

KATE BROWN
GOVERNOR



April 4, 2019

To: Chair Williamson, Vice-Chair Gorsek, Vice-Chair Sprenger and members of the House Committee on Judiciary

Subject: House Bill 3399

Chair Williamson, Vice-Chair Gorsek, Vice-Chair Sprenger and members of the House Committee on Judiciary, thank you for having me here today. My name is Emily Matasar, and I am the Government Accountability Attorney in the Governor's Office. I am grateful for the opportunity to speak on House Bill 3399, introduced by committee member Rep. Karin Power and supported by Governor Kate Brown.

Journalists and members of the public seeking information should be able to request government records without putting themselves at risk of being sued. Under current practice, that is unfortunately not the case.

When a public body denies a request to inspect or receive copies of a public record, the requester may petition either the Attorney General (when the public body is a state agency) or the local district attorney (for all other public bodies) to review that denial. When the Attorney General or district attorney issues an order requiring the public body to release the records, according to ORS 192.411 and 192.415, the public body may appeal that decision in circuit court.

In order to seek the court's guidance on that decision, under current law, the public body must sue the requester. The requester is then dragged into court, spending time and money to defend the order.

The purpose of HB 3399 is to ensure that journalists and members of the public are able to request government records without putting themselves at risk of being sued by a public body challenging disclosure of records. In the event that a public body seeks the guidance of a court on disclosure of records, the bill requires the public body to name the Attorney General or district attorney that ordered disclosure, not the requester, as the respondent in the lawsuit.

This problem first came to the Governor's attention in 2017, when Les Zaitz, the publisher and editor of the Malheur Enterprise, requested Psychiatric Security Review Board (PSRB) records, which PSRB refused to produce, believing the records were exempt from disclosure. Les petitioned the Attorney General to order PSRB to release the records. When the Attorney General did indeed order PSRB to release the records, PSRB decided to appeal that decision in Marion County Circuit Court, and sued The Enterprise. Les submitted testimony, and I will let

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him speak to his experience, but the episode made obvious to the Governor the problem this bill seeks to solve.

HB 3399 adds language to current statute (ORS 192.411 and 192.415) that requires the public body appealing a public records order to name the Attorney General or district attorney who issued the order as the respondent in the lawsuit in circuit court when they seek court guidance on the appeal. HB 3399 then requires the Attorney General or district attorney to defend in court its order requiring the public body to disclose the record in part or in whole. The bill also requires the public body to notify the requester of its appeal, and allows the requester to participate in the lawsuit, but no longer requires it.

In short, the bill ensures journalists and members of the public are able to request government records without putting themselves at risk of being sued, increasing transparent and open government.

Sincerely,

Emily Matasar
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Office of Governor Kate Brown