

Meeting Date	11/18/2015	Time	1:00-3:00pm	Location or Call In	Capitol Building – Governor’s Conference Room
Meeting Name	Public Records Task Force Meeting				
Meeting Owner	Michael Kron	Minutes: Emily Anderson			
Attendees	Ellen Rosenblum, Michael Kron, John Tamerlano, David Rosenfeld, Mark Landauer, Scott Winkels, Robert Taylor, Jeff Kruse, Ken Helm, Betty Reynolds, Gina Zejdlik, John Huffman, Les Zaitz, Jeb Bladine, Phil Lemman, Rob Bovett (via telephone), Emily Anderson				

Michael Kron opens the public records tasks force by asking everyone to introduce themselves and share their experience and what they hope to achieve.

Introduction of members of the task force in order of how individuals are seated:

John Tamerlano is the vice-president and general manager of KATU Television and sits on the OAB Board (Oregon Association of Broadcasters).

This is John’s first year on the OAB and the first time he is participating in this task force. He would like to learn the procedures and in representing the OAB, the topics that will be discussed in this task force are very important to his industry.

David Rosenfeld is the Executive Director of a public interest group.

Mark Landauer is from the Special Districts Association of Oregon and the Oregon Public Ports Association.

Scott Winkels is a lobbyist with the League of Oregon Cities.

Robert Taylor is the Deputy Secretary of State.

Jeff Kruse is a State Senator.

Ken Helm is a State Representative.

Ken is a recent appointee. Ken believes that he can be useful, as in his working life he is an attorney and has essentially been a government attorney for the past 20 years, working in land

use. Ken is currently practicing in hearings officer work for several jurisdictions within the state. Public records dilemmas are not far outside of his practice area.

Betty Reynolds is a public member of the Task Force.

Betty is a retired state executive, including 11 years as the executive director of the Oregon Government Ethics Commission. Betty has a profound interest in the concept of open transparency in government operations. Betty was the vice-president for Legislation of the Oregon PTA, and worked on OAIB's and Representative Frederick's 2014 Task Force on student data privacy. Betty also supported the Attorney General's Senate Bill 187 regarding student data privacy.

Betty thanked **Ellen Rosenblum** for her work on Senate Bill 187 and the Legislators who showed leadership on protecting student data privacy.

Betty is currently the vice-president of the Oregon School Boards Association, and has an appreciation for the challenges of state in local governments in compliance. For example, some of the 197 school districts are not even open during the summer.

Betty has a doctorate in public administration and policy. Betty does training in the public sector and recognizes the need to update the 1973 laws to reflect the digital age.

Betty thanked **Ellen Rosunblum** for the opportunity.

Ellen Rosunblum is delighted **Betty** agreed to serve and thanked the Representatives.

Continued introduction of Task Force Members:

John Huffman is State Representative for House District 59.

Les Zaitz is from the Oregonian is representing the Society of Professional Journalists.

Jeb Bladine is the president of the News Register Publishing Company in McMinnville.

Unit a year ago, Jeb was a newspaper editor for 40 years with an interest in public records and public meetings.

Phil Lemman is from the Judicial Department.

Phil is sitting in for Josh Nasbe, who is on parental leave. Phil started his career in the Attorney General's office doing a lot of public records and meetings work, has been on the Board of Open Oregon, and now is the Public Information Officer for the Judicial Department. Phil does a lot of work with media and records.

Ellen Rosenblum is the Oregon Attorney General.

Ellen is delighted to be here with everyone. She introduces **Michael Kron**, who is going to be chairing this Task Force. Ellen is going to take a roll and will be at most, if not all, of the meetings.

Ellen thanked the Task Force Members for being here and also the public members for attending.

Ellen Rosenblum introduces her staff, who are attending the meeting but are not part of the Task Force:

Aaron Knott and Joan Green

Aaron introduces himself and states that he knows almost everyone. He is excited to be here.

Ellen Rosenblum says that Joan is her Executive Assistant, and is always someone to contact if need be.

