

**Oregon State House of Representatives**  
**House Committee on Rules**  
**Testimony in Favor of HB 4027**  
**F. Gregory Fitz-Gerald – February 17, 2014**

Madam Chair, Distinguished Committee Members. Thank you for this opportunity to appear before you.

I'm Greg Fitz-Gerald from Eugene. I am a director of the Oregon Cultural Trust, and I'm here to speak in favor of House Bill 4027.

Because I was not in Oregon when the Trust and the Arts Commission were created, I don't know the rationale for putting them under Business Oregon. But, with more than 40 years of boardroom and executive management experience, I do know that there are major problems with the Trust and the Commission -- strategic problems, management problems and board governance problems.

From a strategic perspective, it makes no sense to keep the Trust and the Arts Commission under the Business Oregon umbrella. Business Oregon's mission is to help create and grow for-profit businesses. That mission is antithetical to giving charitable grants to non-business, cultural organizations that have an entirely different purpose, and that by law cannot be operated for profit. This is a strategic misfit of the first order.

The Trust and the Arts Commission have never received the attention and support they need to be truly effective showcase organizations for the people of Oregon. They are small, neglected activities inside Business Oregon. Just look at Business Oregon's web site. Neither the Trust nor the Commission are described on the opening page. I think it's very revealing that Business Oregon's mission statement never even mentions art and culture<sup>1</sup>. After trumpeting their business mission, there is an afterthought two paragraphs later that says, "Business Oregon also houses the Oregon Arts Commission and the Oregon Cultural Trust..." It's as if they are talking about an unwanted child.

It's clear to me that the Trust and the Arts Commission are and always will be orphans as long as they are in Business Oregon.

Sadly, the problems are more than just neglect. Business Oregon appears to operate as though the State's rules and polices don't apply to them.

This came to light with the firing of Trust's Executive Director. I want to make it clear that I am not here to talk about the merits of that decision. It's Business Oregon's right to terminate an employee and I have no problem with that. But, there is a problem in how it was done.

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<sup>1</sup> Business Oregon works to create, retain, expand and attract businesses that provide sustainable, living-wage jobs for Oregonians through public-private partnerships, leveraged funding and support of economic opportunities for Oregon companies and entrepreneurs.

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The Statesman Journal reported on December 18, 2013,

“Business Oregon did not follow the state’s procedures in its firing of Oregon Arts Commission Executive Director... The state’s human resources policies clearly require agencies give managers annual performance reviews. Its policies also lay out a procedure for disciplining managers in any way, including firing them, which involves a formal investigation and a hearing with the employee. McCabe’s department followed none of those procedures.”

While this is not my responsibility, it sure should be yours. If your government departments won’t follow the rules, why should anyone?

Now I want to describe the very serious governance issues I have encountered as a Director of the Cultural Trust. When the Governor appointed me and I proudly took my oath of office, I agreed to uphold my duties and responsibilities as a director. These are detailed in the *Governor’s Membership Handbook for Boards and Commissions*<sup>2</sup>, and the Attorney General’s *Guide to Nonprofit Board Service in Oregon*<sup>3</sup>.

I am deeply concerned about a lack of proper board governance in general and a number of specific matters, including what appears to be,

- Non-disclosure of material information to the Board;
- Misleading information given to the Board due to a lack of full disclosure;
- No authority for a Director’s actions; and
- No Board notice or approval of such actions.

I’ve asked four times for information about these matters, and four times Business Oregon has refused. I’ve submitted copies of my correspondence with Business Oregon as part of my testimony. These emails provide the details on these governance questions, especially my letter dated December 16, 2013.

The breaking point occurred January 31, 2014, when Mr. McCabe emailed me saying, “The Department is henceforth treating your request for information as a public records request...” and that I must go through his PR person. I want to stress that I’m asking for information to which I am legally entitled as a Director. This is not a journalist’s request.

The Attorney General says directors have a right to any information they need and “When a problem exists...a director has a duty to inquire into the surrounding facts and circumstances.”

This is the crux of the problem. I’m trying to do my sworn duty to find out what happened, and Business Oregon is stonewalling.

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<sup>2</sup> <http://www.oregon.gov/gov/pdf/form/handbook.pdf>

<sup>3</sup> <http://www.doj.state.or.us/charigroup/pdf/nonprofit.pdf>

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Here's another problem with board governance. You may hear that the Cultural Trust supports Business Oregon's position that nothing should be done now and you should wait until the 2015 session. That's misleading because the Board of the Cultural Trust never discussed or voted this issue.

