



**Legal Department**

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March 11, 2023

House Committee on Emergency Management, General Government, and Veterans

**Re: Testimony in Opposition to HB 2904**

Chair Grayber, Vice-Chairs Tran and Lewis & Members of the Committee:

For the record, my name is Raghav Shan and I am Legal Counsel for OHSU. I'd like to identify the redundancies in reporting and concerns OHSU has with respect to HB 2904—and provide necessary context to the public records requests referenced during testimony at the public hearing on March 9, 2023 which were used to characterize the public records mechanism as deficient and frame this bill as one that is necessary.

House Bill 2904 requires OHSU to report, through the State Veterinarian's Office, a significant amount of information already publicly available. For instance:

- Lines 7 through 12 of HB 2904 as proposed would require reporting of the number of primates, listed by species:
  - A. Used in research, testing or studies at the research facility or other institution.
  - B. Used for breeding programs associated with the research facility or other institution.
  - C. Born at the research facility or other institution.
  - D. Purchased by the research facility or other institution.
  - E. Sold by the research facility or other institution.

OHSU already reports much of this information to the United States Department of Agriculture (USDA)—ONPRC's federal oversight agency—via OMB Form 0579-0036 (found here: [https://www.aphis.usda.gov/library/forms/pdf/APHIS\\_7023.pdf](https://www.aphis.usda.gov/library/forms/pdf/APHIS_7023.pdf)). USDA publishes a summarized version of this form for all applicable US institutions here and makes it publicly available here:

[https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/sa\\_obtain\\_research\\_facility\\_annual\\_report/ct\\_research\\_facility\\_annual\\_summary\\_reports](https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/sa_obtain_research_facility_annual_report/ct_research_facility_annual_summary_reports).

- Lines 13 through 16 of HB 2904 as proposed would require reporting of:

F. That died or were killed as part of research, testing or a study at the research facility of other institution.

G. That were injured or died due to causes not related to research at the research facility or other institution.

The information sought in these proposed paragraphs is information researchers already report to the Institutional Animal Care and Use Committee—records that are generally public records subject to disclosure.

- Lines 17 and 18 as proposed would require reporting of a “description of all research, testing or studies involving primates that were performed at the research facility or other institution.”

This information is already reported to the NIH and is publicly available through NIH here: <https://reporter.nih.gov/>.

In other words, much of what House Bill 2904 believes it would be making public through legislation is already information publicly available through existing federal regulatory frameworks.

There are other issues and ambiguities in HB 2904 with respect to Line 25-27 which would require reporting of “[a]ny unredacted records not otherwise lawfully privileged or protected from disclosure that were *created by* a law enforcement entity to investigate possible violations of ORS 167.310 to 167.390 at the research facility or other institution.” (emphasis added). This section, first, assumes that OHSU would be in possession or custody of such records when there is no reason to believe that would be a certainty. Second, assuming OHSU was in possession of such records, this section impermissibly shifts the decision-making to OHSU as opposed to the law enforcement entity with respect to determining whether disclosure could impede an investigation or is proper. That authority should remain with the law enforcement entity as creator of the records and who would be better equipped to make such a determination.

There is an overarching notion from those in support of this bill that this bill “shines a light” in areas of darkness. It would be a misunderstanding to believe this bill creates transparency in areas where there currently is none. As articulated above, almost all of the information sought is already publicly available. To the extent, there is any information HB 2904 seeks not already publicly accessible—that information is subject to disclosure under Oregon Public Records Law allowing any member of the public, including state representatives, to make a request for, and receive, such information. There was testimony during the public hearing on March 9, 2022, that the sponsor of this bill’s public records request took seventeen months to fulfill and, therefore, the public records mechanism is not an apt vehicle to provide the public the information HB 2904 seeks where not already publicly available. Important context, and facts, were not provided to the committee in this testimony. It is true that from OHSU’s receipt of the sponsor’s public

records request to the completion of OHSU's response, seventeen months elapsed. The information not provided to the committee is the following:

