Oregon’s Long and Winding Road to Public Records Access

COSA, NAGARA, SAA
2018 Joint Annual Meeting
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Multi Faceted Problem

Old laws
Fees
Timelines
Exemptions
Accountability
Old Laws
Retention & Disposition

1961 – First Public Records law for retention and disposition was passed. “Public record means a document, book, paper, photograph, file, sound recording, machine readable electronic record, or other material, such as court files, mortgage and deed records, regardless of physical form or characteristics, made, received, filed or recorded in pursuance of law or in connection with the transaction of public business, whether or not confidential or restricted in use.” ORS 192.005 (5)

2011 – “Public record” (a) Means any information that:
(A) Is prepared, owned, used or retained by a state agency or political subdivision;
(B) Relates to an activity, transaction or function of a state agency or political subdivision; and
(C) Is necessary to satisfy the fiscal, legal, administrative or historical policies, requirements or needs of the state agency or political subdivision.

Old Laws
Access

1973 – (a) “Public record’ includes any writing containing information relating to the conduct of the public’s business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics.
(b) “Public record” does not include any writing that does not relate to the conduct of the public’s business and that is contained on a privately owned computer. ORS 192.410 (4) 192.311(5)

Definition for access has also included a definition for “writing” “Writing” means handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings.
Old Laws
Public Meetings

What constitutes a public meeting?
Texting, chatting, IM’ing, etc.

Oregon’s uniqueness causes major issues
What is the press?

FEES

Dept. of Justice – charges agencies for advice and assistance on Public Records Access and defends agencies in a public records dispute

Numerous attempts made at standardizing fees
1 size does not fit all

Dept. of Administrative Services Policy
Timeliness

192.324 (2) If an individual who is identified in a public body’s procedure...receives a written request to inspect or receive a copy of a public record, the public body shall within five business days after receiving the request acknowledge receipt of the request or complete the public body’s response to the request...  
192.329 Public body’s response to public records request. (1) A public body shall complete its response to a written public records request that is received by an individual identified in the public body’s procedure...and without unreasonable delay.  
(2) A public body’s response to a public records request is complete when the public body:  
(a) Provides access to or copies of all requested records within the possession or custody of the public body...or explains where the records are already publicly available;  
(b) If the requester fails to pay the fee within 60 days of the date on which the public body informed the requester of the fee...the public body shall close the request.  
(4)(a) ...If the public body has requested additional information or clarification in good faith, the public body’s obligation to further complete its response to the request is suspended until the requester provides the requested information or clarification or affirmatively declines to provide that information or clarification.  
(b) If the requester fails to respond within 60 days to a good faith request from the public body for information or clarification, the public body shall close the request.  
(5) As soon as reasonably possible but not later than 10 business days after the date by which a public body is required to acknowledge receipt of the request under ORS 192.324, a public body shall:  
(a) Complete its response to the public records request; or  
(b) Provide a written statement that the public body is still processing the request and a reasonable estimated date by which the public body expects to complete its response based on the information currently available.  
(6) The time periods established by ORS 192.324 and subsection (5) of this section do not apply to a public body if compliance would be impracticable because:  
(a) The staff or volunteers necessary to complete a response to the public records request are unavailable;  
(b) Compliance would demonstrably impede the public body’s ability to perform other necessary services; or  
(c) Of the volume of public records requests being simultaneously processed by the public body.  
(8) A public body that cannot comply with the time periods as soon as practicable and without unreasonable delay, acknowledge a public records request and complete the response to the request. [2017 c.456 §4]

Exemptions

1973 – Public Records law had 55 exemptions

1991 - First, Public Records Advisory Council attempted to find and place all public records exemption into one statutory chapter (ORS 192) and to review the 300 exemptions to the Public Records Law. Secretary of State Phil Keisling would later remark that it was the only time that he was successful in uniting the Legislature – all where in opposition to his proposed bills.  
1993 SB 499 and SB 500

Today – the total number of exemptions for accessing public records totals 574
2008-2009 – discussions with the Attorney General about a Public Records Ombudsman begin

2011 – Sweeping reforms to both public records definitions proposed. Only definition for retention & disposition passes

February 2015 – Governor John Kitzhaber is forced to resign. Secretary of State, Kate Brown, succeeds to the Office of Governor and orders a Public Records Request Audit. Audit is release in November 2015. 

Audit Findings include:

- Agencies handle routine requests well but struggle with complex requests
- Agencies retain records longer than they should
- Exemptions are problematic
- Variations in responses, timeliness, and fees are frustrating
- Agencies aren’t keeping up with changing technologies
Audit Recommendations:

Legislature create a neutral third party, (ombudsman) to mediate disputes between requesters and agencies

Legislature consider results from the Attorney General’s task force for any recommended changes regarding the public records law.

January, 2016 – Governor issues Executive Order No. 16-06 to “ensure government accountability and transparency.”


Leads to proposed 2017 legislation - SB106 for Public Records Advocate and the creation of the Public Records Advisory Council and HB2101 which created the Sunshine Committee to look at the 574 exemptions.
Public Records Advocate – Ginger McCall (Started April 25, 2018)

Responsibilities include:
- Facilitated dispute resolution
- Public records request training
- May provide guidance and advice on public records request processing and the disclosure and applicability of exemptions from disclosure of public records*

*Guidance and advice provided is purely advisory

Sunshine Committee

10 years to review all of the 574 exemptions
Started with personal exemptions
Report to the legislature, quarterly on progress
Summary

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