

July 17, 2024
Location: DOJ Portland Office and WebEx
Sunshine Committee Members

Charlie Fisher, OSPIRG State Director / Co-chair
Morgan Smith, Polk County Counsel / Co-chair
Cameron Miles, Government Accountability Attorney, Governor’s Office
Elliot Njus, Editor, The Oregonian
Michael Kron, Special Counsel, Office of Attorney General Ellen Rosenblum
Mark Landauer, Lobbyist, Special Districts Association of Oregon
Cherrill Crosby, Executive Editor, Statesman Journal and Register Guard
Emily Cureton Cook, OPB Bend Bureau Chief

Guests

Andy Foltz, Public Records Counsel, Department of Justice

Agenda

AUDIO STREAM 0:00:00-0.5

Preliminary Matter – Introduction of New Member

Mr. Kron introduced the newest member of the committee, Cherrill Crosby, who replaces Bennett Hall, who stepped down after many years of service. Crosby is the executive editor of the Statesman Journal, and also oversees the Register-Guard. She has been a journalist for many decades and as a reporter and editor has frequently worked with public records requests. She has also covered changes to public records laws and serves on the Oregon Newspaper Publishers Association Board. Committee members introduced themselves.

First Agenda Item - Minutes for May 22, 2024 meeting

Committee went over last meeting minutes. **Mr. Landauer** moved to approve minutes, **Mr. Smith** 2nd that motion to approve minutes. Committee approved May 22, 2024, meeting minutes.

Second Agenda Item –Discuss Exemptions Relating to Background Check Information

Chair Fisher said that eight exemptions relating to background checks were distributed previously to members of the committee and opened the floor for discussion. **Mr. Kron** posed a question of whether the levels of requirements for confidentiality have a basis in federal law as a component for or requirement of accessing federal criminal offender databases. **Co-Chair Smith** thought that was correct and said there is a convoluted scheme of privacy laws concerning criminal databases such as CJIS. He said as he has access to that information, and he is happy to look into that and provide a report at the committee’s next meeting. **Mr. Kron** wanted to know whether CJIS requires some degree of confidentiality in exchange for access and whether the state laws go beyond that for additional confidentiality beyond what federal law would allow. **Co-Chair Smith** said he believes the impetus behind the exemptions the committee is looking at today is that they’re about when a law enforcement agency disseminates information to another group for another purpose. He said the requestor would need to go to the local law enforcement agency or the courts and not some other group or agency such as DOJ. **Chair Fisher** inquired whether the journalists in the group had ever dealt with any issues in trying to request these records and whether they have run into barriers in accessing this information.

Ms. Cureton Cook relayed a story from her experience as a reporter in getting a tip that sheriffs in Oregon weren't enforcing the prohibition on domestic violence offenders obtaining concealed handgun licenses. She investigated this question by looking at particular background checks that should have been run by that office. She could not even uncover whether law enforcement agencies run internal audits of such information. She started with a records request of people she had reason to believe still possessed guns but shouldn't.

Mr. Kron said he feels as if these exemptions only apply to the results of the check and shouldn't cover the fact that the background check was requested. Although, he noted, a new exemption was enacted to cover that type of information after a controversial Court of Appeals decision that found that such information about concealed carry licensees should be public.

Co-Chair Smith agreed that the way he reads the exemption is that the information received from the background checks is confidential but not the fact that the background check was made. He suggested that the laws are confusing getting around the confidentiality requirements of CJIS and suggested it could have been a misapplication of the law because of the convoluted way the laws are written.

Chair Fisher suggested Mr. Smith prepare a summary for the next meeting of what federal and state law requires.

Ms. Cureton Cook agreed with Chair Fisher regarding the heart of the question, whether the existence of a background check associated with an individual's name is a public record without the results or the name of the person being made public.

Mr. Kron said his concern was how to audit whether the required background checks were actually happening. He said it should at least be possible to verify that a background check has been requested and mentioned that point of sale firearms background checks are different than CHL background checks, and require a higher degree of confidentiality under federal law.

