



# Written testimony of the Oregon Public Records Advocate in support of HB 2431

## Introduction

This written testimony is submitted by Ginger McCall, the Public Records Advocate for the State of Oregon, in her capacity as Chair of the Public Records Advisory Council, and in support of the passage of HB 2431.

## Overview of the Office of the Public Records Advocate

The Office of the Public Records Advocate was created as part of the public records reforms passed during the 2017 legislative session which also established the Public Records Advisory Council (hereafter “the Council”). The core duties of the Public Records Advocate are to mediate public records disputes between requestors and public bodies, conduct trainings on public records issues for government employees and the public, and to serve as chair of the Council.

## Overview of the Public Records Advisory Council

The Council is a nonpartisan, multi-stakeholder body of public records experts comprised of members from various facets of state government, representatives of city, county, and special districts governments, and representatives of the media and the public at large. The Council’s multi-stakeholder composition was designed to ensure a balanced approach to public records reform.

The Council was created to:

- (1) Vet and propose public records reforms, such as HB 2431;
- (2) Provide oversight and guidance to the Public Records Advocate, including the formulation of Office policies and administrative rules; and
- (3) Gather information & conduct surveys about the operation of the public records law in Oregon.

## Overview of HB 2431

HB 2431 – agreed upon by the Council’s media, public, and government representatives – would require that state agencies publicly report basic information about how many requests they receive, how long it takes to process those requests, and how they are handling requests for fee waivers and reductions. There is currently a dearth of actual data regarding public records request practices in the State of Oregon. Even basic questions like “how many requests were received by state agencies overall in the last calendar year?” are unanswerable. As a result, it is difficult to provide meaningful training, pinpoint weak spots in the law, highlight areas of success, or propose significant reforms without such basic information.

This reporting will inform the Council, the Office of the Public Records Advocate, the Legislature, and other state leaders about what legislative and policy changes are needed. It will also give the Office important information regarding what agencies and legal provisions should be the focus of training. And this data will help the Legislature and other state leaders to identify what public bodies may need additional resources in order to improve performance.

Additionally, this data will inform the public about agencies' public records processes and performance and will create accountability for state agencies. Transparency regarding public records performance will incentivize agencies to perform more efficiently and effectively, reducing costs for the agencies and improving customer service. Similar data is collected on the federal level and has contributed to meaningful conversations about public records performance and reform.

These annual reporting requirements will involve minimal financial investment by state agencies. They are basic data points that can be tracked in a simple spreadsheet. To comply with the fifteen business day deadline, and to ensure proper processing of all requests, agencies should, in fact, already be tracking much of this data. In conversations with my Office, many agencies have stated that they are already tracking similar data.

In summary, this data, which can be gathered at minimal cost, will help to create well-informed policy proposals, and ensure accountability.

### HB 2431 – Background

- Requires annual reporting by state agencies on their public records processing, including:
  - How many requests were received;
  - How many requests were processed within fifteen business days;
  - How many requests were still outstanding after sixty business days;
  - How many requests for fee waivers or reductions did the agency grant and deny.
- This data would be made publicly available.
- Currently there is no publicly available data on agency public records processes.
- This data will:
  - Serve as a business tool to inform the Legislature, Governor, agency heads, Office of the Public Records Advocate, and Public Records Advisory Council so that they can make educated decisions about reforms and conduct targeted trainings;
  - Inform the public about agency performance;
  - Encourage compliance by creating accountability for poorly performing agencies and rewarding high performing agencies.
- It may be possible to collect and track this data with simple software, at minimal expense.
- A pending amendment to HB 2431 clarifies that a state agency may provide responses to the survey in line with its agency definition of a public record by adding Section 4, which states: “The requirements in Section 2 only apply to requests for records submitted in accordance with the agency’s public records policy and procedure for making public records requests, as described in ORS 192.324(7).”

### HB 2431 – Conclusion

Although the Council presently has the ability to survey all public bodies in Oregon, it believes that a survey of state agencies enshrined in the law will provide a routine business tool for prompt, concise and reliable data about the state of public records practices in Oregon. Results of any survey based on the Council’s current ability are provided to the Council, which will then distribute them to relevant stakeholders. In contrast, the responses to the survey in HB 2431 will go directly to the public records subcommittee of the Legislative Counsel Committee, the Public Records Advocate, and the Attorney General. The Council recognizes compliance with any survey may require state agencies to implement technological solutions and devote additional staff time to comply. However, the Council’s expectations are that doing so will help agencies to clarify their own public records policies and procedures as currently required under Oregon law, and to gain confidence in collecting and reporting this information in a reasonable, cost-effective manner under existing Council surveys, in time for the implementation of HB 2431 for the 2020 calendar year (with initial reporting in March of 2021).

The basic data reported as a result of this legislation will better inform the Legislature, the Governor, and other leaders about what further public records reforms are necessary and how state agencies are performing. It will also encourage better agency performance on public records processing by creating accountability for state agencies. It is important to collect this data to have a fuller understanding of how public records laws are functioning in the state of Oregon. The Council would appreciate your support on this important proposal.