Michael Kron recognizes almost everyone around the room from last meeting, but offers an opportunity for visitors to introduce themselves.

Michael Kron – At the end of our last meeting we discussed the framework for this meeting, and that we would start with two basic issues. One is coming up with a policy statement to inform the public records Law. Les noted that the public records law does not currently have a statement of policy. The idea was if we can come up with a statement of policy, we can then use the statement of policy to inform our ideas as we move to more substantive areas of the law.

The second was to talk about the organization of exemptions.

I would like to get to both of those things today, but a couple of things have come up that I want to talk to the Task Force about, and maybe suggest a detour:

The Center for Public Integrity recently did a 50 state evaluation of state government around the country. They gave Oregon an F in the area of accountability in state government, and an F specifically in the area of access to public information.

Jeff Kruse – How many states got F's?

Michael Kron – 34

Jeff Kruse – It's a biased assessment.

Michael Kron – In public records law, actually 44 states got F's.

Jeff Kruse – That's a good perspective to have.

Michael Kron – I absolutely agree with that. It may be that there are unrealistic expectations, but I also think that perception indicates there is problem with how people feel about their ability

to have access to their government. If people feel they can't access their government, it seems like that's something we should address.

The other thing that has happened is that the Governor requested audit report has been issued by the Secretary of State Audits Division. In about 10 minutes, the Governor will be delivering some remarks to the joint committee on Legislative audits with respects to this audit and another one on government accountability. We have the ability to watch it here, if people on the Task Force are interested in seeing what the Governor has to say.

We will plan to do that around 1:30.

John Huffman – I haven't had a chance to go over some of the materials that you sent, but are we planning on reviewing some of the work that John Kroger's team did? Was there value in that? I was associated with that, so we don't recreate something.

Michael Kron – I actually worked fairly hard on John Kroger's reform effort and am very familiar with the outcome and the input that went into that. I think there are some things we can look at that will be extremely useful in the context of organizing exemptions. One of the things I sent around was what Kroger proposed in that regard, which is create a catalogue which both classifies exemptions broadly and then attempted to describe them individually. So if you are a member of the public and you want to get at what is potentially exempt, you can look in a broad category and then look for narrower categories.

A lot of work was also done to try and compile all of the exemptions outside of chapter 192 into a master list. I have a law clerk who has been working on helping me update that.

John Huffman – Is the report from that work group available somewhere where I can find it?

Michael Kron – John Kroger did not convene a work group. The failure to do that was perhaps one of the factors that led to people being surprised and overwhelmed when his ombudsman bill dropped and nobody feeling comfortable that they knew what was really in it.

The Attorney General did issue a report in 2010, leading up to his proposal, which we could take a look at. In going through the Center for Public Integrity's Assessment, I did notice they cited to that report a number of times. That is certainly a resource that could be helpful to us.

I think it's important that we take a different approach to the issues, because his was ultimately unsuccessful. I think some of the things he did were useful, and one of the things on our agenda today is talk about how are we going to be more proactive about soliciting public input. Kroger did a fairly good job of going around to various areas of the state and inviting people to come and share perspectives. I personally have a lot of that knowledge and I may not always be great about explaining what I'm relying on that was done there.

Ellen Rosenblum – I am absolutely open to pulling from some of the previous work that was done here. Pretty much any time I have met with the media, the first question out of the box is "are you going to take up the public records issue?" and I kept saying "yes, absolutely I am." I

don't want to reinvent the wheel, but I am also very conscious of the fact that something went awry. I want to be careful about not embracing my predecessor's work, other than some of the parts that Michael finds...

John Huffman – Not being familiar with the work that has been done, I have witnessed particularly in the last two biennia some promising ideas that didn't get traction because someone didn't properly message before bringing the concept to the Legislature. I didn't know if that was part of the challenge.

Michael Kron – It was a very ambitious effort in terms of addressing all three issues in one volume and the way it was presented was another problem. We are certainly willing to draw from that work.

Les Zaitz – Did the draft legislation essentially follow the findings of the report we put together in advance?

