

ONPA 2007 Legislative Wrap-Up Report

Core ONPA issues this legislative session included multiple requests for exemptions to public records, protection of personal identity and general openness and transparency in public access to information maintained by public bodies. Identity theft posed some interesting challenges; how to protect an individual's identity from illegal use while balancing the public's fundamental right to know. It is clear that the growing number of exemptions is troubling not only for legislators but also to public bodies who maintain public records as well. The ONPA should work with stakeholders in the interim to address solutions for requests for exemptions that balance access and relevant protections.

Bills that Died in Committee

HB 3544 – Allows public body to refuse to disclose record if custodian determines request is redundant or excessive.

HB 3312 – Criminalizes improper release of court records. Born out of a New York Times article on expunged records finding their way into the public light, this bill posed plenty of problems. The bill would have subjected those seeking records to enter into an agreement to validate the information prior to transmitting or using the information or be subject to a Class A violation. Essentially the bill targeted database companies from using outdated information but subjected many other parties to this potential violation. Supported by the Oregon Criminal Defense Lawyers the bill was dropped early in the process.

SB 555 – ONPA bill to require public bodies to assert waiver of fees for PR requests more broadly. Opposed by public bodies, cities, and counties alike, this bill was dead on committee arrival. Personal vs. Commercial use test didn't pass the smell test.

Second life of this bill evolved with a 'gut & stuff' initiated by Sen. Roger Beyer on behalf of a private fish hatchery. Hatcheries wanted their lists of clients exempted from public record. Bill was opposed by Oregon Trout and other fish lovers as a mechanism for determining that native fish were not being endangered by the placement of non-natives. Without the information made public on documents filed with the Oregon Department of Fish and Wildlife this process would be hampered. The bill died a smelly death on an unnamed dock. Talk about not passing the smell test!

SB 871 – This bill proposed to exempt audio recording of the voice of a 911 caller from disclosure under PR law. Proposing a 192.501 conditional exemption of the voice recording, the bill would have allowed disclosure of the transcript. Either way this bill was opposed by the broadcasters and the ONPA and ultimately died.

HB 3333 – Cookies for everyone! Legislators, public officials of all kinds have the technology to imbed electronic messages to client lists and constituents with the "cookie" – a means for tracking information about users such as preferences regarding political topics a constituent might access on a candidate or legislators web site. The bill never received a public hearing.

HB 2085 – Public records management for political subdivisions under the direction of the state archivist. Visual aids demonstrated the gross need in some cases for major “clean-up” of public records storage. Bill died in W&M.

HB 2527 – Written minutes, video/sound recordings of public body not subject to meetings law.

Exemption Bills that died:

SB 493 /654 – Medical professionals’ home address, etc.

HB 2454 – SAIF claimant records, etc.

SB 475 – SS # transfer or disclosure.

HB 3366 / SB 936 – Public contracts and consulting services

HB 2083 – SOS campaign finance data not required to be disclosed.

Bills that Passed – Awaiting Governors Signature

Public Records Exemptions

SB 64 – “Clean up” bill to address current exemption regarding investments state treasurer’s office makes on behalf of public employees. Top-tier venture capital funds will no longer accept public fund investors like PERS unless they have specific codified assurances regarding proprietary information about the underlying investments. This bill simply codified current practices of the treasurer’s office within 192.502 with specifics on what information is and is not subject to disclosure. *Gov. Signed. Eff. 1-1-08*

SB 79 – The national Help America Vote Act enables disabled individuals to vote through the use of special ballots and mechanisms for those with physical impediments that might otherwise prohibit them from voting at all. This bill raised the issue of disclosure of that disability. As a personal right of privacy, legislators were not keen on questioning the request for this exemption and rather speedily passed this bill through. Despite questioning the growing number of exemptions toward the end of session this was one area the legislators felt an exemption was appropriate. *Gov. Signed. Eff. 1-1-08*

SB 950 – Exempts from disclosure under ORS 192.502 the public email addresses of patrons of public libraries. The records of a public library including circulation records showing use of specific library material by a named person are unconditionally excluded from disclosure. This includes address and telephone number of the patron, and now, will include their email addresses as well. *Gov. Signed. Eff. 1-1-08*

HB 2114 – The Oregon Department of Forestry maintains a process for landowners to improve private lands through stewardship agreements. The agreements are voluntary and require land owners to submit a Land Management Plan describing their property and its characteristics (i.e. standing timber and value). The content of an LMP submitted by a landowner may divulge information not known to competitors also trying to sell timber for example. Forestry officials requested that LMPs be subject to PR exemption to provide some level of protection to landowners. Originally the exemption was slated for exemption under 192.502. ONPA negotiated the exemption subject to the public interest test in 501. *Gov. Signed.*

HB 2131 – Expansion of the 2005 Address Confidentiality Program, HB 2131 addressed perceived gaps affecting a domestic violence victim or stalking victim’s security in the original program. This exemption clarification was necessary in order to provide the full protection necessary to keep violent offenders from attacking or reaching their intended victims again.

