

# **Biennial Report of the Public Records Advisory Council**

---

## **Executive Summary**

### *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 report summarizes the work of the Council from December 2020 through November 2022, as well as the legislative developments that resulted in the creation of the Office of the Public Records Advocate as an independent state agency.

The Council was created pursuant to SB 106 (2017) (presently authorized under ORS 192.461-483). The Council consists of bipartisan public records experts representing state and local governments, the media, the public, and 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.

The Council is currently well-positioned to continue its core missions of debating and proposing legislative concepts that would improve the administration of Oregon’s public records and establishing, as appropriate, rules and policies for the operation of the Council and oversight of the Advocate’s office.

### *Welcoming New Members*

Since the previous report was submitted, the following new members have been appointed:

- Andrea Chiapella, designee, Director of the Department of Administrative Services
- Emily Gothard, representative of the public sector workforce
- Tyler Janzen, representative of the counties
- Shasta Kearns Moore, representative of the news media
- PK Runkles, designee, Secretary of State
- Scott Stauffer, representative of the cities

### *Work of the Legislative Subcommittee*

The Legislative subcommittee:

- Consisted of 10 out of 14 Council members, including its two ex-officio legislative members;
- Met 22 times; and
- Heard testimony from 20 invited witnesses and took numerous written comments.

In turn, the Council approved the following legislative proposal put forth by the subcommittee:

- **Clarify which costs are recoverable:**
  - Defines clear categories of costs that may be recovered, listing those categories as search, duplication, and review;
  - Tasks must be done in the least expensive manner reasonably possible;
  - Public bodies may not charge more than rate of the lowest-paid employee capable of searching, duplicating, or reviewing records; and
  - Public bodies may recover fees for work done by unpaid volunteers.
  
- **Help requesters understand public body's process:**
  - To charge fees, a public body must publicly post its records policy;
  - Public body must work in good faith with a requester to narrow a request;
  - A requester may ask for explanation of fee amount proposed; and
  - A public body must explain its fees, if requested, to complete a request.
  
- **Preserve discretion over fee waivers while prioritizing requests in the public interest:**
  - Provides that public body may grant fee waivers for any reason, provides examples;
  - If a public body determines a request is in public interest (as defined in current law), it shall grant a fee waiver unless it finds public interest is outweighed by substantial prejudice or prevention of its ability to carry out other functions; waiver may then be limited;
  - A request from a news media member (as defined by federal FOIA) is considered in the public interest unless public body determines it is not; and
  - Requires public body to explain denial of waiver in writing. As in current law, denials of fee waivers to be appealed to district attorney or attorney general.

### *Move Toward Independence for the Office of the Public Records Advocate*

The Office of the Public Records Advocate was created by SB 106 (2017). The first Advocate resigned from the position due in part to perceived political interference in the operations of the office. The Public Records Advisory Council introduced SB 1506 (2020) to establish the office as an independent state agency in response. Although widely supported, the bill was not passed before the session came to an early conclusion.

SB 500 (2021) retained the concepts of SB 1506 while answering questions about office funding and succession planning. The bill's successful passage means that the Advocate is now appointed by the Council, rather than the Governor, and spells out a strong internal structure and clear continuity of leadership for the Advocate's office. LC 1836 (2023) is the final step in establishing a clear, sustainable source of funding for the office.

**A copy of the full report** may be obtained by contacting the Office of the Public Records Advocate at [publicrecordsadvocate.prc@pra.oregon.gov](mailto:publicrecordsadvocate.prc@pra.oregon.gov) or (503) 871.9036. The report will also be posted on the Council's website at <https://www.oregon.gov/prs/Pages/advisory-council.aspx>.