



Corvallis Police Department

Gary D. Boldizar
Chief of Police
180 NW 5th Street
PO Box 1083
Corvallis, OR 97339-1083
(541) 766-6924, Fax 754-1720

FEE SCHEDULE

LETTERS OF CLEARANCE (Request by individual for Visa, Employment or Adoption purposes.)	\$5.00
REQUEST FOR REVIEW AND/OR COPY OF INDIVIDUAL'S OWN LOCAL RECORD (Computer search for local law enforcement contacts)	\$5.00
ACCIDENT REPORT REQUESTS (.15 additional per page for copies over 5 pages)	\$5.00
INCIDENT REPORT REQUESTS (.15 additional per page for copies over 5 pages)	\$5.00
COMPUTER SCAN BY ADDRESS/LOCATION	\$5.00
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COPIES OF AUDIO CASSETTE TAPES	\$24.00
COPIES OF VIDEO RECORDINGS	\$30.00
COPIES OF DISPATCH TAPES	\$24.00 per call
COPIES FOR CITIZENS	\$0.15

NOTE: Charges are based on City of Corvallis Administrative Policy 06-1.14.. Requests to review a report will be treated the same as a request for copy as the same basic amount of time is involved. Fees for accident or incident requests are for processing the request and are non-refundable. Exception to that practice is a request to obtain driver exchange information on an accident occurring within the last 30 days.

*By Bennett Hall Albany Democrat-herald
Sunday, March 16, 2008
Edition: City, Section: News, Page a1
Dateline: Albany*

David Picray wants to see what the Corvallis Police Department has on him - and he doesn't think he should have to pay for the privilege.

Shortly after midnight last May 11, the 58-year-old Adair Village resident was questioned in the parking lot of a local grocery store by a Corvallis officer who had some concerns about Picray's driving.

Picray was not cited, but the encounter left a bad taste in his mouth, and he filed a complaint with the department. In the course of pursuing the matter, he filed a formal request for all documents related to the incident.

The police agreed to provide the documents, but at a price: \$50 an hour for staff time to locate the records and inspect them for non-disclosable information. With copying and postage costs, the estimated total would be \$141.30.

If he wanted to come down to the station and review the documents in person, the charge would still be around \$100.

Picray was outraged.

"Those people are already being paid by tax dollars," he said. "I don't see why a person should have to pay double."

Not so fast, say the police: State law allows them to charge those fees.

"We can't make money" on the transaction, said Lt. Dave Henslee, the department's spokesman. "But we can recover our actual costs."

While simple, readily accessible records might be made available for free, Henslee said, broader requests such as Picray's take officers away from their main task of law enforcement. That puts a strain on the department's limited resources.

"We only have so much money that's provided to us to provide services to the community," Henslee said. "A public information request (is) not something that's built into our day-to-day routine."

Counting the costs

The Corvallis dispute is the latest installment in a cost-versus-access debate that's been going on in this state for 35 years, since the Oregon Public Records Law was enacted in 1973. While designed to encourage open government, the statute also allows state, county and city agencies to set fees calculated to recover the "actual cost" of making records available.

The law also includes scores - perhaps hundreds - of exceptions, with new ones written in seemingly every time the Legislature convenes. At every level of government, custodians of records are responsible for making sure this information is not released, often redacting details with felt-tip marker or correction fluid.

ORS 192 expressly allows fees for copying, certifying and shipping records. It also allows agencies to charge for staff time needed to locate, review and redact records, as well as attorney's fees to review files for protected information. Officials can even charge for staff time needed to supervise members of the public while they inspect records in the office.

With rare exceptions, agencies are not required to charge fees. The law also includes a provision allowing public bodies to waive or substantially reduce fees when disclosing the information "primarily benefits the general public," a clause frequently invoked by journalists and advocacy groups.

On the other hand, the law sets no limits on fees, though it does require estimates if the cost is expected to top \$25. Agencies can even charge for search time even if the records are never located or the request is denied.

Both Corvallis and Albany allow municipal agencies to charge for records.

Corvallis makes some documents available for free, but city departments have fee schedules in place for copying and records searches, especially if they're likely to eat a lot of staff time.

"That's, frankly, in fairness to the taxpayers, who may not want to subsidize an individual's quest for information," said City Manager Jon Nelson.

Albany takes a similar approach.

"Most things we're not going to charge for because they're readily available," said Marilyn Smith, a spokeswoman for the city. "It just depends on what you're looking for and how deep it's buried what it's going to cost you."

Like the CPD, the Albany Police Department charges a fee for most records. In most cases the minimum charge is \$7, though some reports can be inspected for free. Complex requests incur a charge for staff time of \$28 an hour, which includes reviewing the files for non-disclosable information.

"We don't want to release anything we shouldn't release," said Capt. Eric Carter, the department's public information officer.

"For us it's a balancing act - the public's right to know and our need to protect (sensitive information)."

Different approaches

Public records laws vary considerably from state to state, but a database maintained by the nonprofit Reporters Committee for Freedom of the Press reveals some important similarities.

Virtually every state allows cost recovery for duplication of records, and most allow agencies to charge for staff time involved in making written documents, videotapes, audio recordings and other records available to the public.

A handful, however, have taken a firm stance against this practice. Washington's statute, for instance, prohibits fees for inspection or locating of public records.

"The only thing we ever get charged for is the copies," said Aaron Caplan, a staff attorney with the American Civil Liberties Union of Washington.

In this, though, Washington is clearly swimming against the tide.

The "vast, vast, vast majority" of states allow search fees or other charges to reimburse agencies for the trouble of tracking down documents and editing out protected material, said Charles Davis, an associate professor in the University of Missouri School of Journalism and executive director of the Freedom of Information Coalition.

The reason is simple, Davis said: Records requests can be time-consuming, and government officials have limited resources. But he added that it's important to guard against unwarranted charges.

"We ought to be about making public information as accessible and affordable as possible, and not the opposite."

Civil libertarians say they can understand the need to protect agencies against frivolous or abusive requests, such as the blanket queries from political action committees that seem to inundate government offices every election cycle.