Chair Fisher agreed that Mr. Smith will do research around this issue and the committee will discuss recommendations at their next meeting.

Ms. Cureton Cook asked what status quo is now regarding the accountability of whether background checks are being conducted.

Mr. Smith said the issue is that it's all done through the LEDS database unless it comes from the federal level, which has strict confidentiality requirements. He said he would look into how many laws are mimicking federal law versus going beyond it, as well as separating out the confidentiality requirements of whether a check occurred versus the results of the check.

Third Agenda Item – Discuss Biennial Report and preparations for next report

Co-Chair Smith said he put together the last biennial report and it went smoothly, but expressed a concern that there was no central repository for the committee's recommendations. He thinks there should be a standalone document that compiles all recommendations to allow for better recordkeeping.

Mr. Kron said that this could be incorporated into the minute making process, in that a recommendation can be quoted verbatim and this can be pulled from the minutes for the report.

Mr. Njus suggested that it would be nice to have the recommendations and the exemptions side by side as an easy reference for legislators.

Mr. Landauer asked about the timeline for reporting requirements.

Mr. Kron said that the AG's current legislative director may be interested in helping the committee with this effort, but the AG has announced that she isn't running again. He said the committee has some assets of its own who could help with legislative action and this relates to the next agenda item.

Fourth Agenda Item – Possible Legislative Changes for the Sunshine Committee

Co-Chair Smith said the committee will need some potential legislative changes because they're running into a timeline issue of only being in existence for 10 years. They will need additional time statutorily to continue to exist and review more exemptions. He said they have all expressed frustrations as to their reporting structure that goes to a committee that doesn't have a whole lot to do with policy decisions.

Mr. Kron proposed that the committee's report goes to the Rules Committee instead of a subcommittee of the legislative counsel committee, which does not meet during session. He expressed concern that the reports and recommendations seem to be going into a black hole. He discussed taking a look at their workflow with other committee members and come up with a better plan to go through more exemptions, but it doesn't address the bigger structural or morale problems.

Co-Chair Smith suggested forming a small subcommittee of people with legislative experience to look into this issue.

Mr. Landauer said that he was concerned that the legislature was not aware enough of the existence and work of the committee. He wanted to see the committee impact policy more than it already does. He said it was frightening to him that committee members could only think of one example when anything has changed as a result of the work of the group. He wanted to see their recommendations be reported to the House and Senate Rules Committee or the Judiciary committees, so that there was more urgency behind the committee continuing their work.

Chair Fisher suggested putting that item on the agenda for the next meeting. He also discussed the possibility of allocating more resources to support the work of the committee.

Mr. Landauer said he thought this should be a discussion at the full committee level of whether the material they are producing gets reviewed by people who actually make policy decisions.

Mr. Kron said he could add DOJ's legislative director to this conversation at the next meeting.

Committee members discussed including ex officio members more in the group, but they were already invited to join. Committee members then suggested meeting with ex officio members in person to bring more awareness to the work of the committee and possibly working with them on introducing legislation.

Chair Fisher said that will be a good topic to present at the next meeting and asked about the committee's authority to introduce legislation.

Mr. Landauer said working with the ex officio members to make legislative recommendations may be the committee's best option.

Fifth Agenda Item – Discuss Next Exemptions for Review

Chair Fisher said the group has more research to do regarding background check exemptions and the conversation about recommendations to the legislature will probably take up most of their time at the next meeting.

Mr. Landauer agreed and thought it might be helpful for the authorizing language of the Sunshine Committee to be distributed to members in preparation for the next meeting.

Sixth Agenda Item – Future Meeting Locations and Dates

Chair Fisher asked whether members would like to meet virtually for the rest of the year given the technical audio issues experienced in the current meeting, and committee members agreed that they would test out the audio of some other conference rooms first. Chair Fisher also suggested an in-person meeting once a year and the rest of the meetings to be held virtually. Committee members will first attempt to find a conference room that has better audio.

Adjournment