



HOUSE OF REPRESENTATIVES

Chair Williamson, Vice-Chair Gorsek, Vice-Chair Sprenger, members of the committee,

It's been an honor to participate and further the work of the state's Sunshine Committee and Public Records Advisory Council (PRAC) over the last few years. As you'll recall, House Bill 2101 and Senate Bill 106 established these bodies in order to perform two distinct and parallel processes. First, the Sunshine Committee looks backwards at the more than 500 public records exemptions already in state law, and is undergoing the time-consuming process of identifying items for recommended removal or refinement and clarification. Second, the PRAC has been established to proactively improve the process of requesting public records, both by conducting education and serving as a dispute resolution specialist, among other activities. You'll undoubtedly hear more about PRAC's good work from them directly.

House Bill 2430 would remove the sunset date for the PRAC entity and the services they provide, and House Bill 2431 would provide better tracking and reporting of the number of public records requests made and timelines for completion. My third bill before you today, House Bill 2353, is a bill I submitted in collaboration with the Society of Professional Journalists, partly in response to a gap identified in the end-of-2018 PRAC biennial report.

In the report, PRAC identified some differences in the way that attorney fees and costs are awarded that may result in public bodies withholding documents until lawsuits are filed. In the following excerpt, PRAC's report stated:

"... ORS 192.431(3) ... allows requesters who prevail in court to be granted attorney fees and costs. However, some courts have interpreted this provision very narrowly, holding that attorney fees and costs may only be granted if a court order forced agency disclosure, not if the agency "voluntarily" disclosed records in response to a lawsuit. Other courts have more generously interpreted this provision to incorporate what is called the "catalyst theory," allowing for attorney fees even if an agency "voluntarily" released records after the start of a lawsuit because the lawsuit was the "catalyst" for the release of records. This ambiguity discourages litigation under Oregon's public records laws. If potential plaintiffs are uncertain about their ability to collect attorney fees even if they prevail, they are less likely to embark on potentially costly and time-consuming litigation. And if public bodies know that they can avoid paying fees by simply turning over documents at the institution of a lawsuit, it incentivizes public bodies to wait to disclose documents unless or until a lawsuit is filed, then to quickly disclose documents in order to undercut the requester's ability to collect fees.

The 2017 addition of timelines to Oregon's public records law was a very positive step to ensure efficiency and transparency. However, more could be done to ensure that these timelines are taken seriously. ORS 192.324(5) sets well-balanced deadlines. It requires that public bodies must complete a response within fifteen business days or, at very least, provide the requester with an estimated date of completion. But subsection (6) creates a very big exception to these requirements, stating that these timelines do not apply if compliance would be "impracticable" for a variety of reasons. The subsection (5) provision permitting an estimated date of completion in lieu of a full response, though, is already a meaningful enough allowance for an agency that is facing understaffing, a very broad request, a large



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volume of requests, or other challenges. The inclusion of subsection (6) is unnecessary and entirely undercuts the requirements in subsection (5). In practice, subsection (6) is often cited by agencies as a reason for not responding (or even provided an estimated date of completion) within the fifteen business day timeline. These delays can have serious impacts for requesters. Delays in obtaining police reports, for example, can make it difficult for victims to obtain insurance payments, limit the damage of identity theft, pursue civil litigation, take precautions to protect their personal safety, or vindicate their rights in a variety of other venues.”¹

This last bill seeks to fill this gap and encourage better and more timely cooperation by tightening up the repercussions for inaction. Colleagues, thank you for considering these bills and continuing to build upon the public records transparency work done in 2017.

Thank you for your consideration.

Karin Power

¹ <https://sos.oregon.gov/public-records/Documents/PRAC-Biennial-Report-with-Appendices-nov-2018.pdf>