But they also argue that excessive fees can price people out of the market for something that they've already paid for through taxation - the records of their own government's actions.

"There's absolutely no question about that," said Duane Bosworth, an attorney in the Portland office of Davis Wright Tremaine, who sits on the board of Open Oregon, a public records advocacy group. "It restricts access by members of the public, and it restricts access by the media."

Charles F. Hinkle of Stoel Rives, a veteran Portland lawyer who has represented newspapers and civil rights groups in open-records cases, said cash-strapped government officials in Oregon are increasingly turning to fees even for documents that used to be free for the asking.

"Public agencies are doing that more and more and more," Hinkle said.

"I think it's a real disservice to the public. It's almost as though they wanted to charge admission to go into a courtroom to watch a trial. Public services are supposed to be public services, and the more the public is charged for services, the less public they become."

But, as Hinkle points out, there is no constitutional guarantee of free access to government records. That means any change to Oregon's fee structure will probably have to come from Salem. The Legislature, however, has generally been far more willing to restrict access to records than broaden it.

Holding the line

A coalition of four groups representing news media interests promoted a measure in the 2007 Legislature that would have revised the "public interest" clause of the Oregon Public Records Law to make it easier to get a waiver or reduction of fees unless the information was for personal or commercial use.

The idea was shot down, primarily on budgetary grounds.

"Cost recovery is a huge issue for state agencies," said Tim Gleason, dean of the University of Oregon School of Journalism and Communication and a board member of Open Oregon, one of the groups that backed the change. "Obviously it's a balancing of interests, and I think that the public interest standard works pretty well."

In his fight to obtain records from the Corvallis Police Department, David Picray tried to argue that providing the documents free would serve the public interest, but last week he received a letter from the city attorney rejecting his fee waiver request.

But Picray is not giving up. Now, he says, he'll exercise another option available under the Oregon Public Records Law by appealing to the district attorney to order the documents' release at no charge.

"They're abusing the law to deny records to people who are exercising their rights," Picray said. "This is not a case where I'm harassing the city and asking for every piece of paper in their filing cabinets."

Open Oregon and its allies plan another attempt at revising the law in the next legislative session, but Gleason, for one, is convinced that fees are here to stay.

"Any kind of direct assault on fee waiver is dead on arrival," he said.

And in the current budgetary environment, he cautions open government champions against pushing too hard on the money question.

"From the access side of the fence, it's important that we not ignore the other side of the issue," Gleason said.

"The reality is that it does cost money to provide access to public records. And if the Legislature doesn't provide state agencies with the funds to do it, they have to find the money somewhere."

Bennett Hall can be reached at 758-9529 or bennett.hall@lee.net.

[Print Page](#)

DA denies fee-waiver request on records

By Matt Neznanski
Gazette-Times reporter

City Council backs police charges for public records

Benton County's district attorney and the Corvallis City Council are standing behind the Corvallis Police Department's demand that an Adair Village man pay \$100 to view the police report filed after he was stopped by officers and questioned last year.

David Picray, 59, was stopped by a Corvallis police officer just after midnight last May and questioned in a parking lot. He wasn't cited, but did file a complaint with the department.

In following up, Picray asked to see all of the files related to his case and was told by the CPD that the cost for looking at the papers would be \$100. If he wanted copies, he would be charged \$131.90 and if he wanted the copies mailed to him the price would be \$141.30.

"I'm not just going in and asking for some random documents," Picray said. "This is a report written about me."

In line with Oregon law, Picray appealed to the district attorney, arguing that the fees were too high and that the costs should be waived.

In response, District Attorney John Haroldson said the costs were in line with state law, which allows agencies to recoup costs associated with finding, redacting and copying records and were in fact less than the actual cost of doing the work. Haroldson also denied a fee waiver.

"The denial of your petition only serves to deny the waiver or reduction of fees," Haroldson wrote. "You still have the right to have the Corvallis Police Department proceed with making the records available, subject to the fee estimates."

State law allows for fee waivers if the agency deems that the petitioner has the public interest in mind. That's a provision journalists often cite when the information is going to be made available to a larger audience.

But attorney Jack Orchard, who works on behalf of the Oregon Newspaper Publishers Association, said public interest is in the eye of the beholder.

"Why is that not a simple request that can be handled in a few minutes?" Orchard said. "(Charging) \$100 is a discouragement."

During Monday's City Council meeting, Ward 5 Councilor Mike Beilstein said he'd left an angry message on Police Chief Gary Boldiszar's phone after reading Haroldson's letter denying Picray's request for a fee waiver. Beilstein said he was initially concerned about the size of the fees, but that he had reconsidered and doesn't believe the charges are excessive.

CPD charges \$50 per hour to find and prepare materials, 15 cents per page for copies, and \$9.40 for priority mail delivery.

Ward 4 Councilor Dan Brown defended the charges Monday, saying they were appropriate for the city to avoid spending money rooting out requests for information by people looking to "poke a stick in the eye of local government," and that only a few people were "smart enough to know what can be copied and what can't."

But Orchard said law enforcement agencies often falsely claim the need to redact, or remove personal information or material that is part of a police investigation. The law, he said, stipulates that information that is part of a police investigation is not to be included in a basic arrest report.

"If you put investigative material in there, you've made a mistake," Orchard said.

Because Picray was never arrested, it is unclear what material might need to be removed from the records he requested.

The state chapter of the American Civil Liberties Union supports reasonable fees for copies of public documents, according to spokesman Brian Willoughby, but said when costs start to add up, they can be an impediment to public access.

“Our hope would be that an agency would meet someone at a reasonable place and at least let them view a document at a reasonable rate,” Willoughby said.

Unless Picray decides to pay the fee for his report, the only remaining option is to take the matter to court, something he’s so far unwilling to do.

“All these people involved have cost the taxpayers a lot more than just laying the documents on a table and having me look at them,” Picray said.

Matt Neznanski can be reached at 758-9518 or matt.neznanski@lee.net.

