

Government must be more open to comply with new public records laws

DIANE DIETZ
STATESMAN JOURNAL

Oregon's top political leadership tripped all over themselves in recent months to make state and local governments easier for citizens to scrutinize.

The Legislature passed no fewer than four public records laws -- pushed by the governor and attorney general -- in the session that just ended. And the secretary of state weighed in unexpectedly with his own plan for improving government transparency.

The bills, Gov. Kate Brown said, "are significant reforms to Oregon's public records laws -- and probably the most significant reforms we've seen in multiple decades."

The bills amend Oregon's 1973 public records law, which established a presumption of openness. Citizens have the right to obtain government documents unless there's a specific legal exemption that prohibits them from doing so.

But over the 44 years since the law was passed, interest groups have persuaded the Legislature to write 550-plus exemptions from disclosure into the law, and some governments drag their heels about providing documents or charge exorbitant fees to the requester.

The enthusiasm for improving the records law this session was born of frustration about getting documents from the ill-fated administration of former Gov. John Kitzhaber, who resigned in February 2015.

"The strength of our government institutions depend on the public trust, and public trust can be quickly eroded when people don't feel they have access to the work their government is doing or when they can't get answers to reasonable questions," Oregon Attorney General Ellen Rosenblum told lawmakers during the session.

In October 2015, Rosenblum convened a broadly representative Public Records Law Reform Task Force. Rosenblum, Brown, Rep. John Huffman, R-The Dalles, and Rep. Nancy Nathanson, D-Eugene, each shepherded ideas generated by the task force into law.

The bills -- SB 481, SB 106, HB 2101, HB 3361 -- establish three new committees, a public records advocate and a chief data officer, all with responsibility for studying and reporting how to make Oregon government more open. Separately, Secretary of State Dennis Richardson by administrative fiat made state archivist Mary Beth Herkert the public records advocate.

Brown's bill provides for the appointment of a public records advocate, an attorney who will mediate in public records disputes, train state agencies and district attorneys on public records laws and serve as chairperson of the Public Records Advisory Council. That 13-member body is tasked with studying issues that arise under public records law and to provide recommendations to the governor and the Legislature.

Huffman's bill creates a 15-member Sunshine Committee to systematically review the 550-plus exemptions to public records law over the next nine years and to recommend which can be abolished, modified or let alone. On July 1 in even-numbered years, the committee reports its findings to a four-member Public Records Subcommittee of the state's Legislative Counsel Committee. The subcommittee would decide which of the Sunshine Committee's recommendations to pursue during the upcoming legislative session.

Nathanson's bill appoints a state chief data officer to maintain a web portal of government data to make it readily accessible to the public. The bill would also prohibit software that would obstruct ac-

cess to data that should be accessible to the public.

"It's underfunded, but many counties are doing this successfully and in the long run it saves money, so maybe it will grow legs at the state, too," said public records advocate and University of Oregon Professor Bill Harbaugh.

"The next year will tell as the newly appointed advocates and committees get to work whether they meet their intended purpose of speeding public access to government records or mire even simple requests in Byzantine process.

"Our hope is that in most cases the records advocate will operate like some of the more informal ombudspeople in other states that deal with records -- just use a quick phone call to try and get things moving," said Nick Budnick, a volunteer with the Society of Professional Journalist who testified on the bills.

When the records law was passed, it contained 55 exemptions for sensitive information held by the state. That has since grown tenfold.

"These exemptions are hidden and scattered all over Oregon Revised Statutes," said Budnick, a reporter for the Portland Tribune. "It's very hard for the average Jo or Josephine Citizen to figure out exactly what's public and what's not."

Rosenblum's bill requires the Department of Justice to create an online catalog of the exemptions that's easy to search and user-friendly.

The new database would represent an about face from the AG's historical stance. Until 2009, the attorney general sold the information in a 326-page book for \$25 each. The public would have to seek out the book to research the exemptions -- until Harbaugh, the UO professor, scanned the entire document and posted it online. Later, the AG's office itself posted the manual online.

Rosenblum's bill also protects public

bodies from lawsuits when they supply government information in good faith.

The bill also sets a timeline and benchmarks for public agency response to a record request. Previous law was vague, saying only that the agencies had to respond in a reasonable time -- which some agencies saw as months.

The new law requires agencies to acknowledge the request in five days and to supply the documents within 10 days of the acknowledgment in most cases. Although they aren't hard and fast deadlines, they do treat delay as a denial and give citizens or journalists seeking information a clearer path to appeal based on timeliness.

