity on them and then scan them in because that would be more cost effective than back filing/convert. What's the nice thing about this system is, you can have a pointer so it tells you, well these records are here, if they're still on paper. It allows you to do a process that electronic and paper.

MK- And then eventually the idea is I guess the paper gets destroyed, going forward.

MBH- Yup, it meets its retention and its gone.

LZ- So then the redaction process, you end up with one and then the original. Does the redacted copy get saved distinctly from the original so if 4 people ask for the same thing that's been redacted already you don't have to...

MBH- Right and how we deal with redactions is that's exactly it. The system makes a copy of the original and redacts that and then the original copy has a level 2 or 3, most likely a level 3 security level but the redacted copy has a 1 so you could just push it out to the public. So it becomes a totally different version of the record.

LZ- How would a records manager know there is a redacted copy out there?

MBH- Because internally from our end you would see that.

JB- Level 4 is a non-redact able document?

MBH- There are very few level 4's in Oregon state government.

JB- I would think.

MBH- And yes I would say most of them would be pretty hard to, you would be redacting a majority of the information in there at a level 4.

JB- Another question, we had a recent email request that involved eliminating duplicated content. How do you deal with the string of 20 emails and the last includes everything but 20 of them are just the building process that you really don't need.

MK- Totally.

MBH- Right and my staff has become pretty savvy and first of all they try to de dup everything before it goes in because they have a really nice de-duping feature on it, 2013 does, yeah, and it, within TRIM will allow you to put two of the exact same things in there. It will tell you the record already exists or HPRM. It's hard for me to call it HPRM, too many years of TRIM, but it allows you to, it has some of that de duping feature in there. It's probably the weakest of all these

record management systems is that de duplication and because unless it's exact it's going to assume it's different.

JB- These are always with that glass message added too.

MBH-That's why we try to get them to use the outlook feature, because it does look at that piece of trying to get the last message string.

MK- We need that. *Laughs* Does anyone else have questions for Mary Beth? Rob does.

RB- Real quick one, have you any hacking incidents?

MBH- Nope.

Jennifer Johnson (audience member-PDX)- Don't say *inaudible*

MBH-Our vendor takes security very seriously and monitor it constantly and I mean I know it is not impenetrable, I mean it could be hacked, everything could be hacked but you know we try to put it in and keep monitoring it so that we have that. The nice thing we have the tool where it's located on two power grids and two fuel grids so we have that insurance that if one grid goes down we can flip to the other grid and we've tested that within seconds it goes to the other grid.

MK-I guess I have another question which is just going back to your description of the public records request for now Governor Brown's emails I think you said you found 90,000 of them in 9 seconds?

MBH- 83,000 in 90 seconds.

MK- 83,000 in 90 seconds so from that point of finding them which frankly that already is a very impressive turnaround from my perspective but do you remember how long it took the office to deal with them subsequently and did TRIM help with this sort of follow on? Like once you've assembled them how do you get them out the door?

MBH- Because we asset classified them all we only had maybe 250 that we actually had to review out of that 83,000. The one thing that we did notice is when employees would email to say they're not coming into the office because they were sick, we got a little too much information a lot of the times in those emails and so what we ended up doing is we made it a new classification for leave requests so that they're separate now. So when we would see leave requests we would know we don't have to review those, those would be the exempt so, but that was the one thing we did notice is that a lot of times we would get a little too into what we were reporting.

MK- So out of 90,000 emails you guys reviewed 250?

MBH-Mmmhmm, because everything else was a level 2.

MK- Wow and do you know if other agencies are using the software or have you heard any stories about how it's working on that end from your customers?

MBH-The ones who have really looked at it as a tool for getting information out, they're very happy because like I said, Tillamook County would spend days after the commissioners meeting just supplying the same request over and over again and now they've got everyone trained to just go to their website and they pull it up, the latest meeting and that sort of thing. I'm not aware of any of them that have had massive public records requests like we have but it doesn't mean that they're not getting them.

JJ- I have a question about the classification. So you set up these 4 maybe 5 now with leave request classifications. So every time you send an email do you have to classify it or is it auto-classified or...?

MBH- How we set it up is like I said, my staff worked with the agency to set it up and then while they're building it they put that 1-4 classification level on those records and so our goal is end users have minimal choices to make as to where they're going to put that records because I don't care what they call their folder but behind that folder it's tied to a classification which carries all the metadata that's important, the retention, disposition security and then access level. So somebody works in purchasing, they may have 3 choices; a purchasing records a receipts record and maybe a contract. They're only going to have 3 choices; they can call the folders whatever they want because behind the scenes that folder is tied to what we call classifications.

JJ- So they are manually filing every email they receive.

MBH- Yes but you can do it globally to. There is a way to do it globally so like say my receptionist, I know what my receptionist deals with has a very short retention period and it has all the same maxis classification I can capture all of hers and have it sent to one place, anything that she receives or sends. I mean that's what we're working on, to try and look at how many positions we can do that state wide so then nobody has to put them in. But people are putting their email messages into folders now. So what we do is just tie those folders to the system and it works, it integrates with Outlook very well.

MK- And that's something you guys do as part of setting up the system. Anyone else have any questions for Mary Beth? Otherwise I think we'll... that's very helpful and interesting.

Michael/Ellen thank Mary Beth and she leaves

MK- That is at least somewhat of a segway into our first topic that I'm wanting to talk about as a group today which is to take up for the first time in this task force the issue of deadlines or time-framing in response to public records requests. I put together a little handout, I don't want to talk a whole lot but basically the current state of the law is, I would say there are two things (I would have said one but Jeb pointed out there's a second one) that the law currently says about the timing of responding to public records requests;

1. You have to send a preliminary response as soon as practicable without unreasonable delay is the standard there, not in my opinion a model of clarity but I think that the general notion is

pretty obvious. You're expected to do it quickly. The statute sets out I think six things that, that can be. It could be records that are requested it could be a statement you don't them, it could be a statement that the records are exempt from disclosure or it could basically be you don't know what you have and you'll get back to the person and tell them whether you have anything and what it will cost and in rare cases if federal law prohibits you from seeing whether you have anything or not then you can tell people that federal or state law I should say. The first deadline imposed by the law is 'as soon as practicable and without unreasonable delay' but that doesn't have to be the records someone is asking for. So I think that's important to keep in mind, and then the other language that's relevant in the law provides that the public body is it to provide proper and reasonable opportunities for inspection and examination of the records. So we have as soon as practicable and without unreasonable delay and then we have proper and reasonable opportunity, that's the current state of the law in Oregon. I included in the material a bunch of standards from other states as well as recent sort of attempts in Oregon to change that and impose something that's a little more rigorous that gives people a better idea of when they can expect to hear from records. The most recent one and kind of the one that I like for simplicity and elegance I think was just last year, HB2130 which ended up not passing would have imposed a 5-day deadline on the first piece of the initial response. A 10-day deadline that is extendable on actually getting the records out and that's I think fairly similar to where the proposal in 2011 actually ended up but it managed to do it in a page instead of maybe two pages so I think I prefer it for that reason. I also included and I don't know if you guys had the chance to look at these examples of what other states did, I don't want to go through all of them, what I really would like is to have a conversation about what you all think about the various both Oregon proposals other state rules upsides, downsides, and I know for a fact Jeb Bladine has some thoughts about this. So I think in addition to just asking everyone generally maybe Jeb you'd like to get us started with this conversation?