I believe the problems I've described demonstrate conclusively that it's time to move the Cultural Trust and the Arts Commission. Give them a home where they will thrive with proper care, management, and governance. I think there is a good strategic fit with the Secretary of State, and I would support that move.

As I conclude, let me say that over the last 40 years, I have been a senior executive at major publically-held corporations, and I have served on many for-profit and not-for-profit boards. I have never encountered such neglect and disregard for proper board governance. You can fix these problems by approving House Bill 4027.

Thank you. I'm happy to answer your questions.

*Submitted, February 17, 2014 by*  
F. Gregory Fitz-Gerald  
3115 Braeman Village  
Eugene, OR 97405  
541 302-2646  
fgfeug@gmail.com

**State of Oregon House of Representatives**  
**House Committee on Rules**  
**F. Gregory Fitz-Gerald**  
**Testimony in Favor of HB 4027**  
**February 17, 2014**

**Attachments to Testimony**

1. Statesman Journal Article December 18, 2013, *Agency erred in firing D'Arcy from Oregon Arts Commission*
2. Correspondence between Business Oregon and Greg Fitz-Gerald
3. Membership Handbook for Boards & Commissions, John A. Kitzhaber, M.D., revised 2/15/11, relevant pages
4. A guide to Nonprofit Board Service in Oregon, Office of the Attorney General, relevant pages

## Agency erred in firing D'Arcy from Oregon Arts Commission

Written by Hannah Hoffman Statesman Journal

Dec. 18

statesmanjournal.com

Business Oregon did not follow the state's procedures in its firing of Oregon Arts Commission Executive Director Christine D'Arcy in October, records show.

Business Oregon, the state's business development department, oversees the arts commission, and Business Oregon Executive Director Tim McCabe acted as D'Arcy's direct supervisor. He fired her on Oct. 28, and D'Arcy has said the firing was a complete surprise.

Arts Commission Chairwoman Julie Vigeland and Cultural Trust Chairman Bob Speltz also signed her firing letter.

McCabe was not available for comment, and spokesman Nathan Buehler said the department would decline comment on personnel issues generally.

The state's human resources policies clearly require agencies give managers annual performance reviews. Its policies also lay out a procedure for disciplining managers in any way, including firing them, which involves a formal investigation and a hearing with the employee.

McCabe's department followed none of those procedures.

The state policy says, "A performance management evaluation shall be completed for each regular status employee annually. In addition to the annual evaluation, all regular status employees shall receive an informal interim performance review at least once during the review period."

A request for all of D'Arcy's past performance reviews yielded just one, in spite of her having worked 19 years for the commission

D'Arcy's most recent performance review took place in April 2010 — nearly four years ago.

State records law creates a retention schedule for all public records; some are kept forever and some are destroyed after a given period of time.

Performance reviews are included in personnel documents that are destroyed after three years, so any performance reviews D'Arcy may have been given before 2010 no longer exist, Buehler said.

State policies also require agencies to record whether they gave an employee an annual review in a central system. Department of Administrative Services spokesman Matt Shelby said there is no record in the system of D'Arcy ever receiving a review, but he said that may indicate Business Oregon officials weren't aware of the policy or simply didn't follow it.

McCabe also did not follow the state's recommended procedure for disciplinary action. There is no record of an investigation and D'Arcy said her firing was entirely unexpected, which shows there was no disciplinary hearing.

However, that procedure is recommended but not required. The policy explicitly says that firings still are valid even if the procedure isn't followed.

Buehler did not provide any documents related to an investigation or any other pre-disciplinary action, such as an improvement plan, as requested by the Statesman Journal. He did not say whether such documents exist.

hhoffman@StatesmanJournal.com, (503) 399-6719 or follow at [Twitter.com/HannahKHoffman](https://twitter.com/HannahKHoffman)

## Greg Fitz-Gerald

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**From:** Greg Fitz-Gerald <fgfeug@gmail.com>  
**Sent:** Thursday, December 12, 2013 1:34 PM  
**To:** Bob Speltz  
**Subject:** Cultural Trust involvement with evaluation and termination of Chris D'Arcy

Dear Bob,

I'm writing as a director of the Trust for Cultural Development (also "Cultural Trust"). Would you please promptly send me complete copies of the following documents related to the Cultural Trust.