Michael Kron – It did. There are some specific things about it that are very useful. I personally am a fan of what we tried to do with exemptions. I think it can be refined, but it did address the three areas that have been highlighted over and over by everybody, to do with the number of exemptions, the timeliness of public record responses, and the cost associated on both sides. The report can be a good guide.

Oregon ranked 34 out of 50 states, and only six states did not get an F. Utah and Hawaii were highly ranked in their assessment. Idaho got a C. Nobody did terribly well by this measure. There were three C's three D's, and every other state was given a failing grade. This probably reflects that the realities we talked about last week are realities everywhere. Emails and electronic documents create a significant problem for people to deal with.

The perception is out there and I think it is widely held, that public records laws are not working.

Phil Lemman– They gave Oregon a zero in 'practices and receive responses to access information requests in a reasonable time period and at no cost', and that seems to directly contradict the findings of the audit. The routine requests get fulfilled in timely bases and without a lot of problems. It's the larger scale or electronic records that cause a problem. I see a real disconnect whether it's by perception or analysis. I share Senator Kruse's question on how much we can rely on that.

Michael Kron – There may be people in room who will you tell you there are times when those routine requests are not handled as forthrightly as we would hope.

Phil Lemman – We can write for the rule, or write for the exception. If we make the general rules based on the exception on those unusual cases, we aren't really doing a full service to anybody. So I would like us to keep that in mind as we move forward.

Michael Kron – I think it might be a good idea if I can try and get the Governor on the screen. She will be talking at least some about the public records audit.

*Recording stops for break
Break ends and recording resumes*

Michael Kron – The first thing we had talked about was coming up with a policy statement in the law. The courts have made some very powerful statements about the intent of the law and they have made them consistently for decades. The first case predates Oregon’s current public records law but is still cited frequently by courts, from 1961. The idea is to allow people to assess the performance of people working for them. The court described the public access to records a fundamental right balanced against an incidental right of a public agency to be free from interference. The public’s right to know what their government is doing is a fundamental and significant right and what that should be balanced against is an incidental need of government to function.

Michael Kron read multiple court opinions.

Michael Kron – I think Scott said last week that the public records law works against itself when it has all these exemptions built into it. What that prevents is the simply, quick and uniform application of exemptions to records in public bodies.

John Huffman – The direction I would like to see us go would be that records should be available, comma, with few exceptions, and those be articulated, and the process spelled out clearly. The Secretary of State audit had some good recommendations that the Governor is taking under consideration. Steering clear of those comments like ‘generally available’ kind of bothers me.

Michael Kron – The comments bother you, or avoiding it would bother you?

John Huffman – For us to position ourselves in making a statement along the lines that they should generally be accessible. I would like to see this group articulate that the information would be available with few exceptions.

Jeff Kruse – If we can define exceptions then everything else is open.

Michael Kron – It sounds like the Governor is speaking.

*Recording stops for Governor’s comments
Break ends and recording begins again*

Michael Kron – it sounds like in 2016 there will be legislation to propose to adopt an independent ombudsman. We might want to talk about how our task force can help inform those efforts. At the latest, we should put it on our agenda for our next meeting, otherwise it was nice to hear her commitment to the public records law.

I was in the middle of talking about policy statements. Representative Huffman, I think you are saying that language like ‘generally accessible’ may not be strong enough. That does sound like a stronger way of saying what essentially the same idea is.

I found some policy statements in other states that expressed the idea fairly strongly.

Michael Kron read multiple state policy statements.

Michael Kron – If we get to it later, there are a few states where the Legislator has said; “these are things that we want our exemptions to protect”. They are personal privacy, business records, and things that would significantly affect the government from administering its programs efficiently. The idea that there can be few exceptions and identified, maybe a policy statement is the place to do that.

Both of these states failed the Center for Public Integrity’s assessment of public records law. That is no reason not to adopt a policy statement.

Michael Kron read draft policy statement.