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UNREASONABLE DELAY

Litvin, Katie. Willamette Week. Refused access to a draft policy for the Sherwood School Board because the board had not yet seen it. The Attorney General's Public Meetings and Records Manual specifically states that this is not a legitimate reason to withhold documents.

Slovic, Beth. Willamette Week. Waited 19 days for the city of Portland to produce a memo, which was then improperly redacted under attorney-client privilege.

Slovic, Beth. Willamette Week. Received no response to requests for expense reports filed by the Portland City Council. Later learned that the documents were compiled and available but not released because a public information officer was awaiting the mayor's review.

Van der Voo, Lee. Lake Oswego Review. Requested public documents from the city of Lake Oswego Oct. 31, 2008 and received no response. Successfully appealed to the Clackamas County District Attorney's Office and was sued in Clackamas County Circuit Court. Records released without further incident Aug. 20, 2009 following statewide coverage of the lawsuit.

Litvin, Katie. Willamette Week. Refused access to a draft policy for the Sherwood School Board because the board had not yet seen it. The Attorney General's Public Meetings and Records Manual specifically states that this is not a legitimate reason to withhold documents.

>>> "Katie Litvin" <klitvin@wweek.com> 7/31/2009 1:47 PM >>>

Hello Ms. Goff,

As the August 11th board meeting approaches, could you please send me a copy of the proposed policy on religious instruction? I'd just like to review it before the meeting.

Thanks,
Katie Litvin
Willamette Week

Hi, Katie -

We release the information to the media with the publication of our Board packet, which I believe will be this Friday. I will forward it to you then. Please let me know if you have further questions.

Thank you,
Melissa

Melissa Goff
Director of Teaching and Learning
Sherwood School District
(503)825-5010

Slovic, Beth. Willamette Week. Waited 19 days for the city of Portland to produce a memo, which was then improperly redacted under attorney-client privilege.

From: Beth Slovic [mailto:bslovic@wweek.com] **Sent:** Thursday, February 11, 2010 11:12 AM **To:** Meng, Linda **Cc:** Kaufmann, Roy; Miller, Tom; Butman, Laurel **Subject:** public information request

Linda,

This is a follow-up message to a voicemail I left you earlier today.

There seems to be some question about whether a 2008 memo I recently requested is exempt under public records law. The city considers the memo "pre-decisional."

It's not clear to me what the specific exemption is. Without that knowledge, it would appear the city is withholding the document improperly.

I'm happy to be wrong, of course. It's my hope the city will release the document today.

Best,

Beth Slovic
503-445-1541
bslovic@wweek.com

From: laurelb@ci.portland.or.us
Subject: RE: public information request
Date: February 11, 2010 11:25:09 AM PST
To: bslovic@wweek.com, lmeng@ci.portland.or.us
Cc: Roy.Kaufmann@ci.portland.or.us, tom.miller@ci.portland.or.us, sierra.stringfield@ci.portland.or.us

Beth –

I need to clarify again our conversation last night at about 5:30.

No withholding is taking place whatsoever. The memo is under review, as I explained yesterday, pursuant to the advice of our City Attorney, as *whether there is any reason to redact any additional information that is not purely factual* that is allowable under State Law.

I am assured of an answer as to whether we would proceed with any further examination of this record today as I noted yesterday. I have not yet heard back on this. You can find more information describing this in the State Public Records statute under ORS 192.

Because the review is underway in the Mayor's office, timing is subject to the schedules of those undertaking the review. In our conversation, I noted that I *hoped* to have an answer as *whether further review would take place* this morning, but I made no promises.

Review such as this is normal procedure. In this case, the review needed to take place in three different offices.

I appreciate your continued patience with this request, received only three days ago.

Laurel Butman, Principal Management Analyst

Business Operations, Office of Management & Finance

Email: laurelb@ci.portland.or.us

Phone: 503.823.6806 | Cell: 503.823.6397

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Kenneth L. Rust, Chief Administrative Officer
Jennifer Sims, Director & Chief Financial Officer

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DATE: July 23, 2008
TO: Mayor Tom Potter
FROM: Casey Short, Financial Planning Manager
SUBJECT: Utility License Fee Ordinance

Financial Planning (FPD) has reviewed the July 22 draft ordinance dedicating a portion of utility license fee (ULF) revenue to PDOT, as well as earlier versions from June 24 and earlier. Ken Rust and I met with PDOT staff in June to discuss our concerns. All the versions of the ordinance we have seen raise issues of policy and implementation, but my discussion below will address only the most recent (July 22) version.

- Council Policies

- Comprehensive Financial Management Policies

Both the old and new Comprehensive Financial Management Policies contain the same language regarding the use of discretionary General Fund revenues:

“General Discretionary Revenues. Unless otherwise stated explicitly by the Council, the City will not dedicate discretionary revenues for specific purposes in the General Fund. This will preserve the ability of the Council to determine the best use of available revenues to meet changing service requirements.”

This policy is designed to preserve maximum flexibility in Council’s use of discretionary revenue to fund programs and services, and Council has consistently observed it since its adoption in 1992. I am not aware of any exceptions. If the ordinance is to be implemented, it should at a minimum acknowledge that it is not consistent with adopted policy, and should discuss why an exception is proposed.

- Transportation Funding Policy

The 1988 Transportation Funding Policy does provide for a percentage of ULF revenue to be allocated to PDOT, but it preceded the 1992 Comprehensive Financial Management Policies. At the time of its adoption, General Fund support for PDOT was in the range of 28% of ULF revenue, having surpassed this amount for three years prior to FY 1987-88, when it was 25.6%. It has been significantly lower than that in every succeeding year. The policy does provide that Council may choose not to meet the target amount:

“[D]epending upon the financial condition of the General Fund and other service needs of the City, the Council might adjust the actual transfer in any given year.”

With discussion of the draft ordinance promoting further review of the issue of transportation

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funding, FPD suggests that Council consider a practicable transportation funding policy to replace the existing one and provide a workable framework for the longer term for both PDOT and the General Fund.

