

Rosenblum, appointed by Kitzhaber (and married to former *Willamette Week* publisher Richard Meeker), explains the importance of access to public records: “I think people have a right to know what their public servants are up to,” she tells *EW*. “You elect me to do a job, and I don’t think you’re electing me to do that job in secret.”

The public’s right to access public records serves a purpose: to keep government accountable and transparent. And when a public agency throws up a barricade to accessing public information, red flags go up, especially for a newspaper.

Red flags have gone up for many around the state — journalists, public records lawyers, citizens, the Lane County District Attorney’s office and the AG’s office — and they’ve been planted into three areas that need overhauls: a glut of exemptions (more than 500 and counting in Oregon — more than double that of the next highest state, Florida), fees and deadlines.

On Oct. 23, 2015, Rosenblum announced the “Attorney General’s Public Records Law Reform Task Force, a group designed to review and recommend improvements to Oregon’s public records laws.”

Rosenblum and Michael Kron, special counsel to the attorney general’s office, are traveling around Oregon to gather testimony at public hearings with some of the task force, including an array of about 20 stakeholders like State Senator Jeff Kruse and *Oregonian* investigative reporter Les Zaitz.

The task force has been to Salem and came to Eugene May 9. Rosenblum will hold Portland’s first public hearing May 26, and the task force will host a public meeting in Salem May 27.

For the 2017 legislative session, the task force will make recommendations to the Oregon Legislature, which has largely opposed suggested reforms to public records laws in the past. If the Legislature votes to adopt the recommendations, however, real reform could come to Oregon’s state agencies. And as the states go, so will the counties, municipalities and, perhaps, even Eugene.

THERE’S NO SUNSHINE WHEN FROHNMAYER’S GONE

In 1973, in the wake of the Watergate scandal, Oregon joined many other states in enacting sunshine laws, or Public Records and Public Meetings Laws, as a way to keep government transparent, accessible and accountable to the public.

Yes, Tricky Dick paved the way for transparency and the Oregon Public Records Act (OPRA). And special interests have been chipping away at it ever since.

“When I first started as a reporter in 1984, the Oregon Public Records law was still universally, for the most part, useful,” Brent Walth explains. “What I’ve seen over time is an evolution of government agencies shifting in their posture to: ‘We are going to thwart and frustrate and block as many of these requests as we can.’”

Walth, a Pulitzer-winning editor formerly of the *The Oregonian* and *Willamette Week*, is now an associate professor at the University of Oregon’s School of Journalism and Communication. He is currently teaching his students about public records law.

“It’s getting worse all the time,” Brent Walth says. “I’ve yet to see an Attorney General since [Dave] Frohnmeyer who was serious about enforcing the spirit of the public records law. That

sends a loud message across all state and local government that if you want to hide something, you can do it.”

Bill Harbaugh — University of Oregon economics professor, author of UO watchdog blog *UO Matters* and public records advocate — recalls Frohnmeyer’s tenure as AG fondly as well.

“He was very enthusiastic about enforcing the law,” Harbaugh says. “He would tell state agencies, ‘Jump to it.’”

Under Frohnmeyer’s reign (1981-1991), Walth recalls, the Attorney General’s office decided in favor of disclosing public records requests in dispute about 65 percent of the time.

“After Frohnmeyer, that changed dramatically,” Walth says, “particularly under Myers.”

Myers, as in Hardy Myers, AG from 1997 to 2009, was known for “rubber-stamping” denials to public records requests. Harbaugh calls Myers “notoriously bad” on enforcing public records law.

Following Myers as AG came John Kroger (2009 to 2012), of the 2010 Kroger Report, which made sweeping suggestions for reforming OPRA. While many in pro-transparency circles supported the suggested reforms, a storm of lobbyists for state and local agencies came down against the recommendations.

“When Attorney General Kroger was in office, he was pushing very strongly to try to reform the Oregon Public Records Act,” lawyer David Bahr says. “He did not succeed.”

Bahr is a local public records and FOIA (Freedom of Information Act, or federal public records law) attorney who is currently serving on the FOIA Committee under the National Archives and Records Administration. For more than two decades, Bahr has lectured nationally about state and federal public records laws.

The Kroger conundrum leaves reform advocates like Bahr, Harbaugh and Walth skeptical that any overhaul is possible in Oregon, but current AG Rosenblum, with ostensible support from Gov. Brown, has picked up the torch regardless. She says the AG’s office has a more narrowly focused approach than Kroger, who presented more of a far-reaching “omnibus” to the Legislature.

“I’m not Attorney General Kroger, and I don’t necessarily plan to follow what he did,” Rosenblum says. “This is really a whole new effort here, and I want to be very clear because [Kroger’s effort] didn’t work out.”

THE GREAT EXEMPTION BLOAT

There’s a reason Rosenblum’s task force is addressing exemption bloat first: It has the best chance of reform because all sides seem to be for it.

The Kroger Report shows how exemptions — or codified reasons allowing government officials to withhold sharing public records — are not just a concern for the public but also government officials, who themselves have trouble keeping track of them.

“There are a number of exemptions that I’m glad that they’re reviewing to see that things are handled consistently,” says Lane County District Attorney Patty Perlow, who decides on appeals for local public record request denials.

In 1973, when OPRA was first instated, Oregon had 55 exemptions. In 2010, the Kroger Report’s count was 403. As of 2016, Oregon’s exemption count has ballooned to 544. In contrast, FOIA has a total of nine exemptions (granted, they are broader categories).



“Everyone who addressed the subject seemed to agree that re-organizing and compiling various exemptions — which are scattered throughout the statute books — would significantly improve the law and reduce costs,” the Kroger Report states.

Rosenblum says the number of exemptions is high because of special interests.

Bahr agrees: “The problem is — what happens every legislative session — the lobbyists come and insert more exemptions.”

Before 2016, researching exemptions was a nearly impossible task. Now, for the first time, Kron and his team compiled a spreadsheet with all 544 exemptions in one place, which can be found on the attorney general’s website.

“Before that spreadsheet existed, you would have basically had to figure out where in the tens of thousands of pages of statutes,” Kron says. “It’s the most complete catalogue ever.”

While it’s an improvement to have exemptions searchable in one place, Walth maintains that government officials continue to withhold public records by citing an exemption, even though they are not required to. Using exemptions is voluntary and up to the discretion of the individual officer.

“The agency is not required to withhold records,” Walth says. “They simply choose to 99 percent of the time.”

But as Harbaugh points out: “The fundamental problem isn’t the exemptions; it’s the fees.”