JB- OMPA had a lot of discussion about the original bill. I neglected to say that it did end up with 10 days not 30.

Group goes back and forth on 10 days or 30, agreed on 30.

JB-We had a lot of discussion I think OMPH might have opposed that bill if it had moved. You would think that we would think oh great, finally there's some clarity its 5 days and then its 30 but this current language while vague and unclear it has really a lot of strength about it at least locally. Big ranging requests would go all over the place but the idea of as soon as practicable and without unreasonable delay has strength at the local level we know whether a local city, county or school district is being reasonable or not if it wants to wait 5 days or do a 5 day stall and then wait 30 days to say well we're going to claim an exemption which this language allows. So OMPH just felt that there was a lot to talk about and then we abandoned that discussion because it seemed pretty clear early on that the bill wasn't going to move. We kind of assessed the politics of it and said we see where this is going.

MK- One thing I would say about that Jeb I mean I don't think there is any reason necessarily that as soon as practicable and without unreasonable delay necessarily has to be deleted but I do just want to point out again this is the requirement with respect not to the final response but to initially essentially acknowledge the request. I'm hesitant to lean a lot on that language because

all that requires is you to send out an email right away that says: “Hey we got your request and we don’t know if we have anything or not but we’ll get back to you in a reasonable amount of time,” and you’ve complied with that without really advancing the ball substantively in any way.

JB- And I guess you can use that and somebody might and some do, clearly, for the most part locally. For the most part they just don’t do that in my experience. They, the local, who we’re asking for a record from the local city, county and school district and special districts and for the most part they don’t just say oh great there’s some vague, we think we’ll stall this out because it’s vague and so It may be that it’s ok to have clear deadlines but not throw that phrase away in its entirety it’s overriding phrase but in no case longer than 30 days. As soon as practicable and without unreasonable delay but in no case longer than...might be better than to just toss it.

MK- I know Scott and Rob you guys worked on this pretty extensively didn’t you? Representative Helm were you wanting to say something? I guess not, I thought I heard something from the phone, sorry.

RB- We were mostly reactive to the bill. I guess at least I sized I thought that bill was on the verge of passage. That had been worked pretty hard and got sent to ways and means, until the end of session I think that bill was still live. Scott and I worked pretty hard to make it workable from its original for which was a disaster for other reasons. Not the 530 but at kinds of other things that were in that bill. *Inaudible* I think in the end, I’m not going to speak for Scott but I think in the end our members were like ‘ok’. I mean they weren’t going to be upset if the bill died but they certainly weren’t going to fight it anymore, we kind of just walked off the playing field once we got it into the shape that its in. I don’t know, Scott may have a different take from his members, I’ve got 46 he’s got 242.

SW- I could probably speak to the virtues of both approaches largely because in 2007 I was part of the group that negotiated the current status of the law that Jeb likes so much and I was part of the group that negotiated 4130 so I could probably speak to the virtues of either approach. I think the, and this topic is something I’ve spent probably all 10 years of my time at the league thinking about or at least quite a bit and trying to find a way that makes the public records, the time lines and things. Make sure people are getting information promptly which I think most of my members do that. I think we cities are pretty good at it but then address the rare instances of non-compliance and I don’t know that we’ve ever come up with a method that adequately does that. I think creating a timeline for someone that simply doesn’t want to return a record is helpful, but I think as soon as you do that you also create a way for someone who probably would just turn around a record very rapidly who maybe doesn’t want it out, you give them 30 days and I honestly don’t know what approach makes us more transparent or more accountable. I guess that’s been the challenge we’ve had. How do we write a bill that doesn’t penalize the vast majority of public bodies that do this well. That was ramble-y but this is something I’ve put a lot of thought into and I still don’t know that I have a cure.

MK- So I had understood Jeb to basically be suggesting that we could keep in this language of the initial response that the 5-days is like an outside deadline bill retaining the notion to be as soon as practicable. Which seems like is as close as we can come to accomplishing maybe what

you're talking about in language but I don't know if the idea of putting that back in there would create other problems.

JB- We (kind of like what Scott just said) we didn't know. We thought, the group that discussed it thought that it was somewhat politically motivated that it was inappropriate to occur in an off year session and when there was an AG's task force going on, where really important stuff like this was going to be talked about and discussed that it was a quick run thing. I think that our lobby sort of convinced us that well we'll let you know at the last minute if we think it's going to move and that didn't happen and so we kind of walked away from it. I'm not saying we preferred the vague language compared to any absolute, that isn't the case, we just think it needed some discussion.

JK- How often is this a problem?

MK- How often is it a problem that records don't go out in 30 days or...?

JK- The current language, how often has it become a problem?

MK- Well if you define a problem, people getting annoyed enough to write the AG's office a letter or asking us to get an agency to respond to its PRR I would say it happens a few times a month at least.

RT- I think the other thing, Michael I had that same question, is remembering the audits division and it found that for routine public records request they get fulfilled in a timely manner, people get the record without a problem. But it is more of a problem when there are the big complex requests that are asking for all kinds of things and that's when it is going to take months and months and people have a right to be upset about that. But I mean I think it feels like the language in the statute works very well for a great deal of the routine requests that are already out there. I would be nervous about changing the law to make rigid deadlines because there are some complicated requests that take a long time, because if you put a 5 day or 30 day deadline in there even if it's an outside deadline that will be the defector and then all of these routine requests are going to take a longer time.

MK- One of the things I think...

ER- Les was next.

LZ- No go ahead.

MK- You should make your comment.

ER- I wanted to hear what you have to say Les.

Laughter

MK-She would rather listen to you than me.