- Nature of the Funding Provided

The funds provided to PDOT would not improve PDOT's ability to plan for additional resources on an ongoing basis. Funds would be on a one-time basis and provide fluctuating amounts of support – there is no ongoing revenue stream, nor would amounts be predictable. The ordinance appears to provide only that ULF revenues higher than budgeted in one year would be allocated to PDOT on a one-time basis the following year. This wouldn't help PDOT's long-term planning, as there would be no certainty from year to year how much, if any, funding it would receive the following year. (If the ordinance is adopted, the language in the "Council directs" needs to be revised to clarify when funds will go to PDOT and how the amounts are to be determined.)

- Effect on General Fund

If the ordinance is approved as written, there will be two direct effects to the General Fund. First, any ULF revenue above the forecast that would be dedicated to PDOT would not be available as one-time funds for other General Fund purposes. This would affect the one-time revenues available in the following fiscal year. Second, the inability to adjust the ULF forecast will affect ongoing revenues available to the General Fund, and create a more complicated system of forecasting revenue. As I understand the mechanics of the proposed ordinance, the next General Fund five-year financial plan and forecast will be limited in its ability to adjust to changes in actual revenues from this source, so increases – or decreases – will not be included as changes in ongoing revenue. However, the years following the fifth year of the current forecast (FY 2012-13) will be able to reflect those changes, potentially creating a large gap between available revenues in 2012-13 and the next year. We might have ongoing money in year 5 of a future forecast that is not available in years 2-4, which would restrict Council's ability to fund ongoing programs in those middle years. Conversely, the updated forecast could show that PDOT could expect additional revenue in years 2-4, but would not be able to treat it as ongoing because it wouldn't continue to go to PDOT in year 5. The mechanism proposed in the ordinance is awkward and would be difficult to administer.

- Inflexibility

Under the adopted policy that treats all discretionary General Fund revenue equally, any shortfall in one category may be made up with a surplus in another. Isolating one category of revenue limits the ability for a potential surplus in that category (ULF, in this case) to make up for a shortfall in another (business licenses or transient lodging taxes, for example). This poses a potential constraint on the General Fund that would not be there without such a restriction. This is one reason the policy discussed above is in place.

This concept applies on the expenditure side as well. An example of this occurred in the 1970's, when rising energy prices contributed to high inflation. That inflation affected the City's ability to continue to provide services at existing levels, but payers of the ULF were among those benefiting from higher energy costs, and the City's ULF receipts increased, helping to offset higher operating costs. This would probably not be possible under the proposed ordinance.

- ULF Forecast

The ULF forecast is subject to a number of variables over which FPD has no control. These include the nature of PUC-regulated utilities' ratemaking processes, which are not regular (as the City's are for Water and BES) and difficult to predict the frequency and size of rate changes. A timely illustration of this is the recent requests for sizable rate increases from PGE (10-15%) and NW Natural (30-40%) which have come forward since the most recent General Fund financial forecast. Approval of these rate increases will result in higher ULF revenues – and higher operating costs for the City – which could not have been predicted five months ago when the forecast update was issued.

Another variable is the weather – a cold winter produces a bump in ULF revenue because there is greater consumption of natural gas and electricity for heat. The future of land-line telecommunications also has a role, as revenue from Qwest is declining as its market share declines, but it is difficult to predict how fast and how far this will go.

Another factor is the Council's decision in 2004 to freeze ULF payments from Water and BES until the amount they pay is 5% of gross revenue, at which point their payments will begin to grow again. These two City utilities comprise about 30% of the total ULF received. The flattening of this revenue stream has an impact on the overall ULF projection. If either or both of these grow out of the cap during the forecast period, the General Fund would not benefit from it. This as another reason not to segregate specific revenue streams.

- Council Finding #8

The City Attorney's office



FPD has concerns about the policy implications of this proposed ordinance, which are focused on isolating one revenue stream from the discretionary General Fund, contrary to long-standing Council policy. We also have concerns about the administration of the ordinance if it is adopted, and its effect on our ability to provide accurate forecasts and on the Council's ability to retain flexibility to allocate discretionary dollars. Finally, it does not provide a secure revenue source for PDOT. There is undeniably a funding problem for PDOT, which we are very interested in helping to resolve, but we believe the mechanics of this ordinance create new problems without providing a long-term solution.

c: Austin Raglione
Ken Rust

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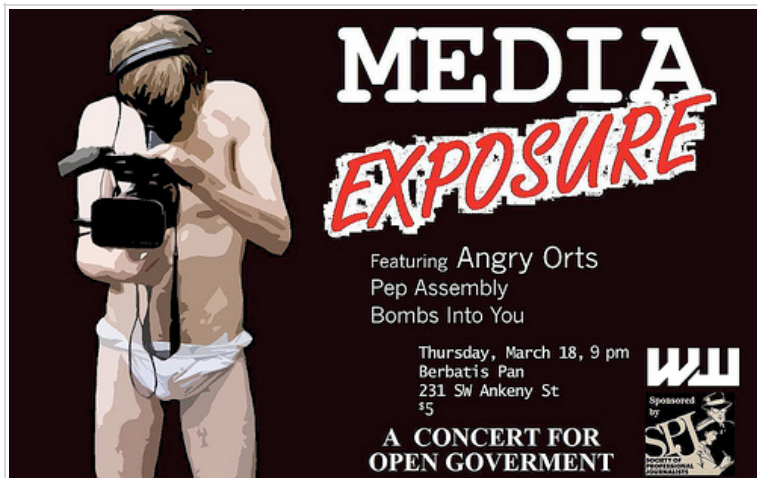
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City HR Boss: Police Oversight Plan Can't be Implemented Without Union Approval

City Hall: Read the Redacted Memo. Then Celebrate Sunshine Week!

5:05 PM March 17th, 2010 by Beth Slovic

City Hall / News | |

What follows is a two-fer! It's a brief explanation of an **obscure City of Portland funding stream called the utility license fee** and, in a round-about way, it's an example of **local government's end-run around transparency**. It's just not exactly straightforward. So bear with me.

