



April 1, 2021

Chair Smith Warner and Members of the Committee,

The Greater Oregon Society of Professional Journalists appreciates the opportunity to express our opposition to HB 2478 as written.

In 1979, the Oregon Legislature passed a law requiring that the attorney-client privilege exemption shielding some public records from disclosure, among others, expire after 25 years. Though this state of law was not understood until recently, the statute is “unambiguous,” as the Multnomah District Attorney ruled in 2016 — a take confirmed last year by the Oregon Court of Appeals as it cited the “plain text” crafted by lawmakers in 1979.

Oregon’s secrecy expiration date on most public records exemptions, including attorney-client, provides Oregonians with important transparency around decisions that may continue to affect them today.

For example, had people earlier realized the availability of 25-year-old public records blocked by the attorney-client exemption, members of the public might have been able to use them to earlier investigate rumors that long swirled around former Portland mayor and Oregon Governor Neil Goldschmidt. Only after 30 years, through dogged investigation, was his rape of a 13-year-old babysitter exposed.

This bill is before you now in part because the city of Portland wants to short-circuit the Oregon Supreme Court from deciding the city's own appeal over this issue. The city seeks to prevent disclosure of records that, according to the neighborhood activist who requested them, could cost the city money by disclosing public malfeasance. Simply put, extending the privilege past 25 years will block accountability and encourage future abuses of the public trust.

Judges in Oregon have found government has abused attorney client privilege to hide things from Oregonians. Agencies in Oregon have copied lawyers on non-privileged records, or invited lawyers into non-privileged meetings to facilitate abuse of the privilege, and only rarely are they called out for it. The practice "eviscerates" Oregon's transparency laws, a Marion Circuit Judge ruled in 2017.

The privilege has been abused to cover up police misconduct including racism, rape and coerced sex shows, as well as other public employee malfeasance. That's why Oregon district attorneys, including Multnomah's Mike Schrunk, called on the Oregon Legislature in 2007 to modify the attorney-client privilege public records exemptions to allow disclosure when the public interest was clear and convincing.

In an Oregonian op-ed, they wrote: **"No government agency should be able to wrap its internal investigations in an unqualified and perpetual cloak of secrecy. The Oregon Legislature should come to the same conclusion."**

This secrecy costs government money. West Linn city officials in 2009 were able to use privilege to hide shocking evidence of misconduct by Chief Terry Timeus from being publicly disclosed in response to record requests, allowing him to remain chief for a decade. This in turn led to a series of big-money settlements paid for by West Linn taxpayers,

including \$600,000 paid over the wrongful arrest of Michael Fesser, a black man in Portland who'd irked a friend of Timeus.

SPJ is concerned that by extending government attorney-client secrecy beyond 25 years, past abuses of the privilege by government attorneys could be effectively enshrined and closed off forever—thus forestalling accountability and deterrence. It would encourage future misconduct, malfeasance, and potential crimes by high officials, while blocking disclosure of information that affects Oregonians' lives.

Rather than extending this privilege with this bill, SPJ encourages you to use it to modify existing law to include the public-interest protections recommended to the Legislature in 2007.

Respectfully yours,

Nick Budnick and Rachel Alexander, co-chairs, Greater Oregon Society of Professional Journalists Freedom of Information Committee.