

# Biennial Report of the Public Records Advisory Council

## December 2024

### Introduction

This report is submitted to the Governor and the Legislative Assembly by the Public Records Advisory Council (“the Council”) per the requirements of ORS 192.483(2). The last report summarized the work of the Council from December 2022 through November of 2024. This report includes legislative developments that resulted from deliberations and the introduction of a bill requested by the Public Records Advisory Council addressing fees for public records requests.

The Council was created pursuant to SB 106 (2017) and can be found under ORS 192.461-ORS 192.483. The Council consists of twelve voting members and two ex officio non-voting members. Members of the Council represent state and local governments, the media, the public and the public sector workforce. The Council is required to meet at least once every six months and at other times and places specified by the call of the chair or a majority of the members of the Council.

The Council and the Public Records Advocate will continue to work together to increase public records training opportunities for both public bodies and officials as well as members of the public and media.

### Duties of the Public Records Advisory Council

- Select and appoint the Public Records Advocate
- Survey state agency, other jurisdictions and public body practices and procedures for:
  - Receiving public records requests, identifying the existence of records responsive to the requests and gathering and disclosing responsive records;
  - Determining fee estimates and imposing or waiving fees;
  - Determining and applying exemptions from required disclosure
- Identify inefficiencies and inconsistencies in the application of the public records law that impede transparency in the public records process and government;
- Make recommendations on changes in law, policy, or practice that could enhance transparency in public process and government and facilitate rapid dissemination of records to requestors.
- Make recommendations on the role of the Public Records Advocate as a facilitator in disputes between custodians of public records and public records requestors; and

- Report to the Governor and Legislature by December 1 of each even-numbered year the findings of the Council since the Council's last report including recommendations for legislation.

## **Council Members**

Chair – Mark Landauer – representing the Special Districts Association of Oregon  
Vice-Chair – Shasta Kearns Moore – representing the news media  
Todd Albert – Public Records Advocate  
PK Runkles – Secretary of State designee  
Michel Kron – Attorney General designee  
Andrea Chiapella – Director of Department of Administrative Services designee  
Steve Suo – representing the news media  
Brent Walth – Society of Professional Journalists – news media  
Scott Stauffer – Cities representative  
Will Glasson – County representative (*new member since last report in December 2022*)  
Emily Gothard – Public Sector Workforce representative  
Tony Hernandez – Public member  
Senator Kim Thatcher – (ex officio non-voting member)  
Representative Tom Anderson (ex officio non-voting member)

## **Legislative Sub-Committee Work**

In November of 2022, the full Council approved a legislative concept developed by the Legislative Sub-Committee of the Council that attempted to address fees to produce public records. The details and background leading up to that legislative proposal is outlined in the Council's 2022 report. Ultimately, that legislative concept became [SB 417](#).

SB 417 proposed several changes to the public records statute. For example, it sought to clarify which costs were recoverable, it included provisions to help requestors understand a public body's public records process and the measure required public bodies to grant fee waivers or reductions to requests if those requests were determined to be in the public interest. Importantly, the proposal attempted to make clear that a public records request made by a member of the media would be considered in the public interest, thereby requiring a fee waiver or substantial reduction in the fees charged to the requestor with a narrow exception. Among other things, it also required public bodies to provide written denials of fee reductions or waivers.

SB 417 was heard before the Senate Rules Committee on February 7, 2023. Due to opposition by local government representatives, the Chair of the Rules Committee directed the Chair of the Council and a representative of the Society of Professional Journalists to convene a work group. That work group met throughout the remainder of the session and continues to meet regularly since March of 2023. It is hoped that they will reach a consensus prior to when the 2025 Legislative Assembly convenes.