Here goes. Last month, Commissioner Dan Saltzman suggested using Portland's utility license fee [to help fund](#) the Bicycle Plan for 2030. That appeared to surprise Mayor Sam Adams who, the next day at [his State of the City address](#), proposed using the utility license fee to fund scholarships to Portland Community College and Mt. Hood Community College.

That same day, Feb. 5, I request more information from the city about the utility license fee. Specifically, I requested **a 2008 memo from Casey Short**, a former City of Portland budget official, about the City Council decision in 2008 to devote part of the utility license fees to the cash-strapped Portland Bureau of Transportation. That was the pot of transportation money Saltzman wanted to help fund bicycle boulevards. And the memo, I heard last month, offered background on that funding mechanism, which Adams began when he was a commissioner.

On Feb. 24, after much wrangling, the city gave me the memo. But city officials redacted an entire paragraph from the memo's third page. Laurel Butman, a spokeswoman from Portland's Office of Management and Finance who emailed me the memo, said the redacted paragraph contained privileged, attorney-client information. Never mind that the author of the memo was not a city attorney. He was a budget wonk.

This brings me to my point. **Oregon public records law contains numerous exemptions** that give local government power (or, sometimes, the mistaken idea) that they can keep from view any number of documents they don't want to share with the public.

On Thursday, March 18, *WW* and the Society of Professional Journalists from Oregon and Southwest Washington are co-sponsoring a **fundraising concert at Berbat's to help pay for SPJ's advocacy around open government and public records**. Tickets are \$5, and bands include Pep Assembly, Bombs Into You, and the Angry Orts.



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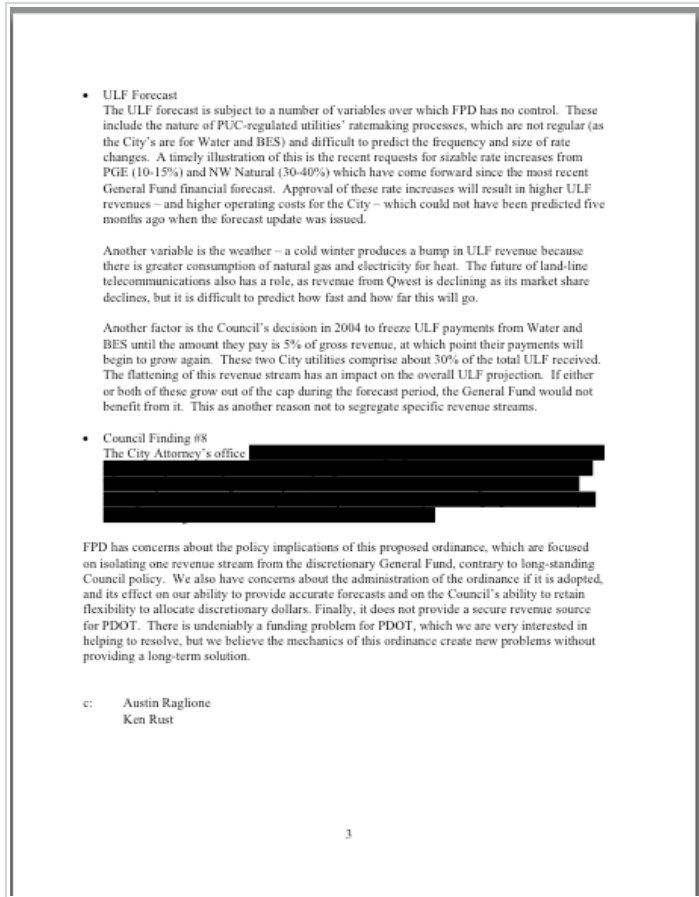
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Which brings me back to the utility license fee. Here is the [memo](#) [PDF]. [And in case you don't want to read it, here's the summary: Normally, the utility license fee goes straight to the city's general fund, which means commissioners can use the money for anything from graffiti abatement to Portland police. Dedicating a portion of it to the transportation bureau limits the license fee's flexibility -- without giving the transportation bureau a stable source of funding.]



WW has learned the paragraph city government didn't want you to see says this:

"The City Attorney's office is concerned with the language here that ties the ULF to use of the right-of-way. The City has successfully argued in court on more than one occasion that the ULF is separate from right-of-way use, and we should not be including in an ordinance a finding that is counter to the City's official position and City Code language that has helped defend challenges to the fee and retain General Fund revenue."

Pretty explosive stuff when you consider the budget office was basically reminding Adams' office that his proposed ordinance put the city in legal jeopardy. One can begin to understand why the city would *want* to redact that, even if public records law in Oregon would appear to frown on that.

But —and this is a big but— the final Aug. 6, 2008 ordinance didn't mention the phrase "right-of-way." The city appears to have fixed whatever legal liability might have been in draft versions of the ordinance. So, should the city have had the right to redact the graph? That's a question I hope SPJ asks Attorney General John Kroger about at the March 31 [meeting on Oregon's public records law](#).

There are two morals to this story. One, come to Berati's Thursday night. And two, bring a friend. The work that SPJ does for public records doesn't benefit reporters alone. **WW**

Share and Enjoy:



Slovic, Beth. Willamette Week. Received no response to requests for expense reports filed by the Portland City Council. Later learned that the documents were compiled and available but not released because a public information officer was awaiting the mayor's review.

From Beth Slovic -

On June 4, I submitted a records request to the City of Portland's Office of Management and Finance seeking public records on City Council's expense reports.

I did not receive a response until July 30, after I involved the Multnomah County DAs office. In the meantime, I discovered the records had been ready for weeks. They were not released to me, however, because the public information officer was waiting for the mayor's office to review the records.

On July 6, the following email was sent to Portland's elected officials:

From: Butman, Laurel
Sent: Monday, July 06, 2009 2:42 PM
To: City Elected Officials; City Elected Officials Exec's
Cc: Kaufmann, Roy; Scott, Andrew; Tuttle, Judy (OMF); Rust, Ken
Subject: FOR YOUR REVIEW: WW Records Request, expense records

Good afternoon -

We have finished compiling records in response to a request (attached) from Beth Slovic, Willamette Week for your expenses. I have attached the results of our search for P-Card and expense account records for your review prior to their release to the Willamette Week.