LZ- I guess be the minority voice because I think it's more of a problem than might be apparent. I'm just speaking from dealing with this for 40 years in this state . The reasons it's a problem varies from time to time the massive complex requests such as; all the governor's emails I think everyone recognizes that's a special circumstance and you're not going to write a statute to guard against the one every five year time, but my experience suggests with all due respect to Scott, that you have changeover of staff particularly at the local level and also state agencies. People don't have a clear understanding of what their obligations are. I made a note to myself that as we go through this entire process where are we looking at certainty, clarity and consequence will help everybody. I think by putting in some deadlines provides guide posts for everyone to agree on. With all due respect we could have a debate on what seems like unreasonable delay to you, to me. So I think we ought to go with putting deadlines in and I note that the AG's manual provides guidance that on average 10 days is an average response time for providing the documents not just responding. I think we ought to, that has worked very well and I think we ought to codify something in that range.

MK- I'm trying to think on the other thing, oh go ahead senator.

JK- Just looking at current law, it's vague. Basically what's it's supposed to be saying is; as soon as a request has gone in and as soon as practicable you should acknowledge the request with either the information or what you have to do to get it or you don't have it and it doesn't really say that. So what we're looking for maybe is just a language change to make sure that: you make a request at my agency, I have to acknowledge that request and tell you, either give you the information or tell you what we'll have to do to get it. Just by making a response to send folks says 'well we have to give it all.' So I'm just kind of massaging words here a little bit.

JB- The 5 day happens a lot. That's probably the biggest problem that we face a lot is people spend two weeks, a month if they want and not respond and then you start battling about getting a response so having a five day is really good when we got in our discussion was just to...

Keith Shipman leaves

JK-Well now if we're talking about the initial acknowledging the request.

JB- Yeah the initial acknowledging request, very important. It's whether or not we didn't want to modify 'oh let's take 30 days to finally claim an exemption on something.' The thing is we just didn't want to codify that as something people do as norm. If it has some as soon as practicable and without reasonable delay over the top of all that but in no case longer than , then you can kind of do both. But the 5 day was really good and we do have some that get abused and get stretched out over 2, 3, 4 months of we're still looking.

JK- 10 days but..

JB- So it's still the majority of stuff locally that we ask for that people treat with a very high priority because of this language. So this vagueness works in a serious percentage of the time but still is very aggravating when it's abused.

MK- Betty, did you have something?

BR- Looking at senate bill 41 in 2011, even though it's long its very reasonable and thorough for paragraph 55 both, it seems practical and convening phase. I'm thinking that for the public that is left hanging is it a public service. I mean we've given it acknowledgment and estimate and one of my hats is with Oregon school boards and I'm aware that there are some unusual circumstances where it is very difficult to comply for example school districts that might have simply closed down for the summer or might not have enough staff some sort of an exception could be built in but I actually liked the thoroughness and the balance of senate bill 41 and I was just wondering if you had any comments on what happened. What the political environment was then.

MK- Not really, I think there are a lot of things at play. A mistake that I would like to avoid repeating here was I think tying the lengthy review of exemptions with the more procedural review and I think that made people nervous at least with the lack of such on this one and the lack of buy in support from stakeholders made people nervous but I don't really want to rehash too much of that.

BR- Ok, well I was just wondering about that 1440 sub 2 seemed like a good language reasonable approach was there, is there anything from that, that could be salvaged without a lot of push back?

MK- I mean I, it seems to me that it's very similar to what Jeb is suggesting, if you just replace the 10 with the 5. To me it makes sense to do that and I think that, that is probably what was intended in 4138 anyway since at the end if you look the exception towards the end and you mention the need for exemptions for people that don't have any staff for example that's built into 4130 but the exception then provides that if you're in the exception then you have to nevertheless respond as soon as practicable and without unreasonable delay. So I don't really think the intent at all was to move away from this idea and Scott/Rob feel free to jump in here. By providing 5 days I don't think the idea is that you would never do it before 5 days right?

SW- No, it was intended as a ceiling not a floor.

MK- Yeah, so it seems to me that, that is probably doable, kind of combine the two as a proposal. It doesn't really get to the substantive response time and the 30 days. What I like about 4130 a lot is the way it encourages by actually requiring ongoing communication from the agency with the public body that has requested the records, 'hey it's been awhile here's where we are.' I think that is something our agency tries to do anyway and its helpful, it often keeps people from getting unhappy with us when they understand yeah we pulled 6,000 emails so it's going to take us a little while to review those. I like that, that is built in here it requires the agency to be sort of proactive in keeping that line of communication open 30 days Scott or maybe Rob would be willing to talk about that move from 10 to 30 and why that's important. Rob, can I put you in the hot seat this time?

RB- I don't know, did it ever start out with 10?

MK- I thought it did.

SW- I don't recall it starting out with 10.

MK- Maybe I'm mistaken.

RB- I thought it was always 530, I don't think we tinkered with that.

JB- It was the previous bill that had that. That Betty's talking about.

MK- Ohh...

SW- 41 and I, I don't want to go there either

Laughs

JB- I think that the 30 days you have an out, you have 30 days to 5 different things. Maybe if you say you must do that within 10 days and each 10 days thereafter you still have an out each time. Well what's the timeline now, what's the timeline now.

MK-Right but it also provides a challenge there, repeated invocation of that extension of the person requesting records if you think they're just yanking your chain you're giving it direct. I said that we get a couple letters a month probably from people senator. The current law is actually, it's not written specifically in statute that we even need to look at that timing issue we just came and concluded that to have meaningful authority to review disclosure decisions we must be able to take a case where someone is effectively denying your record by just repeatedly delaying it. But this would actually make that specific in the statute and the authority to do that which may not be apparent to people who are requesting records, now they would know 'ok, I don't have to believe them that it's going to take this long and I could challenge it'. Based on the repeated invocation and I think that, I don't know 30 days, 10 days if we view it as a ceiling and not a floor, I don't know. If there are ways Jeb, to make it clearer that it's a ceiling and not a floor do you think your members concerns would be diminished by that?

JB- Say that again?

MK- If we could say you're responsible for in all cases providing a record as soon as you reasonably can and here are the time frames. Would that be something that would assuage your member's concerns?

JB- I think so, I mean it would be better than what we have now don't you think?

LZ- Frankly I'm troubled by the 30 day posture.

JB- That's what we got caught on.

LZ- Well and again I go back to the AG's manual that sets the 10 day standard which we've all been operating under and the majority of circumstances that standard works fine. I think why don't we set that as the ceiling and then build in the exception to that, for the extraordinary requests rather than building in a month long window that people could use for any requests, right? If I'm understanding the track here.

MK- Yeah I mean you could read 4130 that way but I think that the intent was really to set ceilings, right?

LZ- Well I think a 30 day ceiling is too high a ceiling for 98% of the requests that...

MK-Scott?