1. Email you sent to Julie Vigeland and Sequeira Pua on October 18, 2013.
2. Email you received from Julie Vigeland to Sequeira Pua on October 18, 2013.
3. The notes dated October 3, 2013 entitled "Oregon Arts Commission / Cultural Trust Committee Meeting".
4. The document referred to in your October 18, 2013 email to Sequeira Pua as "...the written document I shared at our in-person meeting."
5. The notes referred to as "...is in the notes I passed on..." in the next to last sentence in Julie Vigeland's October 18, 2013 email to Sequeira Pua.
6. Any other documents, notes or memoranda related to your involvement with the performance evaluation and termination of Chris D'Arcy.

I would also like to know what authority you relied on in signing the termination letter to Chris D'Arcy dated October 3, 2013. I find nothing in the Oregon Statute 359.400 granting such authority or in the Membership Handbook for Boards and Commissions, revised 2/15/11.

Sincerely,

Greg Fitz-Gerald

Director  
Trust for Cultural Development

## Greg Fitz-Gerald

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**From:** Sequeira Pua <pua.sequeira@biz.state.or.us>  
**Sent:** Friday, December 13, 2013 3:50 PM  
**To:** fgfeug@gmail.com  
**Subject:** RE: Cultural Trust involvement with evaluation and termination of Chris D'Arcy

**From:** Sequeira Pua  
**Sent:** Friday, December 13, 2013 3:16 PM  
**To:** 'Greg Fitz-Gerald '  
**Cc:** 'Bob Speltz'  
**Subject:** RE: Cultural Trust involvement with evaluation and termination of Chris D'Arcy

Good afternoon Mr. Fitz-Gerald,

Your email has been forwarded to me by Mr. Speltz for response regarding the personnel documents you required he provide you. Ms. D'Arcy was an employee of Business Oregon and requests regarding personnel documentation must appropriately be made to the agency.

The documents you've requested can all be located within a recent article in the Statesman Journal, dated December 8, 2013. The documents are located on the following link:  
<http://www.statesmanjournal.com/viewint/article/20131209/DOCS/131209012/Documents-Chris-D-Arcy-termination-notice>

In addition, I would like to provide some clarification regarding who has the authority to hire and terminate employment. ORS 359.135 states, "(1) The Director of the Oregon Business Development Department, upon consultation with and the approval of the Oregon Arts Commission, shall appoint an administrator of the Arts Program *who shall serve at the pleasure of the director*. Tim McCabe, Director of the Oregon Business Development Department has sole authority to terminate employment. Mr. Speltz and Ms. Vigeland's signature as Chairs acknowledges the action but does not hold authority to the action taken.

I hope your inquiry is answered by the information and references provided.

Sincerely,

*Pua Sequeira  
Employee Services Manager  
Oregon Business Development Department  
775 Summer Street NE, Suite 200  
Salem, OR 97301*

*Phone: (503) 986-0148  
Fax: (503) 581-5115*

[pua.sequeira@state.or.us](mailto:pua.sequeira@state.or.us)





**Greg Fitz-Gerald**

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**From:** Greg Fitz-Gerald <fgfeug@gmail.com>  
**Sent:** Monday, December 16, 2013 2:29 PM  
**To:** Pua Sequeira  
**Subject:** Response to your email of 12/13/13  
**Attachments:** Response to Pua Sequeira Confidential as sent.pdf

Dear Ms. Sequeira,  
Unfortunately the information and references you provided in your email to me dated 12/13/13 did not answer my issues as set forth in my attached letter to you.

As I say at the end of my letter I think you in advance for your assistance in this matter and for helping me fulfill my fiduciary and other duties as a director of the Oregon Cultural Trust.

Sincerely,

Greg Fitz-Gerald  
Director  
Oregon Cultural Trust

F. Gregory Fitz-Gerald  
3115 Braeman Village  
Eugene, OR 97405  
541 302-2646  
[fgfeug@gmail.com](mailto:fgfeug@gmail.com)

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# *F. Gregory Fitz-Gerald*

*3115 Braeman Village*

*Eugene, OR 97405*

*Phone: 541 302-2646 E-mail: fgfeug@gmail.com*

December 16, 2013

Ms. Pua Sequeira  
Employee Services Manager  
Oregon Business Development Department  
775 Summer Street NE, Suite 220  
Salem, OR 97301

Dear Ms. Sequeira,

I appreciate your prompt response to my October 12, 2013 email to Bob Speltz about Oregon Cultural Trust involvement with evaluation and termination of Chris D'Arcy. Unfortunately my inquiry is not answered by the information and references you provided.

