

February 9, 2020

To: Senate Committee on General Government and Emergency Preparedness  
Re: SB 1506 – Relating to the Public Records Advisory Council

Dear Sens. Riley, Girod, Boquist, Golden and Monnes Anderson,

I regret that I am unable to attend the hearing on Senate Bill 1506 in person. Please advance this bill without significant amendment. This important bill should not become a vehicle to undermine the very transparency the Legislature hoped to cultivate when it created the office of Public Records Advocate and the Public Records Advisory Council.

I wear two hats in this testimony. The first is professional. I am a freelance journalist based in Portland who writes editorials for newspapers around the country including in Oregon. Throughout my career I have taken a keen interest in public records and open government. For more than a decade, I served as the Open Government Chair for the national Association of Opinion Journalists, now part of the News Leaders Association.

You will hear from many journalists about this bill. I need not repeat the same points they will make. I simply note that transparency and access to government records empower a free press to inform residents of Oregon about what their government does in their name.

My second hat is as a resident of Oregon who is engaged in local government. I serve as a leader in the Overlook Neighborhood in Portland. I have had both good and bad experiences personally and assisting neighbors seeking public records from local governments. When things go well, it is truly wonderful and Oregonians who don't normally have cause to file formal public records requests learn something about their government. When things go badly, however, people lose trust in their government.

### **The importance of independence**

At its most basic, SB1506 is about that trust. When Oregonians seek public records, they need to have confidence that their request will be handled fairly and that a records custodian will not erect arbitrary barriers or withhold records because people in power wish to keep something secret. They also must have trust that when things do become contentious, the Public Records Advocate and the Public Records Advisory Council will serve the ideals of transparency and upholding the law, not political ends.

In my professional experience, I have found that most public officials want to work with the public and share information. A rare few do not. Yet most Oregonians do not encounter public officials and employees with the same frequency as a journalist. The perception that government cannot be trusted is far too common. Providing the reassurance that the Public Records Advocate is independent and does not answer directly to the governor would go a long way to bolstering trust that this person has no priorities other than enforcing public records law and can be trusted to mediate disputes fairly.

Such independence is the cornerstone of SB1506 as introduced.

An independent Advocate isn't just about reassuring the public. It also would benefit public officials. When a public records dispute is mediated by the Advocate, elected officials can say, "Look, the Advocate found that there's nothing afoot here." Without independence, questions about whether that

was true would linger. Lawmakers or local officials might not directly interfere with the Advocate, but those whose politics align with the governor might find a favor going their way.

An independent Advocate also would be valuable to legislators. As you consider future modifications to public records law, you will benefit from having an independent analysis, not one directed by the governor's agenda. The governor will and should have input into bills that affect public records, but that should come from the governor's office, not in the veneer of a Public Records Advocate directed to take a particular position, even one contrary to the public's interest.

### **Proposed amendment SB1506-1**

The need for an independent Public Records Advocate is the entire impetus for SB1506. It is shocking, then, that the backers of the proposed amendments have the audacity to gut that provision from the bill. I can think of few things that would undermine public trust in the Advocate more than holding out the possibility of independence and then withdrawing it at the behest of records holders.

Worse, the proposed amendments don't just erase the positive changes in SB1506, they would move the law backward by eliminating the responsibility of the Advocate and the council to prepare a report on its activities and recommend legislation. It also would remove the authority to conduct other studies into how effectively public records laws are working. Let us be absolutely clear what is being sought here. The backers of the amendment do not want the Public Records Advocate and the council – even an Advocate and council beholden to the governor if they remove independence – to look into the administration of public records law. What do they fear in an impartial assessment?

### **Public records shouldn't be 'us vs. them'**

These amendments are grounded in a misguided view of the role of public records. Indeed, one of the proposed amendments lays this bare. The proposed Section 2.3 would require that the council have two cochair, "One cochair shall represent the interests of public records requesters and the general public. The other cochair shall represent the interests of public bodies."

How depressing that the backers of the amendment see government transparency as "us against them." In fact, the interests of custodians and the public should be the same: Ensuring that Oregon's government and its records are accessible to all Oregonians.

SB1506 ensures that the Public Records Advocate serves the public. It should remain just that, not become a vehicle to undermine the office and council that the Legislature created after much thoughtful analysis so recently. Thank you for your consideration.

Sincerely,



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