Areas where “gaps” were noted and fixed included voter registration records, substitute addresses in DMV records, exemption except through court order of participant in program. Exempts victim listing in jury pool lists. **Gov. Signed. Effective on passage.**

HB 3407 (HB 2847) – A public records exemption in 192.502 was passed in 2005 exempting the records (home address, telephone number, etc.) of police officers from being disclosed. This session district attorney’s / assistant attorneys general were also concerned with safety and requested their data be exempt from disclosure as well. In both cases the home address or telephone number would not be subject to disclosure through either voter registration or county lien records, if the individual permitted in this exemption requested that the information be withheld. Counties raised significant concerns with what they felt were significant requests to redact lots of personal information and that would result in more blanket exemptions of records versus redactions. These two bills merged mid-session and with our assistance moved the exemptions under 192.501 subjecting them to the public interest test. **Gov. Signed.**

Klamath Falls & Attorney Client Privilege

SB 671B - The ONPAs number one priority bill for 2007. Last year the Supreme Court decided in the case of Klamath County School District vs. Teamey, that documents developed by a team of consultants investigating a citizen’s allegation of corruption by school district employees was found to be not subject to public disclosure because the report was directed by the Boards legal counsel and was exempt from disclosure under attorney client privilege. The ONPA strongly articulated that where there are public allegations of wrongdoing on the part of a public agency, the public has a heightened interest in knowing the facts related to any investigation, and that those facts should be publicly disclosed as a matter of the public’s fundamental right to know. Senate Bill 671B was the result of close collaboration between members of the Oregon State Bar and the ONPA – particularly Bob Caldwell (Oregonian) and Bill Blair (WA County).

This bill is a compromise that protects the rights of public bodies to get unfettered legal advice from their attorneys and creates a process for public release of a condensation of the reports and documents that do not violate the privilege. A separate section sets out a process for review of the report for completeness that provides for additional protections for the privilege during the review process.

There was no opposition to this compromise in the subsequent Senate and House Judiciary hearings and high praise for the process that bridged the impossible gap between open records and protection of the lawyer-client privilege. **Gov. Signed.**

Public Records Issues Generally

SB 301 – Notices to trustees. ONPA lobbied to avoid a change in current statutory requirements for trustees posting notices of land sales. Current law requires “...notice of sale to be published in a newspaper of general circulation in each of the counties in which the property is situated once a week for four successive weeks.” Ultimately status quo was maintained and the section proposing a change was stricken.

Gov. Signed. Eff. 1-1-08

SB 554 – An ONPA priority bill developed essentially through the work of an interim stakeholder group. Provides for access to records without ‘unreasonable delay’; that public

bodies will establish a procedure by which public records may be accessed and that costs will be provided to requestors. *Gov. Signed. Eff. 1-1-08*

HB 2090 – Permits SOS to refuse to file elections documents containing SS#, SIN, ODL, CC or other financial account numbers. SOS will begin using a system of ‘approved unique identifiers’ as established by rule making. *Gov. Signed. Effective on passage.*

HB 3279 – The question of first amendment rights by student journalists as exercised in school sponsored media came into question with this legislation. Largely supported by local and national free speech activists the legislation was met with only minor opposition by the Oregon University System which was ultimately managed through friendly amendments. With clear delineation prohibiting inciting criminal acts or libelous or slanderous activities and a student’s right to freedom of speech this legislation upheld the fundamental principals of freedom of expression and freedom of the press.

Waiting on Governor’s consideration.

HB 5048 - Increased fees for obtaining public records through the Oregon Department of Transportation for photocopies, labor costs and faxes. Section pertaining to a charge for emails was removed. Statutory requirements establish the protocol for new fees and require legislative authorization. *Waiting on Governor’s consideration.*

SB 753 – A bill initially pertaining to the activities of ombudsmen quickly evolved into the protection of public records in the possession of the ombudsmen as confidential. Establishing essentially a new privilege for ombudsmen the amended version of the senate bill would have allowed the ombudsmen to decline to disclose records related to their duties. National model language for ombudsmen (volunteers in Oregon to the Governor and for long-term care) appeared to have been the impetus for the legislation. Ultimately the permissive language allowing records be withheld as confidential was stricken through a conference committee amendment chaired by Sen. Walker, a strong proponent of access to public records. *Waiting on Governor’s consideration.*