

Public Records Advisory Council
Legislative Subcommittee
Records Costs Research and Planning Report
June 2022

Between December 2021 and June 2022, the PRAC Legislative Subcommittee gathered research and testimony on costs of providing and accessing public records, an area the Council wishes to address through proposed legislation. This document summarizes work so far and plans going forward.

TESTIMONY

The subcommittee met seven times since mid-December, 2021. Members heard oral testimony from 22 witnesses and received written testimony from several of those people. We additionally received written testimony only from one person. Two more witnesses are scheduled.

From the Oregon custodian community

- 12 witnesses: 10 people representing 8 agencies and two people in custodian roles who spoke on their own accord.
- Agency level: agencies officially represented included five state level, two county level and one city level. Individuals representing themselves had direct experience at the city level.
- Agency type: agencies officially represented included two legal offices, two police agencies, one corrections agency, one environmental agency, two human services agencies.

From the Oregon requestor community

- Six witnesses: two working journalists, one lawyer, one lobbyist, two members of the public at large (one submitted written testimony only.)

From outside Oregon

- Two federal FOIA experts: one law professor/researcher/author and one former Congressional counsel.
- Two Kentucky witnesses, on fees and “harassing” requestors response: One requestor and one custodian
- One Oklahoma requestor, on fees and “harassing” requestors response: a requestor.
- *SCHEDULED* Two Connecticut witnesses, on fees and “harassing” requestors response: One journalist, one state FOI Commission representative.

RESEARCH

- Thanks to Senator Thatcher's helpful request, LPRO compiled a [review of all state laws](#) on public record costs.
- Other references provided to the subcommittee include [deep new research on the FOIA](#), guidance on "harassing" requestors from [Kentucky](#), an [overview of similar guidance](#) from various states around the U.S., presentations from some of the witnesses who spoke, and the Advocate's Office [2019 survey](#) of request fulfillment.

ISSUES AND IDEAS

- Providing public records is an expected and important part of democracy.
- Costs borne by requestors generally do not cover costs to custodians.
- Different custodians/agencies have different numbers of requests, from different types of requestors.
- Many requests are handled promptly and as a routine manner.
- Many fees are routinely waived.
- Many custodians see the ability to charge for providing records as an important tool to narrow certain requests.
- Some custodians see narrowing requests as saving resources.
- Fees are inconsistent.
- Fees are an obstacle to certain groups of requestors, specifically media and the general public.
- Appealing fees is an obstacle for time-sensitive requests, specifically affecting time-sensitive journalism.
- Custodians and requestors within Oregon have specific ideas for improving the system for all.
- There are many opportunities to borrow from other states or the federal experience with public records to improve Oregon's system.

NEXT STEPS

The Legislative Subcommittee next meets June 3. We will hear two witnesses from Connecticut about how they handle "vexatious" requestors. Of note: interest in this arose from other witness testimony. Also on June 3, subcommittee members will begin to identify what stood out from testimony etc. as defining the problem. The next meeting will discuss possible solutions, which we will ask the PRA to translate into draft legislation for further discussion and public testimony.

FULL WITNESS LIST

Oregon

1. Rachel Alexander, chair, Freedom of Information Committee, Society of Professional Journalists, Oregon Chapter. Managing editor, Salem Reporter
2. Nick Budnick, journalist
3. Vance Croney; Benton County Counsel
4. Michelle Whitney Dodson, Records Officer, Correctional Services Division
5. Rick Hancock, member of the public with requestor experience
6. Laura Heathcock, Administrative Specialist, Central Records Section, Oregon State Police
7. Tom Holt, lobbyist, Society of Professional Journalists, Oregon Chapter
8. Avery Horton, member of the public with requestor experience (written testimony only)
9. Amy Johnson, member of the public with custodian experience
10. Jenifer Johnson, Senior Deputy City Attorney, Portland
11. Cheré LeFore, Public Records Unit Manager, Department of Human Services
12. Ellen Osoinach, Local Legal Initiative Attorney, Reporters Committee for Freedom of the Press. Former deputy city attorney, Portland
13. Patty Perlow, Lane County District Attorney
14. Kelly Raths, Assistant Director, Correctional Services
15. Tammi Weiss, Digital and Public Records Manager, Portland Police Bureau
16. Jacob Wiley, member of the public with custodian experience
17. Jeanne Windham, Public Records and Internal Litigation Process Coordinator, OHA
18. Leela Yellesetty, Information Governance Officer, Oregon DEQ

Other states/federal

1. Marcus Green, reporter for WDRB, Louisville, Kentucky
2. Thomas Hennick, public education officer, Connecticut Freedom of Information Commission *SCHEDULED*
3. Margaret Kwoka, author of *Saving the Freedom of Information Act* (Cambridge University Press, 2021) and professor, Moritz College of Law, Ohio State University
4. Melanie Lowe, general counsel/records custodian for the Kentucky Office of the Public Advocate
5. Michael Savino, Society of Professional Journalists, Connecticut *SCHEDULED*
6. Tom Susman, President, D.C. Open Government Coalition, Congressional Counsel for 1974 FOIA amendments
7. Mark Thomas, Executive Vice President, Oklahoma Press Association