

The Oregonian

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Judiciary Committee
Oregon House of Representatives
Salem, OR

Ladies and gentlemen:

Thank you for the opportunity to offer written testimony on House Bill 2727, which would have the effect of closing public access to concealed weapons permits in every county in the state. The views I express here are my own and not necessarily those of the Oregon Newspaper Association, for which which I have occasionally testified.

I oppose this legislation. This is not a bill that in any way protects Oregonians' right to keep and bear arms. Rather, this bill is about the public's right to keep the access it has always had to the records of basic government decisions – in this case the granting of the privilege to carry *concealed* weapons.

This bill would hide records that have always been available for public inspection. It flies in the face of the state of Oregon's stated policy of generally requiring that the public's records remain open to the public and, in close calls, erring on the side of openness rather than government secrecy.

Beyond that, this legislation poses a much wider threat to open government in this state because it adopt the reasoning of a dubious court decision.

The development which prompted this bill was unprecedentedly broad court interpretation that transformed an Open Records exemption, intended to keep government security plans out of the hands of terrorists, into a gaping legal loophole. That Jackson County Circuit Court found a new – and heretofore undiscovered – privacy right for anyone with a vague fear that some public record somewhere might pose a personal security threat. This was never the intent of Oregon Legislators who included this exemption in ORS 192.501.

This court interpretation, offered last year in a concealed weapons case, is under appeal to the Oregon Court of Appeals. Despite that pending appeal, the ruling prompted Washington County's sheriff to send out letters inviting the holders of concealed weapons permits to declare a security concern which he would then address by erasing the concealed weapons permits from public view.

If the legislature needs to fix something here, it would be to shore up and clarify ORS 192.501, so that the meaning of the security exemption cannot be so badly misconstrued. If this loophole is not fixed in due time, what would keep an individual with a “security concern” from getting his real-estate records removed from the now-public county tax records?

This committee should have other concerns, too. The case that prompted this legislation involved an effort by the Medford Mail-Tribune to report the case of a public school teacher who had asserted that she had the right to carry a concealed weapon on school property, contrary to her school district’s safety policy. The newspaper used public records to try to determine if other district employees were potentially carrying weapons in violation of the rules. This is an exercise of the news media’s duty to follow news stories wherever they may lead – allowing the public to examine the questions raised and choose whatever course it prefers. This bill removes that legitimate inquiry from the public’s purview.

Similarly, it removes a means to check the quality of work done by local sheriffs’ offices. Comparing concealed weapons records against, say, the public records of jail releases, could provide the public with a helpful insight into the quality of a sheriff’s judgment and his or her performance in office. In a world where the public demands more and more accountability from its public officials, it seems counter to widespread sentiment to remove public records from the hands of public.

This is especially true if you consider that, in all of the years of routinely keeping this particular set of records open, no harm has come from the practice, despite the vague fears expressed by some.

Since the passage of the Open Records law nearly four decades ago, Oregon has worked hard to uphold the public’s right to follow the actions and transactions of its public officials. When exemptions have been made, some care was taken to strike a balance between competing rights of democratic government and personal privacy.

But if this bill were to be approved by the 2009 Oregon Legislature, the balance would be shifted sharply away from open government and public access. I believe that is the wrong direction for this legislature to take our state.

Sincerely,

/s/ Robert J. Caldwell