SW- One of the challenges we have in discussing PRR's in the building is that everyone thinks PRR looks like whatever they're asking for. So a lot of reporters (forgive me) tend to think it's emails and memos and documents but from the same perspective we're talking about. I mean we probably get PRR's developers who need documents in order to get secure financing and so they're asking for mapped out non-digitized data related to land use decisions. This is something I know city of Tigard (50,000 people) this is something they would have to go out and hire a temp for and issue a public contract for printing services of some of these requests. They're not all that unusual so if you're going to, my point is you can't treat every request like it's the same. I mean different types of government get different types of requests for services and I'm assuming ODOT is probably in a similar boat, where people are asking for maps and photographs at intersections prior to litigation. The term PRR encompasses a wide universe of records and documents that we need to be cognizant of.

MK- Pretty much anything a public body might do.

SW- Yeah pretty much.

RT- If I might build on that I think what I'm hearing is a one size fits all may not work for all records and public bodies. That's part of what I like about the flexible but urgent standard in the law right now. It is flexible to fit all these different public records and public agencies but it does say 'as soon as practicable without unreasonable delay'. So the message is clear for everybody and I think that to get back to what Les was saying, I agree with that, I think certainty is good but also what you're talking about the consequence is important. So you can put a 5 day, 10 day, 30 day schedule on this or you can have a flexible standard in the law, what's the consequence if I fail to meet either one of those?

LZ- Well I'm glad you asked that question.

RT- I think that where you need the hint. You can have whatever deadline you want you just need some hammer that you can use if you feel like you're getting jerked around.

LZ- The hammer that I saw in 2015 3505 where by a certain deadline if you haven't complied you can no longer charge a fee, that to me is a pretty poignant hammer. Right?

MK- My concern with 3505 to be honest is it seems like you're encouraging people then who don't necessarily need everything under the moon to ask for everything under the moon.

LZ- But I think you can build in. That's why I think you've framed language, if I may, to deal with exceptional cases the kind of cases that Scotts talking about and build in more certainty for what you would consider the routine run of the mill PRR. You know, planning commission, grants and those sorts of things. The most trouble I ever have with government agencies is the lack of clarity. While we understand because we work with these, we know what unreasonable means but for a city clerk or a school district official or someone from DOC that doesn't mean anything to them. That is a subjective frame of reference. So I would recommend I would build in a ceiling that accounts for 95% of the records and then build in the exceptions and the escape valves to deal with the more complicated requests that account for both time and the cost.

MK- So I think what you're proposing Les looks something like 4130 but says that after 10 days you need to send a letter explaining where you are and extending the deadline rather than doing it after 30. Does it really at that point make sense to continue reporting, assuming that we did that, does it make sense to say then every two weeks there after just send another update or is it maybe that's the first one and you set some sort of expectations in that first letter for like...what are you thinking Jeb?

JB- I suppose I mean if they're not providing and they're supposedly providing for some kind of timeline in that response, 10 days. Sometimes I think it ought to be 10 days for the media and a month for (*laughs*) kind of like an executive ruling.

RB- Well except everyone is a member of the media.

JB- I know. I'm just saying we do understand that government gets all kinds of requests that are just off the charts, some from media too certainly, but when you get everything, private sector can run wild on ya. (*inaudible side comment between Ellen and Michael*) So I would agree with Les, given what if it's 30 days or 10 days the 10 days doesn't provide any less capability to stretch it out to something that's reasonable under the circumstances, is that enough time to determine that

MK- I mean it could be that we need to add a 4th category. I mean I can think of times frankly when it's taken two weeks to figure out what we even have. It's not unusual if it's a request for something out of our storage facilities so the state archivist was here and she eventually gets our records that are slated for long term retention, but in between when we give them up to her and when we no longer have a day to day need for those records they live in a warehouse that's like something out of the end of 'Raiders of The Lost Ark', right, and if we have to get records from there we may not know for two weeks but I think that is something you could address just by saying option D, these records are not immediately available if they exist at all. We need some more time to even tell you.

LZ- Could we marry some of these ideas and I'm going to spin out a thought. Could you create a category that allows a public agency to declare an unusual circumstance and then state a

reasonable basis for needing additional time. Then you couple that with some sort of consequence that if they state a reason that is not in fact true or is a tact of delay there is some consequence for falsely asserting need for additional time. That way you give the agencies a time and ability to invoke the safety valve to go find the records and archives but you also put some sort of a hammer there so that you don't give them a free pass to just say 'well we just can't find this stuff' when I know it's in the bottom drawer of Sally's desk. Is that possible?

MK- I mean I think, Scott do you have...

SW- I don't know, I mean I see It actually can take a fairly long time to establish that you don't have a document. I mean that actually takes more time than establishing that you do. So I don't....I'm not sure how to craft.

LZ- So I'm not looking for crafting something very tightly at all and I'm not a lawyer that's why we got a room full of brains in here but I'm looking at some sort of element in the statute that says a public agency can exceed the 10 days or whatever date it is by declaring that it has a reasonable need to find records or consult, whatever the reasons are but again, build in, because we just talked earlier again 95% of the requests from everybody get handled without much controversy, correct?

SW- Yeah I mean most, I didn't put a number on it but most requests, I think it's probably your experience too they get handled without much incident. Where I do sort of run into a problem with a timeline is strict timelines for a city is if you have a city recorder for all of my members, a vast majority of my members the point of contact for a PRR is the city recorder that city recorder is also doing a number of other things. Probably the bailiff for the municipal court, they're doing planning and handling permits and what not so however we craft a deadline what the league could never agree to is something that required the city recorder to let the requestor skip the line because it might be important and without undue delay for that record to get delivered but the person who needs to have their municipal court issue resolved or the person who has applied for a permit is important too and we don't want to say the PRR is more important than all the other essential functions that, that employee is providing.

LZ-Well I don't think that's at all what..

SW-I think that's what you do when we start talking about some of these harder deadlines that I think you do create a scenario where the requestor skips ahead of somebody else that's asking for an essential function from that employee.

MK- I was just asking Scott a question. Was it that feature Les described in particular or was it that it's starting to go in a direction?

SW- I think that's sort of where we're going with this 10 days discussion on these hard deadlines. Again, because most requests are getting handled regularly but for that complex requestor, requests, I think when you do put in those deadlines I think you do create a scenario where the PRR takes precedence over the other essential functions.

LZ-If there's a safety valve for those extraordinary requests that takes care of the issue doesn't it?

RB- And that's what I want to address because I don't agree with the characterization here that 95% are just this simple immediate boom then 5% are the complex. That's not what I have experienced at all at the county level. I've been a county attorney for 16 years, there were that easy ones and I would say the majority are the easy ones; 'oh we just need minutes, email' boom done, in a matter of moments. Then there are the incredibly complex ones that cost a lot of money and take a lot of time. Then there's a whole bunch in between where dealing with this public records request is going to take me about 8 hours or it's going to take 4 hours and I'm a clerk or I'm a whatever and I've got all these duties. I want to be able to find that and plug it into my calendar and now I've got a 10 day window. It's not an extraordinary thing but I've got to find 4 hours out of my next week and so somebodies getting off my calendar that doesn't deserve to get off my calendar because I only got a week and a half to look, that's all my time. I've dealt with those personally and to me there has to be some level of flexibility because I think that's justifiable. Now you're not going to bump all these other people off because I have to meet this 10 day deadline because I can't say this is extraordinary. This is going to consume one of my days this week.