John Huffman – I like the wording of ‘narrowly’, ‘liberal’, so we convey that the records should be available. Several of us had lunch with Joe Robertson from OHSU and he was talking about the Moda deal. Joe said OHSU tries to be transparent, that this was one of those things where they couldn’t speak because they were dealing with a non-public entity, and they couldn’t say anything until Moda was ready to make the announcement. I thought it was impressive that OHSU’s policy is they will be transparent with those rare exceptions when they are dealing with intellectual capital of a private entity.

Les Zaitz – Moda makes a good exhibit to the importance to the public of getting the information. Here, you have \$50 million of public money going to a private entity and the public has a lot of questions. The initial statement ought to be as unambiguous as possible. That the records are public, period. I stumbled over “the requirements shall be construed narrowly.” My suggestion would be “they should be applied narrowly”.

Jeb Bladine – I echo Les on the first sentence, that public records shall be accessible to members of the public. I don’t know that you need to refer to “and elsewhere” in ORS for the disclosure provisions. I would suggest only those included in 192.

Michael Kron – Are you talking about the exemptions?

Jeb Bladine – I’m talking about the disclosure statutes that are outside of 192. The disclosure provisions in 192 should be interpreted liberally, well the disclosure in every other statute.

Michael Kron – It might be awkward to include a policy statement inside the public records law that is a policy for other laws, too.

Jeb Bladine – The public records law explicitly draws those into disclosure by making them subject to 192.502. I don't know if there's another place to do that, but there is a connection is 192 to all those other laws.

Michael Kron – What I'm hearing is that it is the policy of the state of Oregon that public records are accessible to members of the public with few exceptions.

Ellen Rosenblum – Or shall be accessible.

David Rosenfeld – The “with few exceptions” part is not in there, everything else is in there. That would be an additional item that is not here.

Michael Kron – I think saying “they shall be with few exceptions” is stronger.

Scott Winkels – The Legislature has been really conflicted about this. We several statutes that designed to limited access to personal data; we have multiple classes of employees: public safety officers, judges, code enforcement officers; whose data we are prohibited from releasing. There was a bill passed in the last session that requires us to delay the release of data until we can notify the public official or person who the request was about. I don't know that I have an objection to the policy statement, I just have to note that we have these conflicting requirements throughout the statute that I don't know this statement could live up to.

Michael Kron – I think the idea was we could then use the statement and try to minimize the inconsistency you are describing.

Scott Winkels – Some recognition that we have an obligation to protect people's physical and economic safety is important.

Les Zaitz – I agree and understand that, I just know from long years of practice with this that it has become the default position to see if any exemption can be applied, and if not then we will release it. This sort of declares that it will be open unless you have a specific reason to make something confidential. I see significant value to giving guidance to all levels of government. That doesn't remove the need for applying on a rational basis, the exemptions. If we accomplish nothing else, but clarify this policy, it's going to make life a lot easier.

Betty Reynolds – The public meetings piece of chapter 192 has a strong purpose statement. If you wanted to go in the direction of a general purpose statement, I did search for ‘purpose’, ‘intent’, and ‘findings’, and there are actually about four different provisions, but they are very narrow. One of them is for genetic information, one of them applies to litigation and attorneys and litigation, and one of them applies to public records and destruction. One possibility is a hybrid of public records and meetings for the entire chapter.

Michael Kron – A policy statement maybe doesn't seem like much, but it's a provision that has been used by trial and appellate courts to reach decisions that are consistent with the policy statement. An opinion was just issued that essentially said you can't get out of the public

meetings law by serial emailing between people who are members of a governing body. It was inconsistent with this policy statement to interpret your emails as anything other than a meeting.

To return to what I think you were hinting at Scott, it seems like what your statement implies is the need to protect people's privacy, safety, and business interests within the policy statement. The intent of the public records law really is to get information about what the government is doing. The intent is not to get personal information about individuals who are encountering the government. The interest really is in knowing what the government is doing and how the government is fulfilling its obligations.

Ken Helm – I don't see that there is a definition of what an exemption is. I tend to think about how a court will look at a claim that the law has been violated around an exception. They will look first at the text of the exemption to see if it applies, and if the text is absolutely clear, they won't go back to this.