Harbaugh is skeptical. The bill doesn't halt the use of delays and fees to prevent the timely release of public records, he said. "It fails to even attempt to address the fee problem. Its main effect is to create a presumptive deadline of 10 business days for public bodies to provide public records. However, this deadline comes with a few truck-sized loopholes."

Huffman's bill also makes it less easy for new exemptions to slip into bills unnoticed. Each bill that moves forward in the Legislature gets a revenue or fiscal impact statement written by professional staff that lawmakers can review before they vote. The new records law requires an "open government impact statement" to now be prepared for the bills.

Open government advocates are optimistic the new laws will increase transparency.

They're "a significant step forward," Budnick said.

Becky Gladstone of the League of Women Voters, who testified on the bills, has "high hopes that it will be a huge improvement."

Ex-governor, first lady face ethics investigation

TRACY LOEW
STATESMAN JOURNAL

The Oregon Government Ethics Commission will launch a full investigation into whether former Gov. John Kitzhaber and First Lady Cylvia Hayes used their positions for financial gain.

Commissioners took the action at their regular meeting Friday morning after a 45 minute long, closed-door session that included Kitzhaber's lawyer, Janet Hoffman.

According to a preliminary review report, the investigation will look at whether Kitzhaber or Hayes used their official positions for financial gain. It will include an examination of Kitzhaber's and Hayes' use of frequent flyer programs while traveling representing state government. That practice violates state ethics rules.

It will look at whether Kitzhaber and Hayes properly disposed of various conflicts of interest, which could include allowing Hayes to use state resources, and attend meetings in a dual capacity as an unofficial advisor and a paid consultant.

And preliminary information suggests Hayes may have accepted one or more gifts in excess of the \$50 limit, including a press spokesperson for Hayes funded by the Oregon Business Council, "an organization that likely had a legislative or administrative interest in the decision-making of a poli-



THOMAS PATTERSON / STATESMAN JOURNAL

A state ethics panel is investigating whether former Gov. John Kitzhaber and First Lady Cylvia Hayes used their positions for financial gain.

cy adviser in the Office of the Governor," investigators wrote.

The commission launched the preliminary review in fall 2014 after then-state Rep. Vicki Berger, R-Salem, and the Oregon Republican Party filed complaints.

In a preliminary review, the commission's staffers have a set period of time to finish a report that goes to the full commission, which then decides whether to dismiss the complaint or move to a full-scale investigation. That time period changed from 135 days to 30 days in 2015.

The commission suspended the preliminary review in February 2015 when state and federal criminal investigations into Kitzhaber and Hayes were launched.

On June 16 federal prosecutors announced they would close their case without filing any charges. On June 20, the ethics commission announced it had resumed its review.

The criminal inquiry revolved around payments made to Hayes' consulting companies by groups seeking to influence state environmental policy at the same time she served as an unpaid advisor to the governor.

Oregon's government ethics rules prohibit public officials from using their positions for financial gain and require public officials to declare potential or actual conflicts of interest.

The standard of proof for ethics violations is lower than for criminal charges.

Neither Hoffman nor Hayes' attorney, Whitney Boise, returned calls seeking comment.

In a July 12 letter to the commission, Hoffman said both the complaint and the commission's preliminary report rely "almost entirely on news stories based on speculation and cherry-picked excerpts from a handful of former Gov. Kitzhaber's personal emails."

"This politically motivated complaint attacking former Gov. Kitzhaber's integrity should be dismissed," Hoffman wrote.

The commission disagreed, voting unanimously, with two members absent, to proceed.

Commission staffers now have six months to complete a full investigation.

Berger, who filed one of the complaints, said she is confident the ethics commission will thoroughly investigate the case.

"The issues which

were the subject of my original complaint remain viable," she said.

In a statement, Oregon Republican Party Chairman Bill Currier said the action was welcome news.

"Perhaps it is the beginning of the long overdue exposing and rooting out of corruption in our state government, and finally holding accountable those who engage in it," he said.

Kitzhaber likely will try to settle the case, according to emails released under a public records request made by The Oregonian.

"We will convey that we are willing to take this all the way and have a strong case for prevailing," Kitzhaber wrote in a Dec. 22, 2014 letter to his lawyer. "But the end game is not to actually have the complaints dismissed but rather to negotiate a stipulated settlement agreement in which we might acknowledge some minor mistakes we may have made and have the matter resolved at the March meeting."

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