SW- The way we addressed that in 4130 is that we put in this petition for the district attorney or for the state's case it would be the DOJ so that there was a third party that could before, some intermediate step (if you will) between going to court or just not getting your document so we did put in this review and I think that is probably a good frame work for finding a way to get at that instance where someone like you is, Sheriff Pulmer where you could go to a DA and get some relief.

LZ- But let's play that out, if I'm a public employee and I know that the only consequence is that someone's going to go asking for a review from the DA that gives me the time I need, I don't have to perform and if I have to cough them up I'll cough them up. If I don't what incentive is there in that process for the public employee to abide by the reasonable and practicable standard if they have this outlook that 'well if they can don't like it they can just slump and go see the DA and we'll burn up another 30 days on the calendar that way.'

MK- I don't want to argue with both of you, I like both of you. I mean I think the problem you just described Les, like if you believe that's a problem I don't know what the solution is, like no deadline is a solution to that, right? It can be hard it can be soft it can be no deadline at all like if somebody wants to wait until the DA or AG tells them to turn over a record it doesn't matter what the statute says right? They can do that and I don't think there's a way we're going to be able to fix that but I had understood your initial suggestion anyway more like a lot of what 4130 already says actually. That actually after you would say 10 instead of 30 days the public body has to send out a letter or email or whatever and I would imagine it could be a formal email that says either 'hey here's what we have that you're entitled to or hey we haven't been able to get to this yet and we expect that we'll be able to get to it in the next' which is what 4130 lays out and you're really to me seem to be more suggesting that they have to. I mean I don't know what the difference is between that and saying that there's extraordinary circumstances. To me like those don't seem like particularly magic words and so the question that I had was, is doing that after

two weeks and I was thinking business day but maybe we're talking calendar days but is doing it after two weeks really more difficult than doing it after 30 days, so that's kind of what I was...

JB- When you read what's in there: 'state that the public body is still gathering, provide an estimated date' if you added to it this is number © under the 30 days. Before I say that I guess I find some confusion between the 5 and 30 and which should go under which group. I mean I would almost prefer to see a 10 day with one set of as soon as practicable and without unreasonable delay but in no case more than 10 days, here's a list and if one of those is say that we're still gathering and here's our estimate on when we'll provide something and here's why I would add and here's why I think we need more time. It's still if there's no consequence you're just providing some information and saying why it is you think it's whether it's extraordinary or not or whether half of your staff has got the flu or it's an unreasonable request that's going to take months to do or whatever it is you'll simply have to say we need a delay for a good cause. It seems like people should be able to do that in 10 days, 10 business days.

RB-This is actually...

MK- Yeah there are pieces of it that are..

RB-This is the original.

JB-Yeah this is the original, that's the other thing and it's confusing.

RB-If you take the cleaned up one and A engrossed.

MK- Alright I think I took the amendments and pasted it in here because when I was going through to address Jeb's comment this morning I realized I should probably but I think the only difference really is sub-paragraph C talks about fees, right. That one is not in the engrossed version.

RB- Well and sub-section 5, that all was...

MK-Yeah all of 5 is actually kind of irrelevant to this discussion I think.

Audience member- All the stuff for schools has been rewritten with significant changes to the timeline under 10 in the A engrossed version had some very different language that would buy more flexibility to small special districts and local districts, community colleges, universities to deal with vacation times.

MK- That's in here.

Audience member- Yeah but it's like the language doesn't work, we rewrote it for other schools.

MK-I'm pretty sure I pulled the 10 right out of the engrossed version but in any event.

JN- After it's engrossed.

Audience member- Yeah and it was sent after.

MK- Ohhh ok.

RB- To a ways and means.

Audience member- So I remember it being a little bit different but this is on track.

MK- Ok, yeah I didn't see those amendments after, I'm sorry. So the 10 is from the engrossed version, 5 all of 5 stuff we can just ignore for these purposes because it's really mostly about fee issues which is not really what we're talking about today. But I don't want to get too far distracted with what's wrong; I think the question is, is there a solution in here that's in reach? My perspective listening to you guys all talk is that you're not really all that far apart. I mean I think the question of 10 and 30 days might be a sticking point I mean that may be just an issue we're not going to agree but the general concept of putting a timeframe that essentially really just imposes a responsibility on the public body to do what it can to get the records out but also to be communicative with the requestor when it can't and explain when it anticipates that it will be able to. I mean I feel like we are all in agreement that, that should be in our statute, right? Does anyone not agree that they should not be as prompt as they can be that we're just talking about setting ceilings.

ER- You know a lot of this has to do with a funny kind of almost emotion when you get a request for deadlines and things that we do. The one that comes to mind immediately at least for my purposes is ballot titles because we have you know, very strict deadlines and they always seem like they're upon us before you even turn around. So we deal a lot with the 5 day, the 10 day, not so much with the 30 day, we hardly ever get 30 days to do anything. But it just seems to me 5 days is really really short, 10 days is really manageable almost always unless something is just sort of beyond the pale. I mean it's not enough time to write a fancy you know court of appeals brief but it is enough to do most things. 30 days the problem with 30 days is that it's just east to put things lower down in the pile. So that's why when I say emotionally I'm thinking about how we as humans, just how human nature works. So I don't know if this is steam of consciousness more than anything else but I would really recommend that if we're going to talk about numbers, days that we look at the 10 day as really like a key number, it works for people and it's on your radar. 30 days can, it's just really easy to slough off. Are you going to hate me for that?.

MK- No I mean I think if the question is well what can you expect to get done and if as I think we're all talking about the idea that if it's possible for you to do it in that time you will have done it in that time, and if it's not all you'll be doing is providing an explanation of why.

ER- But here, unless this is something that isn't in the latest version, this allows you that after 30 days to still give an explanation. There shouldn't be a need to wait 30 days to give your explanation for why you need more time. You should be able to give that after 10 days. I think that's kind of what Les was saying.

LZ- And if I may again I go back to what has been our practice under the AG's manual that 10 days standard has been in there for some time. It seems like all we need to do if codify what's in the manual, simple.