1. **Please let me know if you believe any of these records should be examined by the City Attorney for privilege**
2. **Please send me any questions or concerns no later than NOON THIS THURSDAY, JULY 9**

I plan to release the records to the Willamette Week late Thursday or early Friday. Thanks for your review, Laurel

Laurel Butman, Principal Management Analyst

Business Operations, Office of Management & Finance

Email: laurelb@ci.portland.or.us

Phone: 503.823.6806 | Cell: 503.823.6397

www.portlandonline.com/omf

www.portlandonline.com/communitybudget

www.portlandonline.com/bettertogether

Van der Voo, Lee. Lake Oswego Review. Requested public documents from the city of Lake Oswego Oct. 31, 2008 and received no response. Successfully appealed to the Clackamas County District Attorney's Office and was sued in Clackamas County Circuit Court. Records released without further incident Aug. 20, 2009 following statewide coverage of the lawsuit.

Lee van der Voo

From: Lee van der Voo [lvandervoo@lakeoswegoreview.com]
Sent: Friday, October 31, 2008 3:04 PM
To: 'dforman@ci.oswego.or.us'
Cc: 'nickbudnick@portlandtribune.com'
Subject: Records Request

Mr. Don Forman,

I would greatly appreciate your help with the following request under Oregon Public Records Law (ORS.192).

I would like a copy of an affidavit and complaint filed with the Lake Oswego Police Department regarding use of the racially derogatory term "NILO." The affidavit and complaint were made by former police officer Jerry Ross and both are in the possession of the Lake Oswego Police Department and the city of Lake Oswego or under the control of those entities. Please interpret this request to include both written and electronic forms of the documents requested.

I make this request for newsgathering purposes and in the public interest. It is my opinion that the public has a clear interest in knowing whether ethnic minorities can expect fair treatment from the Lake Oswego Police Department. The Oregon Court of Appeals has defined the public interest in disclosure as reflecting the Oregon Legislature's intent that "members of the public are entitled to information that will facilitate their understanding of how public business is conducted." And according to Oregon Attorney General Hardy Myers' Public Records and Meetings Manual, the "fundamental premise" of the Oregon Public Records Law is that "any doubts in interpreting whether a document is public should be resolved in favor of providing the public information."

If you choose to withhold any records that are responsive to this request, please cite the specific exemptions that you believe apply.

Thanks for your attention to this matter. You can direct any questions about this request to me or to my colleague Nick Budnick at the numbers below.

Lee van der Voo
Reporter, Lake Oswego Review
503-431-1101

Nick Budnick
Reporter, Portland Tribune
503-546-5145

Lee van der Voo

From: Lee van der Voo [lvandervoo@lakeoswegoreview.com]
Sent: Tuesday, December 30, 2008 5:15 PM
To: 'dpowell@ci.oswego.or.us'
Subject: follow up on NILO

Hi David,

Per our earlier conversation I just plowed through my notes regarding NILO and I see that the records request I made stems from allegation #14 in the DPPST complaint labeled "Racism, Anti-Semitism."

The allegation initially explains the NILO acronym, offers a related incident, and goes on to state: "Witt disclosed this incident to Officer Jerold Ross in June of 2004 and Ross filed a complaint with Human Resources regarding supervisor misconduct at LOPD. Ross used the above example in addition to several others that pertained to inappropriate sexual and racist comments made by supervisors at the LOPD. It is unknown if then Assistant City Manager Janice Deardorff ever did an investigation since many of the named witnesses were never interviewed."

So, in an effort to pin down the details, this is what I know. If the above statement is true, then the record I am looking for is a complaint made to Janice Deardorff in June 2004 that apparently did not lead to a personnel investigation or arise as part of an ongoing personnel investigation.

As I said earlier, I will make an effort to provide some additional detail.

Thanks for taking this on during your vacation,

Lee



Beaverton Valley Times • The Bee • Clackamas Review • The Clatsop Tabloid • East County News • Estacada News • Forest Grove News-Times • Gresham Outlook • Lake Oswego Review
Lifestyles Northwest • Oregon City News • The Regal Courier • Sandy Post • Sherwood Gazette • Southwest Community Connection • The Times: Tigard-Tualatin-Sherwood
West Linn Tidings • Commercial Publishing & Contract Publishing, including: The Jewish Review • The Realtor • The Scribe • Chamber Directories and other publications

**Lee van der Voo
and the Lake Oswego Review**
400 Second Street
Lake Oswego, OR 97034

District Attorney John S. Foote
807 Main Street
Oregon City, OR 97045

Jan. 23, 2009

Mr. District Attorney:

We respectfully request your assistance in obtaining copies of documents from the Lake Oswego Police Department and city of Lake Oswego under Oregon Public Records Law.

We requested copies of an affidavit and complaint filed with the Lake Oswego Police Department regarding the use of the racially derogatory term “NILO” Oct. 31, 2008. The affidavit and complaint were made by former police officer Jerry Ross and both are in the possession of the Lake Oswego Police Department and the city of Lake Oswego.

We learned of the affidavit and complaint through a related complaint filed with the Oregon Department of Public Safety Standards and Training March 31, 2008. According to that complaint — filed by a former Lake Oswego police officer — sexually and racially derogatory terms and beliefs, including the term “NILO,” are problematic in the Lake Oswego Police Department and at one time affected the department’s pursuit of a criminal matter involving a Jewish person.

The complaint goes on to state that: “(Officer Jerold) Ross filed a complaint with Human Resources regarding supervisor misconduct at LOPD. Ross used (several examples) that pertained to inappropriate sexual and racist comments made by supervisors at the LOPD. It is unknown if then Assistant City Manager Janice Deardorff ever did an investigation since many of the named witnesses were never interviewed.”

Release of the affidavit and complaint were verbally denied by Lake Oswego City Attorney David Powell Dec. 30, 2008 via telephone. Mr. Powell denied release of the records on the grounds that they are exempt from disclosure under Oregon Public Records Law because they relate to personnel matters.