I accept that Oregon Statute 359.135 grants the Director of the Oregon Business Development Department sole authority to terminate employment, but that is not my issue. My very serious concerns relate to board governance of the Cultural Trust, including non-disclosure of relevant information to the board, information which was given that was misleading due to a lack of full disclosure, no authority for a director's actions, and no board approval of such actions.

It is surprising to me that in spite of the Statute permitting Tim McCabe, the director of Business Oregon, to terminate D'Arcy with or without cause you added an additional requirement. On October 18, 2013, you told both Speltz and Vigeland that it was "very critical" that "Before any action is taken...we want to make sure this decision is not made in a silo and sprung on the group." (group refers to the Oregon Arts Commission and the Oregon Cultural Trust and we is presumably McCabe and you) The email responses Speltz and Vigeland sent you later that day make it clear that they had not as you required "vetted the current situation, performance and potential outcome with the OAC and the OCT." Speltz's email said specifically, "I have not vetted her performance with each board member." This raises a new question. Why was the decision to terminate D'Arcy taken without the required, vetting of "the current situation, performance, and potential outcome" with the full board of the OCT and commissioners of the OAC? As a board member of the OCT, I know this was never brought to the full board and public statements by commissioners of the OAC indicate that the same applies to the OAC. Despite your requirement, this decision was indeed made in a silo and sprung on the boards of the OCT and OAC.

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*Ms. Pua Sequeira*  
*December 16, 2013*  
*Page 2*

The first I learned from Speltz of D'Arcy's departure was in his October 29, 2013 email which said, "Chris D'Arcy is leaving her position at the Trust/Arts Commission. This transpired yesterday..." The word "leaving" is a very misleading description of being fired.

Then on October 30, 2013 Speltz sent an email addressed to OCT board members, special advisors and staff which said, "To recap what is happening: Chris D'Arcy will no longer be serving in her position as director of the Oregon Arts Commission and Oregon Cultural Trust. Myself, as the chair of the Oregon Cultural Trust, Julie Vigeland, chair of the Oregon Arts Commission, Chris and Tim McCabe, director of Business Oregon were involved in the decision around a transition." (Identical language was given to the commissioners at the OAC and staff at Business Oregon.) The phrase, "no longer serving" is similarly misleading, as is saying Chris D'Arcy was involved in the decision. And, as shown below, the phrase "around a transition" is also very misleading.

Then after my return from Korea on November 1, 2013, I spoke with Speltz who said that Tim McCabe of Business Oregon had terminated D'Arcy "without cause" as permitted by Oregon law. Speltz also told me, he and we (meaning the OCT board) could not discuss it since it was a "personnel matter" related to an employee of Business Oregon and we as board members "had no authority to be involved in such a matter".

Speltz' limited disclosures and statements led me to believe that no one from the Oregon Cultural Trust or the Oregon Arts Commission had been involved in anything more than planning a transition to a new administrator after D'Arcy had been fired.

But, the documents Business Oregon was compelled to give the Statesman Journal pursuant to their Freedom of Information Request present a far different picture than the misleading story given me and the other board members. Those documents show that Speltz and Vigeland were far more involved than I was led to believe. They were deeply engaged in the process and decisions that terminated D'Arcy, up to and including co-signing with McCabe the termination letter given D'Arcy.

As stated above, my questions to Speltz in my October 12, 2013 email concern his being involved in the review process and termination of D'Arcy without authority or authorization by the OCT board. His signature as Chair of the Oregon Cultural Trust on the termination letter to D'Arcy leaves no doubt that he was acting as Chair and Director of the OCT and not as an individual. This is further evidenced by your instruction to him to vet the matter with the OCT which he could not have done as an individual.

Oregon Statute 359.410(6) says, "The board shall elect one its voting members as chairperson and another as vice chairperson, for the terms and with the duties and powers necessary for the performance of the functions of such offices as the board determines." The board of the Oregon Cultural Trust never granted the chair (Speltz or predecessors) any duties or powers to

*Ms. Pua Sequeira*  
*December 16, 2013*  
*Page 3*

engage in personnel matters involving staff provided by Oregon Business and none is granted by Oregon Statute 359.440 creating the Cultural Trust.

The Governor's *Membership Handbook for Boards and Commissions*, dated 2/15/11, says,

- Board members "Are aware that authority to act is granted to the board as a whole, not to individual members." (p4)
- "No board member should make decisions or take unilateral action without the consent of the board as a whole." (p5)
- "Board members...must take care not to appear to be speaking for the board unless specifically authorize by the board to do so." (p5)

By not complying with these requirements of the Governor's Handbook, it appears, based on the evidence I have received to date, that Speltz has not "faithfully discharge[d] the duties of a member of the Trust for Cultural Development Board" as required by the Oath of Office for all directors.

