



February 6, 2023

Chair Kate Lieber
Senate Committee on Rules

Re: City of Medford testimony regarding SB 160

Dear Chair Lieber and Senate Committee on Rules:

The City of Medford respectfully opposes SB 160 as currently drafted. In explaining the City of Medford's opposition, it is important to make clear that while ORS 192.324 talks about "reducing the fee," the mechanic by which this occurs is subsidizing the actual cost of performing the work from the municipality's general fund. Responses do not require any less staff time to complete whether or not they are "in the public interest"; instead, the cost of performing the search simply is borne by taxpayers through the general fund instead of by the requestors themselves.

The statutes at issue already allow for reduction of a reasonable amount when an amount is in the public interest (as determined by weighing detailed factors articulated by the Oregon Attorney General in the *Public Records and Meetings Manual*, pp. 20-26).¹ Replacing the Attorney General's balancing test with the proposed bright-line standards will undermine the Attorney General's published framework and have adverse consequences for municipalities.

First, by issuing an automatic bright-line subsidy of 40% to any request from anyone who is a member of the news media, the statute will make the definition of "news media" incredibly financially important. However, the Attorney General already notes that "no bright-line definition exists" for a member of the news media. (*Public Records and Meetings Manual*, p. 176). SB 160 creates a financial incentive for individuals to claim "news media" status without giving any guidance as to who meets that definition.

Second, this automatic subsidy would be a poor proxy for the Attorney General's existing public interest test, since this subsidy would apply to certain matters that are not in the public interest (i.e., a passion project of a lone journalist with voluminous requirements and no real impact on the community) and not apply to matters that are in

¹ https://www.doj.state.or.us/wp-content/uploads/2019/07/public_records_and_meetings_manual.pdf



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the public interest (i.e., a major study by a research university on a matter of national concern).

Third, the fact that this automatic subsidy would be increased from 40% to 50%-100% when the request is “narrowly tailored” means that admittedly-unfocused requests are required to be subsidized by the general fund, regardless of how unreasonable the scope of the request might be. The only remedy a municipality has for overly broad and unduly burdensome requests is to recover the actual costs of gathering all the documents. Forcing municipalities to partially-subsidize unreasonable requests will adversely impact municipalities’ general funds without being necessary to further government transparency.

Finally, SB 160 defines “narrowly tailored” in a way contrary to its plain meaning. “Narrowly tailored” normally refers to just asking for what you really need and nothing else, but here the term is defined as any request that “describes requested records with specificity and primarily includes records in which there is a public interest.” However, because SB 160 also declares that everything a journalist requests is automatically in the public interest, any request by a journalist would be deemed “narrowly tailored” simply by being specific, regardless of how overly broad and unduly burdensome it is.

In conclusion, the proposed changes needlessly undermine the Attorney General’s existing multi-factor analysis for when to subsidize the cost of responding to a public record’s request. Currently, if a journalist feels that a particular municipality is not fairly applying the Attorney General factors, that journalist has the right to appeal the denial of their fee request to the District Attorney’s Office, and can appeal that decision to the local Circuit Court for a judicial determination. The existing system is refined and fair for all parties involved. Creating automatic subsidies simply because of the requestor’s asserted “news media” status, including a 40% automatic subsidy even when the request is admittedly vague or unreasonable, would undermine the Attorney General’s existing system without furthering the legitimate interest of government transparency.

Sincerely,

/s/ Eric B. Mitton

Eric B. Mitton

City Attorney