We disagree for two reasons.

1) Our understanding of the affidavit and complaint is that the documents do not allege misconduct by any particular individual but instead allege a pattern of behavior among police officers and supervisors in the Lake Oswego Police Department. We are happy to accept redacted copies of both documents should personnel privacy be deemed at issue. But it is our understanding that the records we requested did not lead to a personnel investigation or arise as part of an ongoing personnel investigation but speak to overall departmental operations.

2) We also believe the public's interest in disclosure of these documents should outweigh any concern for personnel privacy. The Oregon Court of Appeals has defined the public interest in disclosure as reflecting on the Oregon Legislature's intent that "members of the public are entitled to information that will facilitate their understanding of how public business is conducted." The court has also characterized the public interest as "the right of citizens to monitor what elected and appointed officials are doing on the job."

We believe that the requested documents speak directly to how the Lake Oswego Police Department conducts business with minorities and how officials appointed to the department generally behave on the job. It is our opinion that the documents' meet the criterion for public interest as described by the Oregon Court of Appeals.

Further, it is our opinion that the public has a clear and very pressing interest in knowing whether ethnic minorities can expect fair treatment from the Lake Oswego Police Department. We do not agree that an issue as critical as public safety for minorities and women should be left unexamined out of concern for privacy for a few public employees, particularly when the actions of the few may very well jeopardize the well-being of many.

According to former Attorney General Hardy Myer's Public Records and Meetings Manual, the "fundamental premise" of the Oregon Public Records Law is that "any doubts in interpreting whether a document is public should be resolved in favor of providing the public information."

It is our belief that there is considerable doubt as to whether these records are exempt from public disclosure. We respectfully request that you find in our favor and order the Lake Oswego Police Department and the city of Lake Oswego to release the affidavit and complaint so we may continue our newsgathering in this matter.

Thank you for your attention to this matter,

Sincerely,

Lee van der Voo
and the Lake Oswego Review



CITY
ATTORNEY'S
OFFICE

CITY OF
LAKE OSWEGO

380 A Avenue
P.O. Box 369
Lake Oswego
Oregon 97034

(503) 635-0225

Fax (503) 699-7453

www.ci.oswego.or.us

February 25, 2009

David Paul

Senior Deputy District Attorney

Clackamas County District Attorney's Office

807 Main Street, Room 7

Oregon City, OR 97045

VIA FACSIMILE to: 503-655-8657

VIA E-MAIL to: davepau@co.clackamas.or.us

RE: Public Record Petition

Public Record Holder: City of Lake Oswego

Petitioner: Lee van der Voo/Lake Oswego Review

Date of Request: January 28, 2009

Dear Mr. Paul:

Thank you for your letter regarding the above petition by Lee van der Voo of the *Lake Oswego Review*.

The public records request to the Lake Oswego Police Department that is the subject of the petition was stated as follows:

I would like a copy of an affidavit and complaint filed with the Lake Oswego Police Department regarding use of the racially derogatory term "NILO." The affidavit and complaint were made by former police officer Jerry Ross and both are in the possession of the Lake Oswego Police Department and the city of Lake Oswego or under the control of those entities. Please interpret this request to include both written and electronic forms of the documents requested.

The Police Department conducted a thorough search of its records and found that there is no document that is an affidavit by former officer Ross regarding the use of the term "NILO," and that there is no document that is a complaint by Mr. Ross including a reference to use of the term "NILO." This was communicated to Ms. Van der Voo.



David Paul
February 25, 2009
Page 2

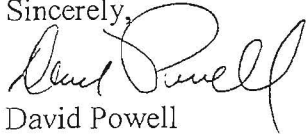
It was also communicated to Ms. Van der Voo that, if there are any *other* documents that relate in any way to the use of the term "NILO" in connection with anything that may have been communicated by Mr. Ross, those documents would be exempt from disclosure pursuant to ORS 181.854(3). That statute provides that a public body may not disclose information about a personnel investigation of a public safety employee if the investigation does not result in discipline. It is important to emphasize that the discussion of ORS 181.854(3) is academic, as Ms. Van der Voo's request was specific to two documents, neither of which exist.

Ms. Van der Voo's petition speaks to the public interest in disclosure of the requested documents, as well as to the scope of what might constitute a "personnel investigation" under a claim of exemption. As the two specified documents do not exist, this letter will not address those issues. If any future requests specify documents that do exist, the City will address those issues, if raised, at that time.

Your letter asks for transmittal of copies of the requested records for review. Again, since the two specific documents do not exist, there is nothing to transmit.

Please feel free to contact me if further information or clarification of this response would be helpful.

Sincerely,



David Powell
Lake Oswego City Attorney

✓c: Lee van der Voo

Lee van der Voo

From: Lee van der Voo [lvandervoo@lakeoswegoreview.com]
Sent: Thursday, February 26, 2009 1:45 PM
To: 'Powell, David'
Cc: 'council@ci.oswego.or.us'; 'amcintyre@ci.oswego.or.us'; 'mforbes@ci.oswego.or.us'; 'Paul, Dave'
Subject: RE: Public record petition

Hi David,

Regarding your letter to Senior Deputy District Attorney David Paul, I'm stumped. Per our previous talks, I thought we agreed that I should keep my records requests as narrow as possible to save us both the time and effort it could take to gather records for requests that are overly broad. I'm holding up my end of the bargain. My understanding was that you would meet me halfway. If you recall, you agreed to help me fine-tune records requests if my initial stab at narrow language did not get us where we needed to go. That cooperation is sorely lacking here. Had I ever received a written denial from you or a clear explanation for why I did not receive documents related to this request, we could have put our cooperative arrangement into play and been further along in this matter. Instead, we are now in front of the deputy district attorney with a semantic argument about whether my use of the word "complaint" really describes the "other" NILO documents which are clearly in the city's possession.