When we talk about this balancing, that is the place that needs more clarity. I don't think there is much argument in this group about whether public records should be broadly available. We are having the trouble when you carve away from that. It may be worth to think about if we are correct on our principles about when exemptions should be granted.

Jeb Bladine – We define it according to the AGs and common practice that it is an allowance for non-disclosure; not a prohibition against disclosure. If an exemption is going to be defined as a prohibition against disclosure, we would consider that bad. It might be good to define it as something allows an official to not disclose information.

Ken Helm – In observing how this bill that Scott was talking about was passed last session, there was no discussion of a principle of exemption around it. Certain public officials are having trouble because their privacy is being invaded for reasons that are unrelated to their personal life, but are related to their public service. The exemptions have been one-offs for a long time.

Scott Winkels – I'm going to clarify. I wasn't criticizing that bill, we actually supported it. Those were our employees who had been jeopardized; it was a good bill.

Michael Kron – Florida and Kansas have both adopted explicit exemption criteria, which state that an exemptions should do one of three things: be necessary to effectively and efficiently administer government programs; they should protect sensitive personal information that would be defamatory or jeopardize safety, and only used to exempt identifying information; and the confidential information about entities, or essentially trade secrets.

Mark Landauer – Shortly after a terrorist action 14-15 years ago, there was talk about the public records law and what sort of things should and should not be released. In reading number two there, where it says jeopardizes safety, is that individual safety of the public at large?

Michael Kron – That one would be about individual safety, I think public safety would fall more under the first one.

Mark Landauer – I think we need something that calls out public safety. What I have in mind are CERT tactics. We don't have to release those or key infrastructure information. We have a safety responsibility to the public. If we are going to go with these broad exemption categories, I want to be sure we at least capture a part of that in there. I do agree that the public ought to know we are doing a good job. Some of that information should be available. We should be vulnerable to criticism when we deserve it. But I also want to ensure that certain plans and facilities that have significant public safety component can be discussed.

Jeb Bladine – These are not exemptions, these are broad categories that they would fall under. Maybe public safety could be included in that. Number two probably falls short of personal privacy issues that are widely accepted.

Gina Zejdlik – Right now we have exemptions and the balancing tests in our laws; but you have the 'other' category that is not trying to be responsive to any category.

Michael Kron – If we come up with a policy statement, then we can move on to the next areas of our work with that policy statement in mind. There are some that don't make sense.

Mark Landauer – Do we in the state of Oregon have anything like this currently or maybe in the past?

Michael Kron – Some states have all their exemptions published and catalogued. That is part of our second agenda item. Maybe a policy statement should wrap in what an exemption should be and the balances that should be at play.

Ellen Rosenblum – Didn't Vermont do that?

Michael Kron – All people have a right to privacy in their personal and economic pursuit which ought to be protected. Public safety is not really addressed here. Where an exemption is truly needed to effectively and efficiently administer government, that isn't really addressed in Vermont.

John Tamerlano – Is there a Federal one we could look at?

Michael Kron – The FFOIA has nine exemptions, but there is not really a policy statement.

Robert Taylor – When a request under that law with nine exemptions, how does the federal agency patch those out?

Michael Kron – One of the exemptions is like ours which patches everything into it. The eight that are actually in FFOIA have been well developed; these are things that are litigated all across the country. The Department of Justice publishes a guide to the federal FFOIA. There is guidance on the ones that are in the FFOIA. As of 2009, FFOIA requires any additional exemptions to refer to the FFOIA if they are not included in order to operate as an exception. You know from your work what exemptions are effective and you consult with your lawyer.

Robert Taylor – I would be in favor of us adopting a policy statement that says ‘these records belong to the public. They should be accessible with few exceptions.’ Have just a few exceptions and repeal the rest of them, inside and outside of the public records law.

Michael Kron – I think that’s more of a substantive change than an organizational change. It will probably come up more later.

David Rosenfeld – If all you were doing was just making sure the public understand the public records law, I don’t know how to do other than the way Robert describes it.

