

September 18, 2024
Location: 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 Central Oregon Bureau Chief
Selena Deckelmann, Chief Product and Technology Officer, Wikimedia Foundation
Cherrill Crosby, Executive Editor, Statesman Journal
PK Runkles, Chief Legal and Risk Counsel, Office of Secretary of State LaVonne Griffin-Valade

Guests

Andy Foltz, Public Records Counsel, Department of Justice
Kimberly McCullough, Legislative Director (former), Department of Justice

Agenda

AUDIO STREAM 0:00:00-0.5

First Agenda Item: Review/Approve Minutes

Mr. Landauer moved to approve the minutes of the July 17 Sunshine Committee meeting. **Co-chair Smith** seconded the motion. The motion passed unanimously.

Second Agenda Item: Follow-up discussion on Background Check exemptions

While the committee was waiting for **Ms. McCullough** to join, Co-Chair Smith started on the discussion about background check exemptions. **Co-Chair Smith** said he had volunteered himself to do a deep dive into CJIS in light of **Ms. Cureton Cook’s** experience with a public records request into whether a background check was conducted, which the committee had discussed at the last meeting. **Co-Chair Smith** said the actual exemption cited was ORS181A.220, which is a very broad statute that basically says that any time fingerprints are taken in conjunction with a criminal investigation, and it gets inventoried in a database, those records are going to be exempt.

Third Agenda Item – Review Committee’s authorizing legislation and follow-up discussion on possible legislative changes

Ms. McCullough joined the call, so the committee switched gears to discussion on the committee’s authorizing legislation. **Ms. McCullough** introduced herself as the legislative director at the DOJ (she is now at the Oregon Judicial Department). She has been doing legislative advocacy in a variety of different capacities for the last 10 years. **Chair Fisher** framed the conversation by saying that the overarching concern is that the committee’s work is not having the intended impact in changing public records law. **Chair Fisher** summarized that the committee was concerned that the reports they send in don’t really go anywhere and go to a public records subcommittee of the legislative committee, which doesn’t meet. He suggested changing the committee to which the Sunshine Committee reports; perhaps the Rules Committee. There was also a proposal to change the reporting date. **Chair**

Fisher noted that in the committee's authorizing statute, "Our reports are supposed to make recommendations to amend or repeal exemptions from disclosure reviewed by the committee." There are also new exemptions created every session, putting the committee's work further behind. **Chair Fisher** discussed the desire of having greater staff capacity in support of the committee's work.

Mr. Landauer gave more context. He said the committee should discuss the utility of continuing the committee if certain changes weren't made. He liked the reporting date for September because legislators are required to pre-session file bills by the end of September. He felt the fundamental problem was getting legislators to review their reports. He also suggested the Judiciary committee as a possible outlet to send reports to.

Ms. McCullough suggested changing the reporting deadline to May or June. She also suggested asking for an informational hearing to be held on the report in both chambers to spread the word about the work of the committee. She suggested the Rules or Judiciary committees, with the Judiciary committee as a preference because there is a greater chance of the committee hearing the report because the committee is watched by more people. Along those lines she also suggested the committee needed to find itself a legislative champion, perhaps an ex-officio member.

Mr. Kron said ex-officio members do not come to the meetings. He said they are struggling to make an impact making themselves more visible to legislators. He agreed that the committee needed to identify a legislative champion.

Mr. Miles said that there are legislative days in May and if the committee were to move the report date back to May 1 they could be heard during that time. He said the current reporting structure is ineffective.

Ms. McCullough discussed the idea of having some staff support and thought that would make it easier to set up an informational hearing. She also suggested hosting a training for legislators as a way to publicize the work of the committee. That way the committee could gain a culture of awareness.

Mr. Miles said that he wrote government impact statements for years and the way that the amendment process works, it would be inefficient, and making them consult with the committee in the middle of that process would change the amendment process for a lot of bills.

Mr. Kron said the committee couldn't make consultation a legal requirement but he said he'd like to see something different than what was currently going on.

Chair Fisher said it made sense to introduce some type of legislation that is relevant to the committee.

Mr. Landauer shared that legislative concepts are due to be submitted to legislative counsel a week from this Friday so they would have to act quickly.

Chair Fisher suggested the committee could work with an ex-officio member to propose a placeholder bill.

Mr. Landauer suggested that the bill be confined to the Sunshine Committee rather than a broader, relating to public records clause.

Committee members discussed which ex-officio members to approach to champion the bill.

Mr. Miles argued in favor of not doing a placeholder. He suggested having it say a bill related to the Oregon Sunshine Committee, to extend the deadline, and any other matters the committee wants to include.

