

**To:** The Honorable James Manning, Jr.  
Co-Chair, Joint SubCommittee on General Government  
  
The Honorable Greg Smith  
Co-Chair, Joint SubCommittee on General Government

**From:** Ben Straka, Policy Analyst

**Date:** June 29, 2017

**Re:** House Bill 2101 A

---

Co-Chairs and Members of the Committee,

The Freedom Foundation [“Foundation”] supports the overall intent of HB 2101 A. However, I’d like to call the committee’s attention to one small aspect of the bill that the Foundation finds concerning.

Page 3 of the bill lists current exemptions from public disclosure that “need not be considered” for review by the Oregon Sunshine Committee. Included among these exemptions that are off limits for review are those listed in lines 29 and 30:

**“(E) Personal information of certain scientific workers described in ORS 192.501 (30), care workers described in ORS 192.435 and 192.437 or public safety workers described in ORS 192.501 (31);...”**

The Foundation would like to ask the following question:

Specifically, why wouldn’t the exemption for “**care workers described in ORS 192.435 and 192.437**” be subject to review?

Consistent with the intent of HB 2101 A, we believe this particular exemption is a perfect example of a public records exemption that *does* deserve to be reviewed by the Oregon Sunshine Committee.

To clarify, allow me to briefly explain the circumstances surrounding the current public records exemption for care workers:

#### Background

Care workers described in ORS 192.435 and 192.437 provide in-home care to clients who receive Medicaid funds. The care workers are deemed public employees “for the purposes of collective

bargaining.”<sup>1</sup> In 2014, the U.S. Supreme Court ruled in *Harris v. Quinn* that these in-home care workers cannot be required to pay union dues or fees as a condition of employment.

On December 17<sup>th</sup>, 2014, the Foundation submitted a valid public records request<sup>2</sup> to the Department of Human Services [“DHS”] for the “names and addresses of all home health care providers in Oregon.”

The Foundation requested the information for the sole purpose of informing home care workers of their constitutional rights under *Harris v. Quinn* [2014].

At the time of the Foundation’s public records request, there was no public records exemption for care worker information. Emails from DHS officials confirmed that the information was subject to disclosure.

Several weeks after the Foundation’s request, on February 27<sup>th</sup>, 2015, an email from the DHS official handling the request stated, in relevant part, as follows:

“Your request is in process, and it is currently with the Department of Justice for a quick review prior to our response. I expect that review to be completed **next week, and I will get back to you at that time.**”<sup>3</sup> [emphasis in original]

After receiving no response, the Foundation again followed up with DHS. On April 10<sup>th</sup>, 2015, an email from the same DHS official stated, in relevant part, as follows:

“**HB 3037 has now been signed by the Governor and is effective upon her signature.**.... Specifically, the new law prohibits the disclosure of certain personal information of home care workers, operators of child care facilities, exempt family child care providers, and operators of adult foster homes...

Because of the enactment of HB 3037 and the fact that the information you have requested is exempt from disclosure under HB 3037, we have no responsive records to provide you.”<sup>4</sup> [emphasis in original]

The Foundation’s request was denied nearly four months after it was originally submitted, on the same day HB 3037 was signed into law. HB 3037 specifically exempted the information pertaining to home care workers that the Foundation had requested. The bill also exempted the contact information of all care workers whose rights had been affected by *Harris v. Quinn*.

Although DHS cited “legislation moving quickly” as the cause of the delay, the Foundation’s request had been submitted more than two months before HB 3037 was even introduced.

---

<sup>1</sup> 410.612, 329A.430, 329A.430, 443.733.

<sup>2</sup> <http://www.freedomfoundation.com/sites/default/files/documents/DHSRecordsReq17Dec2014.pdf>

<sup>3</sup> <http://www.freedomfoundation.com/sites/default/files/documents/12Jan2015thru27Feb2015.pdf>

<sup>4</sup> <http://www.freedomfoundation.com/sites/default/files/documents/1April2015thru10April2015.pdf>

It's worth noting that HB 3557, passed later in 2015, further amended the law to allow disclosure if the public body determines that the party making the request "show[s] by clear and convincing evidence that the public interest requires disclosure in a particular instance." The Foundation has made subsequent requests stating our reason for seeking disclosure – to inform care workers of their constitutional rights under *Harris v. Quinn* – but those requests have also been denied.

In short, the public records exemption for care workers in ORS 192.435 and 192.437 was accomplished in 2015 with the passage HB 3037<sup>5</sup> and HB 3557.<sup>6</sup>

### Conclusion

There is no evidence that anything other than the Foundation's public records request prompted the exemption of care worker information. This concern was echoed by *The Oregonian* Editorial Board, which wrote two articles criticizing the creation of the exemption.<sup>7</sup>

The Foundation understands that not every member of the Joint Subcommittee on General Government may agree with the Foundation's purpose for requesting care worker information.

However, this is not the intent of our public records laws. Exemptions should not be created to serve one particular interest over another, especially when there is no evidence of any impartial, legitimate concern over public safety or privacy. Aside from informing workers about a U.S. Supreme Court decision with which some parties may disagree, the Foundation has an impeccable record when it comes to the proper use of workers' contact information.

HB 2101 A, by establishing the Oregon Sunshine Committee to review current public records exemptions, seems to be taking a positive and commendable step towards improving transparency, consistency, and responsiveness in our state's public records laws.

However, given the history of this public records exemption for care worker information, I would like to again ask:

What reasons exist for determining that the care worker exemption "need not be reviewed" by the Oregon Sunshine Committee?

After all, removing "**care workers described in ORS 192.435 and 192.437**" from HB 2101 A would only strengthen the intent of HB 2101 A by allowing the Oregon Sunshine Committee to review this particular exemption. It would not affect the exemption itself.

---

<sup>5</sup> <https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/HB3037>

<sup>6</sup> <https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/HB3557>

<sup>7</sup> [http://www.oregonlive.com/opinion/index.ssf/2015/12/kate\\_browns\\_government-transpa.html](http://www.oregonlive.com/opinion/index.ssf/2015/12/kate_browns_government-transpa.html)  
[http://www.oregonlive.com/opinion/index.ssf/2015/12/government\\_transparency\\_oregon.html](http://www.oregonlive.com/opinion/index.ssf/2015/12/government_transparency_oregon.html)

On behalf of the Foundation, I respectfully ask the committee to remove the relevant portion of HB 2101 A in a manner that would allow the Oregon Sunshine Committee to review the public records exemption for care worker information.

Thank you,

A handwritten signature in black ink, appearing to read "Ben Straka". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

**Ben Straka**

Policy Analyst | Freedom Foundation

[BStraka@FreedomFoundation.com](mailto:BStraka@FreedomFoundation.com)

503.951.6208 | PO Box 18146 Salem, OR 97305

[FreedomFoundation.com](http://FreedomFoundation.com)