Mark Landauer – I don’t oppose going down that road, I just want to make them precise enough in order to avoid litigation over whether something is or is not available to the public. We represent public bodies with limited resources. I’m not sure if the new ombudsman wants to take on 242 cities, 950 districts, 192 school districts, and 36 counties.

Robert Taylor – In other states, they do.

Mark Landauer – If the Legislator wants to provide them the funds to deal with that, God speed.

Gina Zejdlik – Coming up with an overarching policy statement is a really important step, and an important step if we end of going down that road.

Michael Kron – I think I have a fairly good idea of what the Task Force would like to see in the policy statement. I think we want to talk about what an exemption is and why it should exist; I think we want to make the language at the beginning a stronger, and that that gives us a natural transition to talk about the basis for exceptions; I think we’ve identified three good ones and we can add public safety to them. I think we want to talk more generally about chapter 192. This overlaps with the policy statement in the public meetings law, which is working well. I think it would be a mistake in the public meetings law to mess with it. Did I miss something?

Ellen Rosenblum – In looking at the second sentence, I think it’s missing something. The second piece is getting information, so that you know what is going on. It’s not just about ensuring I’m doing my job.

Jeb Bladine – Maybe a step beyond that is the importance of an informed citizenry. To be able to participate efficiently.

Michael Kron – I will admit that I tried to keep it short. This will lengthen it, but that’s okay.

Phil Lemman – When we say shall be accessible with few exceptions, it makes sense if we take the nine category approach. I think we are shooting ourselves in the foot if we say that and leave 400-something specific statutes out there. I would like us to think about how we say that. I think we are all trying to say that disclosure is the rule, non-disclosure is the exception.

Michael Kron – So really, we are talking about a few genres of exceptions; a few categorical principles that explain when information the government has may not be appropriate to share with the public; as opposed to there are few exceptions in the literal meaning.

Phil Lemman – I think the vast majority of those exceptions have been where disclosure was ordered and someone got the Legislature to fix that; or someone wanted certainty and came in and got that. I think the balance we are going to go through is these general principles and how they are applied on a case-by-base basis. If we go by those general principles we are still going run into the litigation and lack of specificity.

Gina Zejdlik – You want judicious exemptions?

Phil Lemman – That’s what’s nice about the Florida approach where it says when the Legislature does this they ought to think about—maybe something that says the Legislature ought to make findings on these questions so that it’s explicit and put out there that there is some policy guidance that this exception follows.

Ken Helm – I think that is a great idea.

Michael Kron – Requiring the Legislature to make policy statements?

Phil Lemman – We also get back to what the Legislature can and cannot do to itself. Part of it is an ongoing legislative commitment to do that.

Michael Kron – I think it would be useful to the legislature to set that as an expectation.

Ken Helm - The exception language from Kansas and Virginia is helpful, because it looks like legislative findings. It’s not just the policy; it’s the reasoning behind it. That helps the interpretation and the problem of strict definitions.

Michael Kron – I think what you guys are proposing is a something that encourages the legislature to think about why we are adopting this exemption.

Jeb Bladine – Are you including those broad areas of exemptions as potentially part of the policy statement or as a prelude to what the exemptions are? Are you suggesting that the three broad categories of exemptions are somehow incorporated into the policy statement?

Michael Kron – Yeah

Jeb Bladine – Which could be three, or nine. What Robert suggestion may or may not fly, but it would be a very valuable exercise, to see if an exemption fits into those categories.

Michael Kron – So far I think we have identified four: the efficient and effective administration of government, personal privacy including personal safety, public safety, and business-type financial records. Those are the ones I would like to work into a revision of the policy statement.

The idea would be to use that to talk about how we might go about organizing exemptions, and I think we agreed that the substance of the exemptions would be a separate conversation. Robert, I think your conversation fundamentally is about what the substance what of our exemptions are, or would be viewed that way by the legislature more so than what I am lumping into this organizational category; a step prior to changing them. I think just repealing them all and replacing them with nine feels more like changing them.

Unidentifiable – What you could do is identify your four or nine categories; and plug in the four or nine hundred with 25 outliers. The public can have confidence in the reasoning behind the exemptions and take the outliers to the Legislature to figure out if we really need them.

