

## STATEMENT ON HB 4086

Submitted to the House Committee on Judiciary

Timothy W. Snider  
Attorney at Law  
900 SW Fifth Ave., Ste. 2600  
Portland, OR 97204  
February 4, 2014

### A. Introduction

1. My name is Tim Snider. I am a partner at the Portland office of Stoel Rives LLP law firm. Part of my practice includes advising individuals and businesses on issues under Oregon's Public Records Law, ORS 192.410, *et seq.* I am here on behalf of TriMet to testify in support of HB 4086 (2014).

2. Oregon's Public Records Law is an important component of our democratic system of government. Public scrutiny and transparency help ensure that government operates for the benefit of the people. At the same time, the Public Records Law protects the privacy of Oregon citizens when government obtains confidential or personal information about them. This is accomplished by the legislature enacting exemptions to the Public Records Law, which otherwise would require the disclosure of such confidential and personal information.

3. As government services evolve with information technology advancements public bodies are obtaining personally identifiable information on citizens, which information may be subject to disclosure as "public records." ORS 192.410(4). To protect the privacy interests of Oregon citizens, it is incumbent upon the legislature to enact new exemptions from the Public Records Law to keep up with the changing role of government and the types of information obtained by government agencies in providing services to citizens.

### B. The Problem Issue

4. TriMet is a public body subject to the Public Records Law. TriMet is implementing an electronic fare collection system ("e-fare system") that will enable citizens to electronically purchase and use fares to ride on TriMet's bus and rail systems. The e-fare system will collect personally identifiable information on TriMet's riders, including general account information such as names, addresses and dates of birth, as well as payment information such as credit or debit card numbers, bank account information and other personal identifier information. The e-fare system will also collect information on citizens' travel patterns, including dates and times of travel, frequency of use, travel locations, and other usage data. Such information and records are "public records" within the meaning of the Public Records Law and may be subject to disclosure to the public upon request. This information will help TriMet better serve its customers by providing it with data to evaluate efficiency of bus routes and possible service changes. In addition, efficient payment processing for riders will result in savings to TriMet and its customers.

5. The risk that personally identifiable information collected by the e-fare system may be misused if released to the public is obvious. Personally identifiable information, such as names, addresses, dates of birth and other account information, is valuable. In the hands of identity thieves, such information could lead to devastating results for mass transit riders. Similarly, citizens have an important interest in keeping their personal travel patterns and travel history private and not available for public consumption.

6. No current exemptions in the Public Records Law currently covers all the information that will be collected by the e-fare system. For example, ORS 192.501(27) provides a qualified exemption for information used by a public body “to authorize, originate, receive or authenticate a transfer of funds,” unless the public interest otherwise requires disclosure. This exemption may cover fare payments in the e-fare system, but it does not cover the other types of personally identifiable information collected in the e-fare system, including customer account information and travel data.

7. Without a Public Records Law exemption for personally identifiable information collected by TriMet and other mass transit systems that adopt e-fare systems, such information may be subject to disclosure to any member of the public that requests it.

### **C. The Solution**

8. HB 4086 addresses the problem of personally identifiable information collected in an e-fare system by creating a specific statutory exemption from the Public Records Law for such information. In so doing, it ensures that citizens who use the e-fare system will not have their private personal, financial and travel information made available to the public.

9. The proposed e-fare system exemption is consistent with other exemptions from the Public Records Law adopted by previous legislatures to protect personally identifiable information from disclosure. *See, e.g.*, ORS 192.502(3) (exempting public body employee addresses, telephone numbers, Social Security numbers and dates of birth); ORS 192.502(12) (exempting public body employee and retiree addresses, telephone numbers and other nonfinancial records maintained by the Public Employees Retirement System); ORS 192.502(24)(k) (exempting personal information about tenants maintained in records of the Housing and Community Services Department); ORS 192.502(28) (exempting personally identifiable information about customers of public utilities).

10. HB 4086 also places the exemption within ORS 192.502 as an “unconditional” exemption, which means that the public body is not required to engage in a public interest balancing analysis in order to determine whether the exemption applies. *Compare* ORS 192.501 (exempting certain public records from disclosure “unless the public interest requires disclosure”). Creating an unconditional exemption for personally identifiable information collected by an e-fare system correctly recognizes that the citizen’s privacy interest in such information outweighs any public interest in disclosure. This too is consistent with other unconditional exemptions from the Public Records Law for personally identifiable information. *See, e.g.*, ORS 192.502(12), 192.502(28). In addition, creating an unconditional exemption

relieves TriMet and other mass transit systems of engaging in a case-by-case analysis of public records requests targeting personally identifiable information of its riders, which decisions may be subject to litigation. *See* ORS 192.450 (creating administrative and judicial remedies for challenging denials of public records requests).

#### **D. Experience in Other States**

11. Other states have adopted similar legislation to HB 4086 to ensure that personally identifiable information collected in e-fare systems are exempt from public records disclosure requirements. For example, both Georgia and Utah have adopted public records exemptions substantially similar to HB 4086, which unconditionally exempt customer account information and travel history information collected by public transit systems. *See* Ga. Code § 50-18-72(a)(30); Utah Code § 17B-2a-815(3)(a). In addition, Washington and Florida have enacted exemptions from their public records laws to protect personally identifiable information collected by transit agencies. RCW § 42.56.330; Fla. Stat. § 341.3026(1).

12. HB 4086 is an appropriate and necessary new exemption to the Public Records Law. It will ensure that mass transit riders' personally identifiable information collected in e-fare systems is not subject to public disclosure or the risks inherent in such disclosure.