



April 18, 2019

TO: Senate Committee on Workforce  
FR: Charlie Fisher, State Director, Oregon State Public Interest Research Group (OSPIRG)  
RE: HB 2016

OSPIRG has serious concerns regarding how Section 11(1)(m) of HB 2016 would affect access to public records and government transparency.

We understand the important balance that must be struck between privacy of personal information and access to public records. However, as written this tips the balance significantly too far towards government secrecy and privacy. Personal information of public employees is already exempt from disclosure unless the requestor can show through by “clear and convincing evidence that the public interest requires disclosure in a particular instance.”

**We believe the current public interest test is the proper way to balance the competing interests of privacy and access to public records and recommend removal of Section 11(1)(m) from HB 2016.**

**Potential liability for public agencies will chill access to public records**

We were a participant in the Attorney General’s Public Records Task Force that led to SB 481 in 2017, and participated in the work group focusing on improvements in the final product of the Oregon Legislature that session. One provision of SB 481 explicitly holds agencies harmless for releasing public records in “good faith” in order to increase the public’s access to and knowledge of the business of government.

By adding release of certain public records to the unfair labor practices statute, Section 11 of HB 2019 would go against the intent of SB 481 by creating a punitive liability on a public agency for releasing a public record, even if they did so in a good faith application of the law.

**No public-interest access to personal information**

Current public records statute conditionally exempts personal information of public employees from disclosure unless the requestor can show “by clear and convincing evidence that the public interest requires disclosure in a particular instance.” HB 2019 categorically bars release of public records even if disclosure is clearly in the public interest.

**Vague definition of personal information**

Section 11(1)(m) has the potential to expand the definition of personal information in confusing ways, and likely far beyond the current definition in statute. Coupled with the potential for punitive action against an agency for releasing a public record that is later deemed to be personal information, it’s likely they will simply refuse any public record that could even minimally be related to personal information.

### Personal information has been rigorously studied by the Oregon Sunshine Committee

The Oregon Sunshine Committee, created in 2017 by HB 2101, and tasked with examining exemptions to public records law has already studied and is poised to make recommendations to the legislature on personal information exemptions of public employees. **The proposed recommendations are for the legislature to keep the current public interest balancing test for personal information of public employees.** Enacting HB 2016 as written would undermine the work of the Sunshine Committee while it's still in the process of reviewing the more than 500 current exemptions to public records law.