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April 25, 2017

Re: HB 2101-Oregon Public Records Exemptions

Chair Williamson and Members of the Committee,

Thank you for the opportunity to submit comments on HB 2101, which creates a process for review of exemptions to Oregon's public records law.

The Oregon Mediation Association (OMA), believes that open and transparent government is critical to a healthy democracy. We appreciate and support efforts to find the proper balance between exemptions to disclosure, and the public interest. However, in its current form, HB 2101 is unnecessarily broad in that it subjects Oregon's mediation statute—Chapter 36 of the Oregon Revised Statutes—to review by a legislative committee to determine whether confidentiality provisions should continue to apply.

The introductory language to the mediation statute states, "It is the policy and purpose of ORS 36.100 to 36.238 that, when two or more persons cannot settle a dispute directly between themselves, it is preferable that the disputants be encouraged and assisted to resolve their dispute with the assistance of a trusted and competent third party mediator, whenever possible, rather than the dispute remaining unresolved or resulting in litigation." (ORS 36.100). Confidentiality is a fundamental component of mediation. It is the premise upon which many participants agree to try mediation in the first place, and is critical to ensuring that mediation continues to offer a more efficient and less costly alternative to litigation. ORS 36.220 codifies confidentiality for mediation processes in Oregon. ORS 36.224 deals with mediations involving state agencies, and does *not* allow confidentiality unless the state agency has adopted rules to create such confidentiality. The Oregon Attorney General's office has articulated this process through rulemaking:

<http://www.doj.state.or.us/adr/pages/rules.aspx>

Moreover, public bodies that are not state agencies may adopt rules or policies exempting themselves from confidentiality in the interest of transparency if they so choose.

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In summary, the mediation confidentiality provisions found within ORS Chapter 36 should be left outside the purview of any legislative review process created by HB 2101. Confidentiality is critical to ensuring the continued success of mediation in Oregon, and adequate mechanisms are already in place to ensure transparency where appropriate.

Thank you for the opportunity to provide input on this important issue.

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