Mr. Landauer supported **Ms. McCullough's** suggestion of reporting to the Judiciary Committees of both the House and the Senate.

Mr. Kron made a motion to “empower our co-chairs, one or both, to propose such a bill to various legislators and that it would include those three things” – (1) sending the report to the Judiciary Committees of the House and Senate, (2) changing the reporting date to May 1, and (3) extending the deadline for the committee’s work, keeping the existing language of “they may accept, reject or modify our reports.”

Mr. Landauer amended the motion to change the relevant committee to Judiciary.

Chair Fisher proposed extending the deadline for the work of the committee to 2031.

Mr. Kron discussed the option of including staff support in the bill. **Mr. Landauer** said that including a fiscal impact would kill the bill.

Ms. Crosby asked how many exemptions have been reviewed so far, as she was a new member. **Mr. Foltz** said that about 120-150 exemptions out of 600 have been reviewed.

Mr. Kron brought forth the amended motion to “empower our chairs to approach legislators about getting a bill introduced that would (1) extend our deadline for exemption review by 5 years, (2) change the submission date of our report to May 1 of even-numbered years and (3) change the committee to which we report to the Judiciary committees of both chambers.”

Mr. Landauer seconded the motion.

All were in favor. Motion passed unanimously.

Committee members discussed educating legislators about the existence of the committee and a cultural rather than statutory change in legislative awareness about the work of the committee.

Co-Chair Fisher said they would report back on their conversations with legislators at the next meeting. Committee members also discussed talking with legislators about getting rid of the existing committee that the Sunshine Committee reports to.

Mr. Njus suggested that there should be a way to better catalogue the progress they’ve made and the recommendations.

Ms. Deckelmann said this was a project she could work on depending on the format of the documents.

Mr. Foltz said the basic idea would be to add another tab to the website that shows the committee work product and the status of exemption reviews. He will work with **Ms.**

Deckelmann on this project.

Fourth Agenda Item – Continue discussion on Background Check exemptions

Co-Chair Smith continued his discussion about CJIS and **Ms. Cureton-Cook’s** public records request. He said that the state police relied on a state statute, not CJIS, ORS 181A.220, to make its determination. CJIS protects criminal justice information until it’s released through some other public means like the courts. It provides for guidance and security protocols. It started in the late 1990s and dovetails into a lot of the background check requirements for gun ownership and similar topics. The question **Co-Chair Smith** had was regarding the confidentiality provisions cited by OSP about whether or not background checks have been conducted. It basically just says that any public records related to the fingerprints, photographs, records and reports for any fingerprinting related to an arrest is confidential unless authorized by law enforcement or court ordered. The main issue with the state statute cited by OSP, he said, is that it’s not worded very clearly and a broad view could be taken of the statute.

Mr. Kron asked whether the apparent interpretation of the statute by state police would apply to the fact of a background check being conducted or not has ever been the subject of a public records order.

Mr. Foltz said not to his knowledge.

Mr. Kron said the goal of getting the report from **Co-Chair Smith** is to figure out whether there might be room for state law improvements that might actually move the needle given the CJIS overlay. He said his subcommittee is a good place to review the options.

Co-Chair Smith said that the state police are taking the position that any report compiled after the fingerprinting for an arrest is confidential. He thinks there should be better language around whether the fingerprinting documents are confidential. Whether or not a background check was conducted, without revealing the contents of the report, is a different matter. He said it seems to include a very broad umbrella of confidentiality and he isn't seeing a lot of policy reasons for that.

Mr. Kron said that in his view CJIS laws should not affect the question of whether OSP conducted a background check that was supposed to have been conducted.

Ms. Cureton Cook asked whether the exemption itself leaves the door open for this question to be unanswerable or whether the OSP was misinterpreting the question to shut down requests from journalists.

Mr. Kron said his subcommittee will take a look at the issue. **Ms. Cureton Cook** volunteered to fill the vacancy on the subcommittee; **Ms. Deckelmann** asked to rotate off, and **Co-Chair Smith** volunteered to replace her.

Mr. Kron made a motion to appoint **Ms. Cureton Cook** and **Co-Chair Smith** as new members of the committee. **Mr. Landauer** seconded the motion. The committee voted unanimously in favor of the motion. The motion passed.

Fifth agenda item – Discuss next exemptions for review

Mr. Foltz said the next batch of exemptions was related to disability information. After that was juvenile records, close to 20 of those. Committee members said they would tackle both subjects and **Mr. Foltz** will send out summaries.

Sixth Agenda Item – Next Meeting Date and Location

Chair Fisher said the next meeting will be virtual and take place on November 20. There were no further agenda items.

Adjournment