## **Re-Appointment of the Public Records Advocate**

In 2021, the Legislative Assembly passed [SB 500 Enrolled](#), which among other things, established that the Public Records Advocate (PRA) is an independent office, separate and distinct from any other state agency. It also changed the process by which the Public Records Advocate is appointed. Specifically, it removed the Governor's role in nominating the Public Records Advocate and eliminated the need for Senate confirmation. Instead, the Legislative Assembly delegated to the Council the authority to recruit and appoint future Public Records Advocates.

Under current statute, the Public Records Advocate serves in that position for up to four years with the potential of being reappointed. Todd Albert's four-year term as the Advocate was to end on October 31st. As a result, the Council convened a bylaw subcommittee charged with proposing a new process of appointing a new PRA or reviewing the existing PRA for re-appointment to a four-year term. That process began in January of 2023 and ultimately concluded in September after at least 3 public meetings of the hiring bylaw subcommittee and approved by the full Council in September 2024. The bylaws to appoint or reappoint the PRA were unanimously approved by the Council and is the first set of bylaws that have been adopted by the Council since its creation.

Once the bylaws were adopted by the Council, and after Mr. Albert had expressed his interest in seeking another four-year term as the PRA, the Council sought feedback from multiple stakeholders. This was done by directing the Deputy PRA to survey stakeholders and Council members using questions supplied by the Department of Administrative Services to conduct 360 reviews of Mr. Albert.

In the August 2024 meeting of the Council, it reviewed the results of the 360 survey responses. Members of the Council and the public were able to review those responses, and the Council ultimately voted unanimously to re-appoint Mr. Albert to another four-year term.

## **By-Laws Sub-Committee - Continued**

The Council has faced several challenges since its inception. The first PRA resigned before the conclusion of her first term. The Council spent several months going through a recruitment and interview process that resulted in the nomination of three candidates to the Governor. Of the three, the candidate selected by the Governor ultimately withdrew her name from consideration prior to confirmation. Ultimately, Mr. Albert was nominated and confirmed by the Senate but the lack of an Advocate for such an extended period had an impact on the Council's work. Combine that with the work and time the Council committed to addressing fees for public records (see the PRAC 2022 Biennial Report) there had been little time to establish bylaws for the Council and PRA. Since the creation of the Council, it has generally operated by consensus of the members. However, this is not a best practice and could lead to challenges for the Council in the future. As a result, the

current Council is continuing its bylaw subcommittee that will focus on creating a comprehensive set of bylaws that will address the following, among other things:

- The authority of the PRAC
- Membership and terms
- Officers and roles
- Meetings and Orders of Business
- Officers and Assigned Duties of the members
- Appointment of the PRA (completed)

The PRA bylaw subcommittee is actively meeting at the time of this report. It is anticipated that this work will continue into 2025. Members of the bylaw subcommittee include:

Chair – Scott Stauffer  
Emily Gothard  
Will Glasson  
Mark Landauer  
Todd Albert  
Senator Kim Thatcher  
Representative Tom Anderson

### **Formal Facilitated Dispute Resolution Rules Currently Being Drafted**

In September of 2023, Mr. Albert presented the Council a draft of proposed rules for facilitated dispute resolution conducted by the Public Records Advocate and his Deputy. Those rules were discussed by the Council. The Public Records Advocate will be moving the proposed rule through the required stages for completing an Oregon Administrative Rule, including a period for public notice and commentary, in early 2025.

### **Other Issues Before the Council**

**State-Issued Email Addresses:** One of the goals of the Council is to operate in an open and transparent manner. To further our efforts to become more transparent and to ensure that communication to and from Council members can remain in the public's eye, we have discussed securing state email addresses for each member of the Council so that those records can be retained in a central repository. Additional discussions will be conducted on this front.

**Surveys:** Another one of the primary responsibilities of the Council is to survey state and local agencies on public body practices and procedures for: receiving public records requests, identifying the existence of records responsive to the requests and gathering and disclosing responsive records; determining fee estimates and imposing or waiving fees; and determining and applying exemptions from required disclosure. The Council has not conducted a survey in the recent past and this will be a goal of the Council in the coming year.