Betty Reynolds – The efficiently and effectively administration of the government would also go to some of the timing and cost concerns of the smaller jurisdictions and possibly address some of the judicial cause and litigation cause. There are specific policy statements in the statutes that would need to be addressed.

Michael Kron – The first item on my sample approaches is a catalogue to how we might organize exemptions. In 1993 the Secretary of State proposed a version of what we are talking out. They proposed to write specific exemptions, and then made conforming amendments elsewhere in the statute book. If there was a law that was an exemption, they would tie it to one of the new exemptions created.

In 2011 Kroger's approach was more like: here are the categories, and here are the exemptions that fit within that category. It has the disadvantage of being bulky but the advantage of it being in one place. California's approach is similar to Kroger's, where they're listed and described within the statute, as required by the public records statute. It set the expectation that the legislature approach the issue rigorously.

Louisiana literally lists statutes. I think that's not very helpful.

Alternatives include a tagging system, which is included in the federal law. The exemptions outside of FFOIA have to say "this is exempt under FFOIA". My view is that a tag does the same thing, just not as well. You have to have access to some kind of tool that will allow you to search the statutes for a keyword.

Phil Lemman – Isn't that just the flip side of the Louisiana approach? The other way of doing it is, in 276.422 refers you to 192.

Michael Kron – I feel like neither of those approaches are as satisfactory as a catalogue that ties to our overarching principles.

Les Zaitz – How many of the 400 exemptions are contested or ever an issue? Are we trying to fix something that doesn't need to be fixed, when the real issues typically are the exemptions cited in the public records law? If we just want to this as housekeeping to clean things up; that seems like a clerical function as opposed to a policy function.

Michael Kron – There is some risk of housekeeping, but I don't think it needs to be done that way. The 82 exemptions in 192 could usefully be subject to this process. The cataloging will be useful as an end to itself; but the more substantive use is the one Robert referred to – what about the ones that don't fit very well when we are categorizing these?

I think last time we agreed to approach these issues as sequentially as we can so we get the benefit of the work where we can come to agreement and get things done. I think that's going to a heavy lift, when we reach the ones we can't categorize. There will be people who don't want those to go away and I think we will have to hear from them.

I think it will be helpful, even if we can't get rid of them, to have gone through the exercise of making it more user friendly for people on both sides.

Scott Winkels – There are exemptions that their advocates are going to have a hard time articulating the public interest. I would like to hear someone make a case for why boat collision reports are exempted. There are others in there that I think the advocates should have to justify these.

Jeb Bladine – I hope to catalog the public interest. The public interest is by far the most problematic area. None of us know what it means. We have 501 with public interest test except in a couple places, and 502 without public interest test unless it says there sort of is; and all these other statutes that are an end-run around the public interest test because they're under 502, when public interest should be discussed out there. There is inconclusive and conflicting language.

Phil Lemman – The broad categories of exemptions can serve to try to categorize the types of public interest. We have the public interest in disclosure balanced against the public interest in privacy or efficient administration of government programs or the public safety at large. That combined with the legislative findings will help. From my experience, any time a reporter makes a request they say 'it's in the public interest waive the fee.'

Michael Kron – The public interest is an interesting feature. It doesn't exist in a lot of other places. Oregon public meetings law is the only one in the county that allows journalists to attend our executive sessions, with the condition that they can be told to not report on things if they hear them. The scenario doesn't make a lot of sense if you look at it head on, but it's worked quite well in practice in Oregon for more than 40 years.

The public interest test is a substantive and I think it would be a difficult one to go away with. I think we would have a hard time making all those conditional exemptions unconditional. I also think we would have a hard time getting rid of the conditional exemptions entirely.

Jeb Bladine – We should look at it to see where we have current law that really should have a public interest test.

Michael Kron – If we are going to catalogue, I think that is something we could flag.

Are people thinking that having a catalogue would be a worthwhile endeavor?

Ken Helm – I think cataloguing for the purposes of the task force would be helpful to me.