JJ-I was just wondering if you're talking 10 days and then you go to the DA because that's not codified now and that would be a significant and troubling change. You know because the employees I work with the threat to go to the DA is not like you say 'no big deal' because if something goes to the DA a lot of people are going to look at that and there's going to be a lot of questions to that employee and so I don't think it's like 'oh I'm going to wait 30 days and I don't care if it goes to the DA' because that's not what happens to these folks. And I think that if you're saying after 10 business days some of these folks are going to the DA then there's a lot of business for counties and municipalities that is not going to happen and I think that, that is a significant choice to make.

Inaudible retort from Scott Winkels

ER- That isn't what I was saying.

JJ- They now get 28,000 requests a month and that's just the police bureau and so if you want cops not to be on the street we'll fulfill those in 10 days but we'll have to talk to the city council about those requests.

ER-That wasn't what I was intending. I was referring to the what's I think 3C and 3 is a public body must reply within 30 days and then it says state that the public body is still gathering the requested records. What I was suggesting was I think we should be capable of saying that after 10 days. It's not that you go to the DA necessarily at that point but that you don't need 30 days to figure out how long it's going to take you to gather the records. There might unusual circumstances where it does but I think as a general matter we can eyeball how long it's going to take us to do something within 10 days rather than a month. Doesn't mean you have to complete the search or the production within 10 days.

MK- So that would be a suggestion that you could separate I think the first really maybe substantive response assuming you were not able to do the substantive response at the 5 day mark. That you would separate the more sort of substantive response with the day at which you get to go crying to the DA, although at that point do we need a timeframe for going to the DA?

LZ- Well I don't think so because wouldn't that decision turn on what's a reasonable time? And the DA is going to assess or the AG is going to assess well did the agency have reasonable time to respond to the request as I'm thinking very particularly of the case with DOC where we had a request that went on and on and on and the AG finally issued an opinion that this was not reasonable it didn't cite any particular deadline at all it just said in a general sense this was not reasonable. So I don't think it would be an automatic after 10 days people would run to the DA and expect to just win a slam dunk because you wouldn't have the reasonableness.

MK- Scott, are you looking at me like you want to say something?

SW- No, I'm really not.

Laughs

MK- That might even be better. So the way 4130 worked this 30 day termination could be challenged. That was the mechanism for getting you to the DA is that if you didn't like what they told you after 30 days you could get there. Oh my gosh, between losing, ok we're running way behind on our agenda but I think.

RB- If I could add one comment there to make you aware of this political nuance. When Scott and I and a few others got done tinkering with 4130 and the subsequent amendments the DA's came to me and were very concerned. They don't want an increase in work load they were very nervous about it and having handled all of Lincoln county DA petitions for the last 25 years I understand why they don't want to handle them. It's not their normal work load and they don't want to see that expanded so if we are going to have build DA review into it, to something like this I just want you to be aware that we are not necessarily in favor of that.

MK- So you're saying the DA's don't like being in here, Les is saying that maybe the DA's don't need to be in here, that sounds like coming together of a sort.

RB- Well yes and no. I see the value of DA review and I agree with what you just said at least in Lincoln County our cities did not want people filing petitions with me. They didn't want that because that was more burden on them, then the city attorney has to get involved and it turns into this show. So they actually avoid DA review and try to avoid DA review. Which is exactly what you said for those exact reasons, it doesn't matter if you're big or small because if you're a clerk and you just couldn't process it in a reasonable time and somebody, that's a big deal. So I just wanted to put that, I think I got the DA's massaged to be ok with 4130 but if we're talking about bumping that down to 10 I think they'll come unglued because then they'll say well everybody and their mother is going to file a petition for review two weeks after.

MK- No one wants DA's involved at 10 right?

LZ- It's not an expansion of the rule. That does not change if we codify it.

JB- So it automatically comes to the DA if it comes out of changing to 10?

RB- No, it's not, yeah. I just wanted to let you know and they may very well change their mind if this comes out in a full session may not like the expansion of their role, I just don't know.

LZ- It's not an expansion of their role. I mean again, if I got to the AG's manual the standard in Oregon now is in guidance of the AG, 10 days. That doesn't not change if we codify it, we do not have people unless you all can tell me different, we don't have a line at DA's office of people trying to enforce the AG's.

JJ- Yes.

LZ-Ok I would be surprised.

JJ-They went to the DA and they went to court and they had to say that 10 days is not binding and we had to move to dismiss. So all this time was spent trying to say that, that DA and that it's a recommendation and we had told them what we're doing we had to send the records to an outside consultant so it's not like we weren't communicating with them and that is just the example in the last six months because this is a reoccurring thing and so if it says 10 days and I guess the reason I thought you were talking about going to the DA is one of the versions of 4130 that we saw said after the 30 days you could go to the DA if it didn't meet those requirements.

LZ- I guess I'm and I appreciate that and I understand the strain on government to respond to these that's why I'm trying to figure out how do we build safety valves and I'm not talking about day to day basis where we have the 10 day standard in existence now unless I'm completely out to lunch I have not heard of a steady stream of people going to either the AG or the DA to enforce the 10 day standard. Am I missing something here?

RB- But it's not enforceable as a 10 day standard.

LZ-Well in the AG's manual it is.

RB-No that's different than codifying it.

LZ- I understand that.

MK-I wish we had internet

ER- I know, I'd like to see this.

NE-I also think that if you go back and look at past PRR's the AG will be granting 10 day petitions that come in after 10 days.

MK- Well we're not getting a line of them. I mean I think that's Les' point. That 10 days in the manual is exclusively meant to provide a general guideline for dealing with a normal PRR we usually think you ought be able it handle it in 10 days. It's never going to be like basically this says 10 days, they didn't do 10 days so therefore it's a denial. But I think similarly under this statute if you replace the 30 with the 10 it wouldn't be there either. I think the concern really coming from this side of the table is that well yeah it might not say automatically but if it's tied with DA review or the AG review then you're going to get people going to it at the 10 day mark than you are now which is why I wonder if maybe the DA just doesn't belong in here anymore.

BR- Michael at one point there was a discussion of; public records ombudsman in the governor's office or the AG's office someone to address these kinds of disputes maybe short of the DA.

MK- I don't know about short of but as an alternative to, yeah that is something that we want to get on our agenda for in the next couple of months but I don't think any of us is really prepared to talk about it here.

RT- Well I actually and Betty brings that up but part of what I've been thinking about is what if we maintained this flexible standard for all of the local governments and agencies but then you create a public records ombudsman that had authority over all of those local governments. Somebody wasn't happy and said it's taking them too long and I'm unhappy about that they can go to the ombudsman, the ombudsman can look at it under the facts and circumstances and say 'you know what, that is too long' or 'you know what, let's work this out, why don't you narrow your request' and get them the stuff and then you could build in some hammer that the ombudsman had and they could issue some binding order that says you have to provide the records within 30 days and it's going to cost the body \$10/day every day after that. I mean there's a way to maintain the flexibility in the statute so there was still some over-arching way to handle all of these.