The documents available through the Statesman Journal link you listed, do not answer my request. They have many redactions of what appears to be material information, and as a director of the OCT I am entitled to all the documents I requested without redaction.

As set forth in the Governor's Handbook, board members

- "Learn about issues affecting the board." (p4)
- "Examine all available evidence before making judgment." (p4)

The booklet, *A Guide to Non-profit Board Service in Oregon*, by the Office of the Attorney General also has requirements for access to information by directors.

- "You have the right ... to have reasonable access to internal information of the organization." (p4)
- "Senior management must also be willing to facilitate board access to books and records..."
- "When a problem exists ... a director has a **duty** (*emphasis added*) to inquire into the surrounding facts and circumstances." (p5)
- "The director also has a **duty** (*emphasis added*) to investigate warnings or reports of ... mismanagement."(p5)

Based on the forgoing, I as a director of the Oregon Cultural Trust again request the information and documents without redaction as I did in my October 12, 2013 email to Speltz.

*Ms. Pua Sequeira*  
*December 16, 2013*  
*Page 4*

1. Email Speltz sent to Julie Vigeland and Sequeira Pua on October 18, 2013.
2. Email Speltz received from Julie Vigeland to Sequeira Pua on October 18, 2013.
3. The notes dated October 3, 2013 entitled "Oregon Arts Commission / Cultural Trust Committee Meeting".
4. The document referred to in Speltz' October 18, 2013 email to Sequeira Pua as "...the written document I shared at our in-person meeting."
5. The notes referred to as "...is in the notes I passed on..." in the next to last sentence in Julie Vigeland's October 18, 2013 email to Sequeira Pua.
6. Any other documents, notes or memoranda related to Speltz' involvement with the performance, evaluation and termination of Chris D'Arcy, including without limitation, the "...draft outline of the schedule and timeline..." referred to in Ms. Sequeira's email to Speltz and Vigeland dated October 18, 2013.

The Oregonian seems to have been given information (D'Arcy's 2010 performance evaluation and perhaps other items) by Business Oregon that was not given to the Statesman Journal. Would you please send me copies of all documents, without redaction, given to the Oregonian that are not included in the Statesman Journal internet link you sent me? Would you also please send me copies of D'Arcy's performance evaluations for 2011, 2012 and 2013, which annual evaluations are required by ORS 50.035.01.

My request to you for documents and information is made pursuant to page 5 of the Governor's Handbook which says, "Questions about board issues should be directed to the board's administrative or executive officer, who will see that all board members receive full information by the next regular meeting."

I thank you in advance for your assistance in this matter and for helping me fulfill my fiduciary and other duties as a director of the Oregon Cultural Trust.

Sincerely,



Director  
Trust for Cultural Development

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**Greg Fitz-Gerald**

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**From:** Sequeira Pua <pua.sequeira@biz.state.or.us>  
**Sent:** Friday, January 10, 2014 2:27 PM  
**To:** Greg Fitz-Gerald  
**Subject:** December 16 - Email Response

Good Day Mr. Fitz-Gerald,

Please forgive my delay in response to your letter as illnesses and the holidays postponed my reply.

I appreciate your recognition that OBDD Director Tim McCabe has sole authority and discretion over employment decisions regarding Oregon Business Development Department (OBDD) "at-will" employees and that volunteer members of the Cultural Trust Board have no authority over personnel matters related to the OBDD staff. To your points regarding the director's exercise of discretion over at-will employees, communicating with board members was a suggested courtesy, not an added requirement and had no impact to the action taken by Mr. McCabe. As I'd mentioned previously, members and chairs (including Mr. Speltz and Ms. Vigeland) of the Oregon Cultural Trust Board and Oregon Arts Commission have no authority regarding personnel matters as it pertains to OBDD staff.

Your letter includes a request for information and identifies specific documents, some of which have already been provided to the media. Your requests will be separately assessed with follow up correspondence as appropriate.

The Cultural Trust Board has made a positive impact on the State of Oregon and its communities and economy. I hope this response assists in returning focus to the mission and goals of your organization so Oregonians will continue to benefit from the good works, talents, and dedication of its board members.

