

Public Testimony

SUBJECT: SB 719 and SB 721

The OHA has submitted testimony dated 3/15/2021 that purports to address "potential impact of Senate Bill 719 on disease investigation and public information."

Several things stand out about that testimony that require a response from the public's perspective.

They cite a case that is not remotely comparable to our experience with coronavirus in Oregon and enormously significant public policy actions now for over one year predicated on data and interpretations of that data to which the public and the press have been categorically denied access. The case they cite deals with essentially an isolated food product contamination event and data about that for an exceedingly small number of individuals.

The OHA states that "had we been required to release our statistical compilations prematurely, they would have incorrectly impugned the hummus." The statistical compilations themselves are simply data. It is interpretations of those data that could result in false implicatures, not the data themselves. The public and press are always entitled to their own opinions about public information, who themselves bear the consequences of any unwarranted conclusions or actions.

The OHA next states that "a requirement to respond to a public request to a public records request for data in *such situations* would derail the epidemiologist who was collecting and analyzing the data, slowing the investigation, and delaying the outbreak solution." In their own example the *statistical* data is trivially minimal. In addition, the OHA has designated individuals for responding to public records requests. Collection and handling of this trivially minimal data by those designated OHA individuals further reduces any burden on their own epidemiologist in their own example.

The OHA also states that: "Furthermore, the release of "aggregate" data from numerically small populations could lead to the identification of individuals. ... Correlating relatively uncommon demographic features with diseases, even in aggregate, can betray protected health information." This is one of the best understood issues with health data in data science. The sole substantive amendment to ORS 433.008 by SB 719, included in SB 722, is specifically:

SECTION 1.

(b) Aggregate data derived from information obtained by the authority or a local public health administrator in the course of an investigation of a reportable disease or disease outbreak are not confidential or exempt from disclosure under ORS 192.311 to 192.478 **unless the data could reasonably lead to the identification of an individual.**

The US Department of Health and Human Services provides guidance on how to meet provisions of the HIPAA laws about protecting individual confidentiality:

Guidance Regarding Methods for De-identification of Protected Health Information in Accordance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule

<https://www.hhs.gov/hipaa/for-professionals/privacy/special-topics/de-identification/index.html>

Finally, the OHA offers to entertain suggestions for "extending or otherwise improving" the small amount of data they now choose to release through their data dashboards. Although our public records laws have been severely undermined over the last several decades, the core principle remains that in our form of government it is not public officials who decide the public information to which the public is entitled.

SB 719 and SB 722 should be passed without substantive amendments to provide the public our rightful access to our public records.