Michael Kron – We are working on that.

Ellen Rosenblum – How close to the app is the catalogue? We have an app for this, by the way.

Michael Kron – Lee Vandervoo created a web app where you can do keyword searches for exemptions. It is out of date, but we have been working on updating our list of exemptions. I think the nature of this make it hard to be 100% sure we've got them all. I will start working on what a catalogue will look like.

Does anyone feel strongly that it will be better to take to oppose approach and have the tags?

Mark Landauer – I think it will be helpful for the government entities who are administering the law to go to one spot and find the law.

Ken Helm – If you are responsible for responding, you need to have some ease of use there. Sometimes catalogues aren't. I love the app idea for local government that tells whoever is responsible what the parameters are with clear and objective wording so they can dispense quickly. If that's one of the problems we're trying to solve, we shouldn't assume that a catalogue that works for us here is what we are going to hand down to local government.

Michael Kron – I think we should think as a group how we want to get input from the public. The AG has been chairing a profiling taskforce which accepted public testimony. We could consider having people in our meetings. Do you guys have any thoughts?

Phil Lemman – Is that to help structure our work or review a draft work product, or both?

Michael Kron – Both. I think it would be useful for us to form our work and also to have feedback on our work.

Gina – Is there a web presence for this? Is there a comments section there where we could direct people?

Michael Kron – Maybe when we get our new website. We could set up an email address that would be easy for people to send up comments.

John Tamerlano – When crafting something like it, is it in the back of your mind who is asking for these public records? Is it how you communicate with media, or public interest groups? Now, everyone lumps everything into media, are there factions of bloggers who don't have the same standards as other media. Or is it just wide open?

Scott Winkels – Speaking from City, its wide open. We get requests from developers, citizens, and media requests.

John Tamerlano – Should we take media down to that next level, about how media has changed?

Mark Landauer – We've been dealing with that in executive committees for a long time.

Scott Winkels – The League did develop a model policy on how to deal with bloggers in executive session and I am happy to provide it. The Ethics Commission just got legislative authority to issue advisory opinions on that.

Ellen Rosumblum – There is a lot of interest in what we're doing. Some think we are not as representative as we could be. We have said in response that we want to hear from the public. I think sooner rather than later would be a good idea and I am more than happy to have a presence in that. It goes a long way in transparency and inclusiveness. We could come up with a couple of locations and if you are available for a couple of hours, we will arrange for the locations and let you know. We would do it on the record so we can provide summaries. It would be nice to be able to say here is our total, what do you think? But we are not there yet.

Jeb Bladine – Were clearly interested in exemptions, we could ask for some input on that. The ability to enter online would be a nice way to do it. I can probably submit that ONPA would promote to its newspapers to write about any cohesive effort.

Michael Kron – I think people are happy to participate.

Ellen Rosenblum – I wouldn't want to limit to exemptions, I would want to ask people to weigh in on any of the three major topics we are covering, especially in light of the audit.

Phil Lemman – Is there a way we can learn from General Kroger's efforts as he did a lot of outreach? Do you think those questions or comments have changed over the last four years? I would guess there is enduring concerns or questions.

Ellen Rosenblum – We will put a summary together of what he did for the next meeting. The proposed legislation was thick, and I think that was a problem. As far as what else he did, Michael has intimate knowledge.

Michael Kron – I will try and take a stab at categorizing them to give us some samples of how I think about this catalogue, a revised draft of our statement, and some information about what the public input was that Kroger solicited.

I think that it is good to hear from people to have them inform our work and get feedback on what we have discussed so far. I am reserving meetings for the third Wednesday going forward through January. I wanted to get your thoughts about meeting while the legislature is in session.

Mark Landauer – That's going to be tough because of the pace in the building. The pace is really difficult.

Michael Kron – So, the third Wednesday at the same time. (December 16 and January 20)

We did not approve our minutes. If you have comments, can you please email them to me and we can approve the minutes for both sessions at the beginning of next session?

I will circulate revisions based on people's comments.

Michael Kron adjourns meeting.