Best Regards,

*Pua Sequeira*  
*Employee Services Manager*  
*Oregon Business Development Department*  
*775 Summer Street NE, Suite 200*  
*Salem, OR 97301*

*Phone: (503) 986-0148*  
*Fax: (503) 581-5115*

[pua.sequeira@state.or.us](mailto:pua.sequeira@state.or.us)



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From: Greg Fitz-Gerald [mailto:fgfeug@gmail.com]  
Sent: Monday, December 16, 2013 2:29 PM

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# *F. Gregory Fitz-Gerald*

*3115 Braeman Village*

*Eugene, OR 97405*

*Phone: 541 302-2646 E-mail: fgfeug@gmail.com*

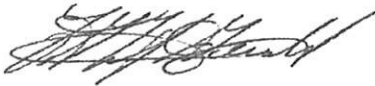
January 30, 2014

Mr. Tim McCabe  
Executive Director  
Business Oregon  
775 Summer Street NE, Suite 200  
Salem, Oregon 97301-1280

Dear Mr. McCabe,

This is my third request for the information that I asked for in my December 12, 2013 letter to Bob Speltz, Chair of the Oregon Cultural Trust. The two responses from your office have not complied with my request, and I have not yet received such information. Your failure to comply with my request by the commencement of the Oregon Cultural Trust's board meeting today shall constitute a further violation of the Governor's policies and procedures at set forth in *Membership Handbook for Boards and Commissions*, John A. Kitzhaber, M.D., revised 2/15/14 (the "Handbook"). Likewise, such failure has prevented me from fulfilling my duties as a director of the Oregon Cultural Trust as described in the Handbook, and *A Guide to Nonprofit Board Service in Oregon*, Office of the Attorney General.

Sincerely,



Director  
Oregon Cultural Trust

## Greg Fitz-Gerald

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**From:** McCabe Tim <tim.mccabe@biz.state.or.us>  
**Sent:** Thursday, January 30, 2014 9:00 AM  
**To:** Greg Fitz-Gerald  
**Cc:** Sequeira Pua  
**Subject:** Re: Oregon Cultural Trust

Mr. Fitz-Gerald

It is my understanding that a response to your letter was sent on January 10th.

Tim McCabe

Sent from my iPhone

On Jan 30, 2014, at 8:37 AM, "Greg Fitz-Gerald" <[fgfeug@gmail.com](mailto:fgfeug@gmail.com)> wrote:

Dear Tim,  
Please see the attached letter.

Greg

F. Gregory Fitz-Gerald  
3115 Braeman Village  
Eugene, OR 97405  
541 302-2646  
[fgfeug@gmail.com](mailto:fgfeug@gmail.com)

<Letter 3 to McCabe repeating request as sent.docx>



## Greg Fitz-Gerald

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**From:** Greg Fitz-Gerald <fgfeug@gmail.com>  
**Sent:** Thursday, January 30, 2014 9:16 AM  
**To:** 'McCabe Tim'  
**Subject:** RE: Oregon Cultural Trust

Mr. McCabe,

As stated in my letter this morning, "The two responses from your office have not complied with my request, and I have not yet received such information."

The Governor's Handbook requires that the information I requested be delivered prior to the next board meeting which is this morning.

Greg Fitz-Gerald

**From:** McCabe Tim [<mailto:tim.mccabe@biz.state.or.us>]  
**Sent:** Thursday, January 30, 2014 9:00 AM  
**To:** Greg Fitz-Gerald  
**Cc:** Sequeira Pua  
**Subject:** Re: Oregon Cultural Trust

Mr. Fitz-Gerald

It is my understanding that a response to your letter was sent on January 10th.

Tim McCabe

Sent from my iPhone

On Jan 30, 2014, at 8:37 AM, "Greg Fitz-Gerald" <[fgfeug@gmail.com](mailto:fgfeug@gmail.com)> wrote:

Dear Tim,  
Please see the attached letter.

Greg

F. Gregory Fitz-Gerald  
3115 Braeman Village  
Eugene, OR 97405  
541 302-2646  
[fgfeug@gmail.com](mailto:fgfeug@gmail.com)

<Letter 3 to McCabe repeating request as sent.docx>

## Greg Fitz-Gerald

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**From:** Sequeira Pua <pua.sequeira@biz.state.or.us>  
**Sent:** Thursday, January 30, 2014 11:11 AM  
**To:** Greg Fitz-Gerald  
**Subject:** Email Response  
**Attachments:** Oct 3 Mtg (Redacted).pdf; Oct 3 Notes (Redacted).pdf; Oct 18 (Redacted).pdf; Oct 18 Email (Redacted).pdf; 2009 - D'Arcy Performance Appraisal.pdf; Term Ltr - p40.035.01.pdf

Mr. Fitz-Gerald,

Attached you will find the documents that were previously provided to the Statesman Journal and the Oregonian for your convenience. This is the scope of your request.