- Representative Gomberg filed a public records request with OHSU on July 21, 2021. The request included six separate—extremely broad—subparts related to the three incidents at ONPRC between 2017 and 2020. One subpart read “[a]ll records, including, but not limited to, any memos, notes, forms, reports and communications (both internal or external) related to the incident at your facility on or around August 13, 2020 in which two monkeys died as a result of injuries suffered when those animals were left in cages that were placed in a cage-washing machine.” This type of request is more akin to a discovery request in litigation and makes responding to a public records request, where the request is not specific and/or bounded in time, very difficult to respond to. Still OHSU worked diligently to identify custodians and prepare a cost estimate for Mr. Gomberg.
- OHSU provided Mr. Gomberg its cost estimate to complete his requests on August 17, 2021. Per Oregon Public Records Law, a public body's obligation to respond to a request is suspended upon issuance of a cost estimate and until payment is received. OHSU was under no obligation to work towards Mr. Gomberg's request until payment was received—and waiting to work on requests until receipt of fees is OHSU's standard practice for all public records requests when fees are involved.
- Typically, when public records requests include significant cost, the requester engages with OHSU in an effort to narrow the scope of the request, provide keywords OHSU should use in its search and/or collaborate in a manner to get the requester the most relevant information they are seeking while minimizing the cost to them, to the extent possible. Mr. Gomberg chose not to engage with OHSU to narrow his requests after receiving the cost estimate and did not provide payment for his requests until **December 20, 2021**.
- Upon receipt of payment, OHSU began working towards completion of Mr. Gomberg's requests and between January and March 2022, provided him with batches of responsive records that did not involve an IT search.
- In April 2022, OHSU's Public Records Coordinator informed Mr. Gomberg that an IT search yielded 35,000 records she would need to process for responsiveness and for evaluation of public records exemptions where applicable. She noted in a communication to Mr. Gomberg that “[i]n my time as public records coordinator for OHSU, **this is one of the largest email search results for any public records request I have encountered**” and “[m]y estimated completion timeline for the tasks necessary to fulfill this request is nine to 12 months, **at a minimum**.”
- Mr. Gomberg with this information, again, chose not to engage with OHSU to collaborate on how to narrow his requests but rather contacted Oregon's Public Records Advocate with respect to the time it would take for his requests.
- By its enabling statute, the office of the Public Records Advocate is authorized to facilitate dispute resolution services between requesters and *state agencies*. OHSU, as a public corporation, is not a public body subject to such services—yet, when the Public

Records Advocate contacted OHSU to engage in seeking a resolution after speaking with Mr. Gomberg, OHSU readily agreed to work with the Advocate and Mr. Gomberg.

- OHSU met with the Advocate on May 6, 2022. The Advocate relayed to OHSU that he explained to Mr. Gomberg the difficulties inherent in processing a request like his that returned so many emails. The Advocate suggested OHSU propose keywords, custodians and a time frame for a new IT search OHSU could run to hopefully drive down the number of records gathered and needed to process and he would discuss with Mr. Gomberg.
- OHSU provided the Advocate keywords, custodians and a time frame that same day. On May 25, 2022, the Advocate relayed to OHSU that Mr. Gomberg agreed to the keywords, custodians and timeframe proposed by OHSU—adding a few keywords and custodians himself.
- OHSU then re-ran the search—this time gathering approximately 2000 records needed to process and review.
- On July 1, 2022, OHSU sent Mr. Gomberg a first batch of responsive records noting to him “we will provide responsive, nonexempt, records on a rolling basis, likely every 2-3 weeks, until completed.”
- Between July 1, 2022, and November 14, 2022, OHSU provided rolling batches of responsive records and completed Mr. Gomberg’s request.

The in-person testimony on March 9, 2022, related to OHSU’s response to Mr. Gomberg’s public records request appeared to insinuate that Mr. Gomberg did not receive any communication or records from OHSU for seventeen months. That framing of events would not be based in reality. The above illustrates: (1) just how diligently OHSU worked towards completing Mr. Gomberg’s requests; (2) that four months of the seventeen month period was attributable to Mr. Gomberg’s choice in delaying payment of fees and thus not requiring OHSU to work on his requests; (3) that from the time of narrowing his IT search, OHSU completed review and release of 2000 records—a large number of records in its own right—within approximately four months; and (4) the public records vehicle is more than sufficient to provide the public to receive the information it seeks, including any information referenced in HB 2904 not already publicly available.

It’s a mischaracterization to view OHSU’s opposition to this bill as an opposition to transparency. What OHSU opposes is the onerous annual requirement to amalgamate publicly available information HB 2904 would impose when OHSU is already actively transparent and subject to Oregon Public Records Law.

For all the foregoing reasons, OHSU is opposed to House Bill 2904. Thank you.

Regards,

/s/ D. Raghav Shan

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Page 5

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