

Oregon Sunshine Committee Meeting Minutes
October 3, 2018

Location: Oregon State Capitol, Room 343

Sunshine Committee Members
Oregon State Senator Brian Boquist (excused) Selena Deckelmann, Director of Engineering, Mozilla Firefox (by phone) Eileen Eakins, Law Office of Eileen Eakins, LLC Charlie Fisher, OSPIRG State Director (excused) Mary Beth Herkert, Oregon State Archivist Karin Johnson, Independence City Recorder (by phone) Michael Kron, Special Counsel, Oregon Department of Justice Emily Matasar, Government Accountability Attorney, Governor's Office Oregon State Representative Karin Power (by phone) Oregon State Senator Floyd Prozanski (excused) Adrienne Roark, Vice-President and General Manager, KPTV Fox 12 (by phone) Morgan Smith, Polk County Counsel Brent Walth, Journalism Professor, University of Oregon (by phone) Oregon State Representative Carl Wilson (by phone) Bennett Hall, Newspaper Publishers Association
Guests
Ginger McCall Todd Albert Andy Foltz Cameron Miles Kimberly McCollough Carey Wilson (?) Nick Budnick Aaron Withe
Agenda
VIDEO STREAM 04:40 – 1:28
First agenda item: July 18, 2018 Draft Minutes Chair Kron started with the first agenda item. No comments. On motion and second the committee unanimously approved the minutes pending any typographical errors.
Welcome and Introductions Chair Kron materials he brought with him for the committee. He stated he received several written testimony the previous afternoon and that morning and would share those with the committee on the website. He moved forward with guest and member introductions.
Second agenda item: Public Testimony Aaron Withe of the Freedom Foundation explained how in home care providers are public employees and reiterated previous testimony of his organization's suggestion that they are the

cause for the current exemptions. He talked about the work of his organization. He discussed various ways to obtain personal information including through public records. He stated that unions and government see organizations like his as a threat. He suggested that expanding exemptions would directly contradict the Sunshine Committee's mission of creating a more transparent government.

Tony Schick of the Oregon Public Broadcasting testified that personal contact information was essential to the pursuit of journalism in the public interest. He gave examples of how access to address, date of birth, employee issued identification numbers, and driver's license numbers were beneficial to his reporting. He explained that having access to this information proved useful to his analyses and, in some cases, forced corrective action.

Chair **Kron** asked if personal contact information obtained for his publications had or would be disseminated. Mr. **Schick** could not say there would never be a case where disseminating the information would be in the public interest, but he didn't believe they have ever published personal contact information.

Ms. **McCall** asked what Mr. **Schick** thought about an opt-out option to not provide personal contact information when filling out a complaint form for individuals with valid retaliation concerns. Although he saw the value in an opt-out option, Mr. **Schick** felt there was also a question of whether people should be held accountable for their complaints and there should be a way to independently vet through the complaints, which is much more difficult if they're anonymous.

Chair Kron limited all other questions to committee members only.

Mr. **Smith** commented that he struggled with the concept that if information is available to journalists, it is available to the public. He asked Mr. **Schick** if he saw a distinction between the two. Mr. **Schick** thought that was a tricky distinction to draw. Mr. **Smith** explained that if this was journalists' position, the committee would have to wrestle with whether there is a different standard for access to information by journalists versus access to any member of the public because the public records law was established to create access to everyone despite profession or what the information is being used for. Mr. **Schick** believed there was an implicate distinction and explained that the laws were written in a time where the only people with the ability to disseminate the information were those with a publishing platform versus now where everyone has a publishing platform.

Mr. **Hall** asked Mr. **Schick** if he could provide examples where personal contact information obtained by a journalist, either by himself or another journalist, was published as part of the story. Mr. **Schick** could not think of an.

Steve Suo, team leader of the Oregonian's Watchdog and Data Team, speaking on behalf of himself, discussed examples of how journalists use personal identifiable information in their work and how his members use data to inform and build stories they feel are in the public interest. He provided suggestions on what shouldn't be exempt, such as employee ID numbers and added that they do not publish personal information. He concluded that he thought privacy

was important and there are possible ways to protect it while ensuring that journalists are able to continue their important work in the public interest.

Chair **Kron** stated that it sounded like Mr. **Suo** had specific ideas about what the committee's recommendation might look like that adequately protects privacy while also protecting public interest access to the information for journalism.

Mr. **Suo** responded that many aspects of the law have worked for him on many occasions so in terms of fixes to the law, he wasn't prepared to propose anything concretely. However, he has been exchanging ideas with some of his colleagues. He believed there were positive ways forward and certain exemptions that could be more limited.