*Pua Sequeira  
Employee Services Manager  
Oregon Business Development Department  
775 Summer Street NE, Suite 200  
Salem, OR 97301*

*Phone: (503) 986-0148  
Fax: (503) 581-5115*

[pua.sequeira@state.or.us](mailto:pua.sequeira@state.or.us)



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# *F. Gregory Fitz-Gerald*

*3115 Braeman Village*

*Eugene, OR 97405*

*Phone: 541 302-2646 E-mail: fgfeug@gmail.com*

January 31, 2014

Mr. Tim McCabe  
Executive Director  
Business Oregon  
775 Summer Street NE, Suite 200  
Salem, Oregon 97301-1280

Dear Mr. McCabe,

This is my fourth request for the information that I asked for in my December 12, 2013 letter. The previous responses from your office have not complied with my request, and I have not yet received such information.

Ms. Sequeira's response yesterday sent me only copies of the redacted documents previously released to the Statesman Journal and the Oregonian, and said "This is the scope of your request." It is not.

My December 12, 2013 request asked for complete copies of the items listed in paragraphs 1 through 6. This was reaffirmed in my December 16, 2013 letter to Ms. Sequeira which said I "...again request the information and documents without redaction..." Redacted copies are not complete copies. Furthermore, my request covers more documents, notes and memoranda than just the redacted ones she sent.

My December 12, 2013 request also asked what authority Mr. Speltz "relied on in signing the termination letter to Chris D'Arcy dated October 3, 2013". As I said then, "I find nothing in the Oregon Statute 359.400 granting such authority or in the Membership Handbook for Boards and Commissions, revised 2/15/11. Neither you nor Ms. Sequeira have ever responded to this question.

I can only assume your continued refusal to supply the requested information and documents is based on a legal opinion saying you have the authority to withhold information from a director of the Oregon Cultural Trust. Would you please send me a complete copy of such opinion?

Sincerely,



Director  
Oregon Cultural Trust

**Greg Fitz-Gerald**

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**From:** McCabe Tim <tim.mccabe@biz.state.or.us>  
**Sent:** Friday, January 31, 2014 3:17 PM  
**To:** Greg Fitz-Gerald  
**Cc:** Buehler Nathan  
**Subject:** Oregon Cultural Trust

Dear Mr. Fitz-Gerald

In regards to your letter today dated January 31<sup>st</sup>, the Department is henceforth treating your request for information as a public records request, and all future communication regarding your public records request must be directed to Nathan Buehler by mail at: Business Oregon, 775 Summer Street NE, Suite 200, Salem Oregon 97301-1280, or by email at [Nathan.buehler@state.or.us](mailto:Nathan.buehler@state.or.us).

However, before the Department is able to respond to your public records request, we need clarification as to what further "documents, notes and memoranda" you are referring to in your January 31<sup>st</sup> letter. Please send that information to Mr. Buehler. Thank you.

Tim McCabe

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This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.

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# MEMBERSHIP HANDBOOK

for

# BOARDS & COMMISSIONS

*John A. Kitzhaber, M.D.*

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of a specific group. When the group's interest conflicts with that of the general public, your primary responsibility is to the public. All board members must work for the benefit of the public first, with the good of any particular profession, industry or special interest group taking a secondary position.

If you were appointed to fill a designated "public member" position, you may feel intimidated on occasion by other members' experience in the field or expertise with the subject matter. You are, however, a vital part of the board, representing the Oregon consumer's point of view. Each of you is encouraged to ask questions and seek information until you have a clear answer and good understanding of the items under discussion.

Public and special interest members working together form a productive, effective complement to one another in conducting the work of the board. Listening to all viewpoints and working as a cohesive group provides an excellent forum for developing good policies and procedures and finding fair solutions to problems.

## BEING AN EFFECTIVE BOARD MEMBER

Oregon boards are generally small in size (three to 10 members) and are composed of a carefully balanced membership. Each board member has the potential to influence board decisions.

The most important factor to ensure the decisions your board makes are fair and meaningful is **regular attendance** by all members. In addition, it is important that you **prepare for meetings** by reading reports, proposals and other documents prepared or distributed by staff. If you are unsure about something, seek advice and information before and during each meeting that enables you to make a knowledgeable recommendation or decision.