MK- I guess it depends on how much we value Les' suggestion and the in general having an expectation codified in statute is actually going to be valuable for public employees as they're prioritizing this work. To my mind the current statute invites people to not prioritize public records requests, I mean I just...

JN-Over they're regular work right?

MK- Well yeah, prioritize. Maybe in some cases that is appropriate and maybe in other cases it's not. I think that is the advantage of the reasonable standard but it gives you no idea at all really like where on my priority list should this fall. So I don't know, to me the idea of having, and I haven't got a real, like 30 days to me to send a letter that might just say we're not done kind of does seem like a lot of time. On the other hand, 10 days to run into the DA's office seems like not a lot of time, right? Having a letter after 10 days that's expected, a public employee knows they're required to send and tells you what's going on, but that's not necessarily something that's going to be in statute connected directly in going to the DA's office but that might be useful. I think something that honestly is a separate question because it doesn't matter where you go if it were the ombudsman's office the escalation from the ombudsman's office to local government would trigger I would think Rob in saying, yeah. So to me the issue of who reviews it is not really, I understand the idea of independence and that's an idea that's worth talking about but I don't know that it is helpful in this conversation I think it just kind of confuses the question about time frames.

JB- I think the appeals process is really different than what we're talking about, the timeline. It's an appeal to the DA or AG If you're denied the record and then if you don't get a fee waiver or within a reasonable time then you can appeal that but it's...if you're following one of these proposed laws you're not denying the record. You say 'we've got the record, we're working on it', you haven't codified an appeals process at least the way the current law reads on the appeal. It just says if you're denied a record you can appeal it, now you can claim a denial and effective denial but reasonably most reasonable DA's would say, you might not have a reasonable DA.

Chuckles

JJ- It went to court anyway.

JB- Yeah, that's odd.

JN-I'm just, I feel like different folks are talking about different things and maybe I'm just confused but we're talking about a 10 day acknowledgement that the request has been received, right?

MK- Well it would be more than that. Like the 5 days in the current statute we're talking about the 30 day response being something that's required after 10 business days instead basically, in 4130.

RB- So instead of 5 and 30 we're saying 5 and 10

MK-Right, but it would still potentially be the response that we haven't completed the request.

JN- So instead of saying, *inaudible*, you're saying letter by 5 days, produce the records at 10?

MK-Well that's not what 4130 says after..

JB-You would do one of 5 or 6 things after 10.

JN- Is one of those things, still looking?

MK/JB-Yes, that's right.

JN- And if someone goes to the DA I can say I gave them a letter that said I was still looking they have no case.

JB-Well they haven't been denied the record which is what it says that triggers going to the AG or DA.

JN- I guess what I would like to hear is: Is the concern that people are going to go running to the DA's within 10 days after I've sent them a letter, or is the concern that they're going to run to the DA if I haven't produced a record? I'm just lost on which

MK- It's if, so the concern is as I understand it is if we keep 4130 because 4130 specifically allows you to go to the DA on the 30 day response right. So if we change that response to 10 days and we keep the part about going to the DA then we would be encouraging people to run to the DA's when they get the letter after 10 days that says you haven't got the records. Jennifer are you nodding along with my.. yeah.

JJ- That's what I'm concerned about.

MK- and Rob too.

RB- The DA's will come unglued on that.

MK-But if we take the DA's piece out of it entirely is what I'm saying and what I think Jeb is saying, then all we're requiring is a letter after 10 days that says 'ok, we've had a little more time to look at your request and we haven't got the records, here's where we are.'

ER- Except that paragraph C or part C it feels like it takes you out of that problem because if within 10 days you have to state that you're still gathering the records and certainly that does not suggest that you can go to the DA at that point.

MK-Right, it's not a denial any more.

JJ- I think I'm commenting on the 4130 that was the last version initially because I do recall a very specific 30 day deadline.

JN- So I don't think anyone objects to the 10 day letter. The DA's might.

JB-Does it say that in here?

Inaudible

LZ- But if I may ask the question so let's, let me ask you folks on that side of the counter so to speak: what tools should the public have when a government agency is not reasonably providing the record. I get all the concerns that have been stated here but you also know there are instances where governing agencies for whatever reason decide to impede by stalling, delaying or whatever. So a mechanism for the press but also the public should have, to say enough is enough. How do we deal with that consequence.

RB- Well you have to have a process, kind of like whatever was said before. I don't know that it matters whether it's the DA, an ombudsman, the governor's office or (I don't know if I can share this) even the senator had a better idea. An ombudsman at the SOS's office to depoliticize things as an alternative.

JK-It's something to do senator.

RT- I like the thought of depoliticizing it, that's good.

RB- Whatever mechanism you set up for the appeal process and take that will drive how government folk in the situation you described Les are going to respond because in my experience and at least shared in the city of Portland, nobody wants to get appealed because then city managers attorneys have to get involved. So that is the appeal itself inherently the hammer. How you build that by statutory reference or whatever matters in a major way.

LZ- Ok, that's what I'm asking is for you and Scott; where in the timeline we're talking about, because I feel like we are pretty close here, if we can figure out where we put that trigger in, where do we lay that hammer down in this scheme of things in a way that does not cause unnecessary disruption. Would have forged some protection with rights to get are being observed.

JJ- So the last version of 4130 that I looked at, well I just want to, if not agreement there was acceptance that one point you were going to give a first run of explanations and that was the 5 days and then there were additional things you would have to do by 10 or 30 days before we go to the DA. What we're talking about and given the concern that 5 might be too short and 30 too long. What if the process was, as soon as I get the request I say 'yes I got it, we're working on it'. Then at 10 days you have to give a lot more detail, either here are the records or oh my god what the heck are you asking for this is going to take the rest of my life can we try and clarify or all those things and then maybe you know if at some point it's like and I think in 4130 it was 30 days you would either have to say 'ok it's going to take me 4 more months to go through the 10,000 records you've asked for and pull them from archives or provide these deadlines for certain exemptions and I think that's when people got to go to some reviewing authority. Because if you could tell me it's unreasonable to take 4 months to review 10,000 archive boxes and you can convince someone that we're just yanking your chain, of course on the other hand what you do is you go to ombudsman or the DA and you say I only asked for one document. Though I will also tell you that the ability to do that decreases when you're getting, I can't even do the math, 24,000 requests a year.

LZ- Ok, so if we build on that could we do 5, 10 and then 30? You build on the 30 and then you have the 5 days to respond, 10 days for a subsidiary response or an explanation...

Inaudible comment from Michael Kron

JJ- I would say acknowledge as soon as practical because I think you could send an email that says 'got your request, thank you very much.'