Chair **Kron** stated that if Mr. **Suo** came up with suggestions between then and the next meeting, they are accepting written testimony. Suggestions should be submitted by the beginning of November.

Nick Budnick of the Portland Tribune, representing the Oregon Territory Chapter of the Society of Professional Journalist, thanked the committee. He stated that journalists used personal information regularly to verify basic facts about individuals. He believed that preserving the public interest balancing test was crucial because it applied to everyone, not just journalists. He strongly disagreed with having an opt-out option because of very good public interest reasons to know who the person is behind the complaint. He gave an example of how the city of Portland gave this option to job applicants and by doing so, limited the public's ability to know who applied for bureau director jobs. This made it impossible to know if job selections were made based on merit or cronyism. Like Mr. **Schick** pointed out, when someone is contacted for comment, whatever the perceived intrusion is minimal. Mr. **Budnick** gave an example of a phone call with an individual who didn't want to talk to him and later thanked him for respecting her refusal. It is his belief that providing an opt-out option would be very dangerous to the public's knowledge.

Chair **Kron** discussed his struggle to understand why current exemptions treat different people differently. He asked Mr. **Budnick's** opinion on whether or not he felt there were legitimate reasons for treating people differently, depending whose information was being sought. Mr. **Budnick** said he would need to discuss that with his organization.

Joy Roman, a homecare worker, introduced herself as a survivor of domestic violence. She described the steps she took to protect her children from her abuser. Subsequently, the Oregonian published information about her daughter, including where she went to school and pictures, without her permission. She stated that this put her daughter at risk of being killed by her abuser. When she complained she received only an apology and an 8x10 picture. After that incident, she pulled her children from public school and homeschooled them. She described individuals being harassed by organizations like the Freedom Foundation who gain access to their personal information and stated it was getting out of control. She wanted the committee to keep in mind that this isn't only about businesses or individuals who think they have the right to personal information, but also about all Oregonians who really need the protection.

Chair **Kron** wanted to make sure that the public was aware that the committee would be taking a lot of testimony and recommendations to the legislator would be made based on the testimony and the committee's views. The legislator would then act on the recommendations. From his own perspective, the personal safety justifications heard are extremely compelling to him and it is important for the committee to consider them and make sure they are adequately protected.

Mr. **Suo** spoke again to respond to Chair **Kron's** question of whether or not there were legitimate reasons for treating people differently, depending on whose information was being sought. He thought to an ordinary person it would be odd that individual professions are treated differently, but there are exceptions, particularly in terms of public safety officers. He also wanted to bring to the committee's attention the existence of the Department of Justice's confidentiality program and explained how it could be used as model. Chair **Kron** confirmed the existence of the program and felt that part of the answer may be to make the provisions in it stronger. Mr. **Suo** stated that he wasn't sure how widely that option was advertised to state employees. Chair **Kron** clarified that the program isn't just for state employees but to anyone whose personal information is in the hands of the government. He thought looking at that in connection with the current exemptions was a good idea and thanked Mr. **Suo** for raising it.

Third Agenda Item: Future Business

The Committee discussed **Ginger McCall's** report on privacy concerns. Ms. **McCall** gave a brief summary of what she has done, but stated she still needed access to Westlaw before she could finish the report. Chair **Kron** asked for assistance from the committee to get Ms. **McCall** access. Until Ms. **McCall** receives access, Chair **Kron** suggested that **Andy Foltz** prepare a notebook of cases using his access. Ms. **McCall** thought that would be helpful.

Chair **Kron** expressed hope that the Committee would arrive at a reasonable recommendation on the privacy issues. He strongly encouraged members to send him their thoughts on what their ideal recommendation would look like, which he would then disseminate to the group for discussion at the next meeting. He explained that the public records meeting law doesn't allow them to do their deliberations in writing, it has to be done publically. He gave a deadline of Friday, November 9, 2018 for the submissions. He pointed out that the committee was not required to come to consensus. If it reached the point where the committee couldn't agree, he would encourage the committee to embrace **Zakir Khan's** suggestion to submit a minority report with the recommendation.

Chair **Kron** thought it could be beneficial for the legislative members of the committee to perhaps provide guidance regarding what sort of recommendation they would like to see from the Sunshine Committee's recommendations. He expressed that the legislator members' views of the Committee's role are ones that matter most.

Adjournment

After motion and second, the Committee unanimously voted to adjourn.