State law also places an important emphasis on regular attendance. In ORS 182.010, it says that a member who has two successive, unexcused absences "shall forfeit his or her office unless prevented from attending" for reasonable cause.

To summarize, effective board members:

- Attend all board meetings.
- Prepare for meetings.
- Recognize that serving the public interest is the top priority.
- Recognize the board must operate in a public and open manner.
- Learn about issues affecting the board.
- Examine all available evidence before making judgment.
- Are aware that authority to act is granted to the board as a whole, not to individual members.

## PUBLIC RECORDS/PUBLIC MEETINGS

Oregon is known for an open form of government that allows for citizen participation and involvement. Two illustrations of this are the public records and open meetings laws that have been on the books for many years.

These laws are designed to protect public interest, and to make sure the public's business is conducted in an open forum. As a board member, you should become familiar with these laws and how they apply to the board on which you serve.

## AMERICANS WITH DISABILITIES ACT

The ADA sets criteria for accessibility and accommodation. Under the ADA, people who have disabilities have a right to an equal opportunity for effective participation in the activities of boards, whether as appointed members or as members of the public.

Meetings and other board sponsored activities should be held in wheelchair accessible locations. Qualified sign language interpreters, materials in accessible format such as Braille, large print and tape, and other forms of auxiliary aids for effective communications should be provided upon request. Reasonable modifications should be made to policies or procedures whenever they create a barrier to the full and equal participation of a person who has a disability.

## COMMON SENSE

- Board members must be familiar with and operate within their board's governing statutes and bylaws, and state and federal laws at all times.
- To ensure accountability, all applicable policies and procedures adopted by the board should be in written form.
- No board member should make decisions or take unilateral action without the consent of the board as a whole.
- Questions about board issues should be directed to the board's administrative or executive officer, who will see that all board members receive full information by the next regular meeting.
- No details of board investigations or matters dealt with in executive session should be disclosed by a board member unless they are part of the public record.
- Board members should use caution about participating in private discussions on behalf of one party in the absence of other parties to a dispute.
- Board members should remember they are seen as representatives of the board when they appear at industry or professional gatherings. They must take care not to appear to be speaking for the board unless specifically authorized by the board to do so.
- Board members must keep in mind that their mission is to serve the public, and it is inappropriate to use board membership to create a personal platform.

## GENERAL BOARD ACTIVITIES

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### BYLAWS

It is recommended that boards have a set of bylaws to direct and clarify its actions, procedures and organization. Bylaws are the guidelines by which a board functions and should include expectations of members. Issues such as attendance, responsibilities and discipline should be addressed in the bylaws. Board members are expected to adhere to bylaws and all relevant statutes.

An organization's bylaws generally include a number of articles, such as the following:

- Name of board
- Mission statement
- Membership

# A GUIDE TO NONPROFIT BOARD SERVICE IN OREGON

Office of the  
Attorney General





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## UNDERSTANDING YOUR RIGHTS

In order to carry out your legal responsibilities as a board member, you must be able to make informed judgments about important matters regarding the organization and operations of the charity. The law permits you to reasonably rely on information from the charity's staff, its lawyer, its accountant, outside advisors, and board committees in making those judgments.

Your right to information includes the following: You have the right to reasonable access to management, to have reasonable access to internal information of the organization and to the organization's principal advisors, such as its auditors and lawyers. Senior management must also be willing to facilitate board access to books and records of the charity. The board has the right, if necessary, to engage the services of outside advisors at the charity's expense to assist it with a particular matter.

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# UNDERSTANDING YOUR RESPONSIBILITIES

In carrying out board responsibilities, the law generally imposes three duties of trust. They are regularly described as the duties of due care, loyalty to the corporation and obedience to the law.

**Duty of due care.** This responsibility generally requires that a director must discharge the duties with the care an ordinary prudent person in a like position would exercise under similar circumstances. ORS 65.357. Directors need not always be right, but they must act with common sense and informed judgment. To exercise this duty properly, boards must pay particular attention to the following:

- **Active participation.** A director must actively participate in the management of the organization including attending periodic meetings of the board, evaluating reports, reading minutes and reviewing the performance of the executive director.
- **Reasonable inquiry.** Directors should request and receive sufficient information so that they may carry out their responsibilities as directors. When a problem exists or a report on its face does not make sense, a director has a duty to inquire into the surrounding facts and circumstances. The director also has a duty to investigate warnings or reports of officer or employee theft or mismanagement.