MK-The first business day or if someone isn't working....

JJ- I just think time leaving as soon as practicable. It's true, if you are the only clerk working in the whole county and you are in a hearing all day then one business day is not reasonable. But if you're the city of Portland and you have an automated response system where the email goes right away, well then two seconds is reasonable right? I would just leave it at as soon as practicable and without unreasonable delay you acknowledge that the request came, then in 10 days you've got to give substance and then at some later point you've got to, if we don't tell you how long this request is going to take then you can go to the DA.

LZ- Scott does that work for you?

SW- I have to see the bill. Lobbyists are not going to agree to content we agree to bills but ... I don't think we're there.

Laughs

MK-Understandable

SW- But I think we can there, I would point out that when you're putting out some these deadlines there are intended consequences and so I got a PRR for an email I wrote, got a phone 'Scott I heard you sent an email, I'd like a copy of it', and my response was forward it to them while I was still on the phone with the person. I'm not sure if we just gave him 10 days, I mean if I waited 10 days to fulfill that request I should be prosecuted for official misconduct but for some...

RB-Write that down somewhere.

Laughs

MK- Its's all on the record.

SW-Seriously, it was like a one page email that he sent, within 12 hours of the request it was fulfilled.

MK- And that's, so whatever timeframes we can't lose sight of the idea that these are the points at which things are triggered but you need to be as responsive as you reasonably can be, right? Yeah.

RT- I guess the only point I would make and I think this has been a good discussion and I think maybe we're getting closer to something but I think that we should have the freedom here as the task force to think about the whole system and we can make changes to different parts of the system in different ways and a lot of the complaints that we have had about timeliness have been complaints that exist in the absence of the ombudsman for example. So maybe if you create that position and give them certain authority then making these rigid deadlines that a lot of folks object to maybe some of that goes away so I think we have to look at it as a system and not just talk about well what if we make one little change here and then we'll talk about the other part of the system tomorrow. I think we need to look at it as a complete package, that's all.

BR- That was going to my point. Building in DA review I think should be the last resort. I've seen ombudsman as a public advocate and a stance that's less rigid than the legal approach that would be off putting to the general public an ombudsman could be a softer approach for a public advocate. I know we're not ready to talk about that but I would like to build in that the rigid deadlines and I'd like to see the DA as a last resort.

JK- We're dealing with a lot of DA's offices that can't even handle their current work load. I don't want to put more on them, I mean I've got some DA's that are punting serious cases to DOJ simply because they don't have the personnel to do it, that sort of thing. There are other aspects of the job in the DA that we don't want to lose in all of this so...

JB- I think the, I just was looking at 4130 as it was A engrossed and it actually did trigger but not after 30 days it triggered at the end of whatever you said after 30 days would take you.

JJ- Unless you didn't say that, right?

JB- So if you didn't say, yes, you know, but how hard should it be in 30 days to say something but at any rate the was the trigger and....

RB- I think what you described as I remember it that's what the DA's were reluctantly willing to swallow down and not fight that bill because the way you just described it.

JB- So if there was 10 instead of 30 and you said that was 30 days that would become the trigger. It's what you can assess, but I mean it doesn't have to be, it's just a....

MK- Honestly I'm not sure I'm seeing the value in building in, like dragging the DA's into this at all at this point. I mean they're already there you know and I think the existing procedures, if we don't change the existing law at that point then to some extent we would be retaining the flexibility in a way that's got, oh sorry Robert, why do I have, I feel like I do that a lot Robert, I call you Scott, my apologies. Would be building in the flexibility or retaining the flexibility that Robert is talking about while building in a more open communication requirement essentially that requires public bodies to take requests seriously, doesn't require them to drop everything else they're doing, sets an expectation for when you should expect to hear from the public body on your PRR at the latest. If at the same time we could keep the language that says as soon as practicable and not later than we're making it clear that these are ceilings not floors, right? Anybody not nodding along with that?

RB-Just write all that up and into a bill and let us look at it.

MK-Since it's 4 o'clock.

JK-That's not a bad idea.

Laughs

MK- I think that's what I'll do or what I'll ask Noah to do perhaps. We did not get to two things on the agenda and I'm really sorry about that's partly due to our fire drill but partly I think this discussion was more robust than I expected but really usefully robust and I really am grateful to you guys for it. The cataloging is going pretty well. I guess one of the things we didn't get to which I'd like to assign as homework, the second handout is available to you it's also posted on the webpage for the task force, is the attempt at combining exemptions in the business transactions category. If you could look at it before the next meeting and have thoughts about it that would be great. I do want to talk about an ombudsman I don't know if maybe we can get that on the agenda for next month's meeting. I posted some examples from other states a few weeks ago on our website so those should still be available to people too if they're interested in looking at that.

ER- I just want to put in a plug because I think what Robert said and Betty said on kind of thinking outside of the box a little bit. How an ombudsman or public advocate could really help even with some of the deadline aspects of some of this. Not making the ultimate decision obviously if it really goes south you may eventually have to go to the DA or AG but to have this person or office, whatever it's going to be, to be able to intervene and assist at a point where

things can get unnecessarily ultimately feisty would be amazing so I really urge us to talk about that at the next meeting. Did you talk at all about getting their help to get the word out about our public meetings?

MK- We had a brief meeting, that was actually the 4th agenda item I didn't get to.

ER/MK- I really wanted to get to that, can we just take one more minute of your time because we've got a Public hearing coming up on May 9th in Eugene. And you know, getting people to come out and talk about public records is.... we all love it, we're here but obviously there's other people we really want to hear from. So if you could lend your ideas on not only how to get them there, it's going to be on the campus at U of O in the journalism school so it's a really great location. I'd like to do a little bit of tweeting or something like that at our office beforehand to get people excited about coming but we need your help, we need each and every one of you to help us get the word out and that's your job, right, so this is an opportunity for you to demonstrate your medal in getting the public to engage in something that isn't that necessarily exciting to them but you know there's lots of people out there who would like to be heard they just have to get the word and so you can help us do that.

MK- Certainly your members are also welcome to come. There is also a May 26th public hearing in PDX. So we're going to be doing Eugene and Portland in May.

ER-Thank you

MK- We'll be scheduling two for June. The Portland one is also at the U of O school of journalism, it's the White Stag building in downtown Portland. That will be at 5 o'clock, these will all be noticed but, so you remember.

ER- The May 9th one we need your help now because it's like in a week and a half. So two weeks maybe.

SW- If you have a release we can put it out in our bulletin.

JB- We should all do that within our associations.

JN-As much as we can then we will all get it out.

MK/ER- We will send something as soon as we can. Great, ok excellent guys. Thank you so much, sorry to go a little bit over.

Meeting Adjourned