I hope we can agree that this particular step in our debate about whether the NILO documents should be released is a waste of time. Perhaps that is your intent. If so, I'm going to restate my records request below and do so broadly. Given the enormous amount of time that's already been wasted with delays on this request - the original request was made Oct. 31, 2008 - I have to insist that you reply to me with a date that I can either expect documents in response or expect a denial of the request in writing. My hope is that if a denial is again forthcoming, it will be a proper written denial and a quick one so we can begin our slow paces back to the district attorney's office. The sooner we take up a discussion with the district attorney about whether the documents I've requested meet the public interest test for release, the sooner we can resolve this matter. Diversions aside, I do intend to resolve it.

As I side note, David, although I recognize that your response to the deputy district attorney in this matter is perfectly legal, I think it falls far short of embracing the spirit of Oregon Public Records Law. I question whether our newly elected leaders - many of whom backed calls for increased government transparency in Lake Oswego during the election - would support it.

My hope in copying the city council on this email is that they begin to understand the process that accompanies many records requests to the city as they work to address transparency issues throughout the bureaucracy. If the majority of records requests must pass through the city attorney, if there are significant delays in response to them, if the denials are not properly placed in writing and if the lack of clarity in denial compromises the requester's appeal rights under the law, then transparency in city government has not been achieved.

However unpopular these requests may sometimes be, they are legitimate. I hope that in the future the process for handling them will treat them that way.

Lee
503-431-1101

Please see the restated records request below:

Mr. David Powell,

I would greatly appreciate your help with the following request under Oregon Public Records Law (ORS.192).

6/16/2009

I would like a copy of any and all documents in possession of the city of Lake Oswego regarding use of the racially derogatory acronym "NILO" by city employees. Please interpret this request to include documents which include the term "NILO" or refer to the phrase in its fully spelled out version "Nigger in Lake Oswego." Please interpret this request to include both written and electronic forms of the documents requested. I am happy to accept redacted copies of the documents to protect employee privacy.

I make this request for newsgathering purposes and in the public interest. It is my opinion that the public has a clear interest in knowing whether ethnic minorities can expect fair treatment from city employees, particularly those in the Lake Oswego Police Department. The Oregon Court of Appeals has defined the public interest in disclosure as reflecting the Oregon Legislature's intent that "members of the public are entitled to information that will facilitate their understanding of how public business is conducted." And according to Oregon Attorney General Hardy Myers' Public Records and Meetings Manual, the "fundamental premise" of the Oregon Public Records Law is that "any doubts in interpreting whether a document is public should be resolved in favor of providing the public information."

If you choose to withhold any records that are responsive to this request, please do so in writing and cite the specific exemptions that you believe apply.

Thanks for your attention to this matter. You can direct any questions about this request to me at the this email or the phone number below.

Lee van der Voo
Reporter, Lake Oswego Review
503-431-1101

-----Original Message-----

From: Powell, David [mailto:dpowell@ci.oswego.or.us]

Sent: Wednesday, February 25, 2009 11:43 AM

To: Van Der Voo, Lee

Subject: FW: Public record petition

Lee,

Attached is a copy of the City's response to your public records petition.

Thanks,

David Powell

PUBLIC RECORDS LAW DISCLOSURE

This e-mail is a public record of the City of Lake Oswego and is subject to public disclosure unless exempt from disclosure under Oregon Public Records Law. This email is subject to the State Retention Schedule.

Lee van der Voo

From: Powell, David [dpowell@ci.oswego.or.us]
Sent: Thursday, February 26, 2009 10:12 PM
To: lvandervoo@lakeoswegoreview.com
Cc: COUNCIL; McIntyre, Alex; mforbes@ci.oswego.or.us; Paul, Dave
Subject: RE: Public record petition

Lee,

I had hoped to have a conversation before writing this e-mail response, but wasn't able to reach you by phone this afternoon.

Following your original request for the two documents (complaint and affidavit relating to "NILO") I reviewed copies of the records provided by the Police Department and then spoke with you by telephone (I believe this was in December). What I told you then was essentially the same as my recent response to the District Attorney's Office: there is no affidavit from the named officer at all, and no complaint from that officer that includes a reference to NILO. I also told you at that time, however, that if there were any other documents that might relate to NILO and that officer, they would be exempt from disclosure pursuant to the statute that forbids disclosure of personnel investigations of police officers that don't result in discipline (except under certain circumstances). My recollection is that you didn't request other records, but instead told me that you were going to go back to your sources as you were quite sure they told you that there was an affidavit by the officer.

We spoke again early this month after you had filed your petition with the District Attorney's Office, which was quite specific as to the City's failure to provide the two documents: a complaint and affidavit relating to NILO. During this conversation I told you once again that there was no complaint or affidavit on those subjects (and also mentioned again that, if other documents existed relating to NILO, they would be exempt under the statute). During that conversation you expressed surprise that the requested documents (or at least the affidavit) didn't exist. This in turn surprised me, as I'm quite sure we had discussed that during our conversation in December. Lee, I'm not suggesting that your surprise wasn't genuine -- but I'm sure we discussed it before. Maybe I wasn't clear in my explanation the first time, or you misunderstood me.

Now that I've filed my response to the District Attorney's request -- stating the same thing that I recall telling you twice before -- your message below suggests that you have again been surprised by my response, and that somehow I am trying to make the process more difficult. I can assure you that I am not. In each of the two conversations above, I told you the situation -- being very careful not to suggest that there might not be "other" documents that weren't requested that might pertain to the subject.

Lee, maintaining good relations with you and the Review are very important to me. I respect you, and I'm sincerely sorry that you feel I've been trying to make semantic arguments rather than cooperating with you -- I can assure you that was never my intent. I'm simply trying to carefully follow the law in a sensitive area (police internal investigative records). I informed you more than once what the situation was, but still your requests remained focused on two documents that your sources apparently were describing to you. I concluded that, for whatever reason, you wanted to retrieve two very specific documents that you continued to believe the City possessed. I'm sorry if there was any misunderstanding.

Now to your new request below. To the extent that it includes documents concerning "NILO" that have a connection to an investigation in response to matters raised by former officer Ross, the City's response can be quite prompt -- as those records have already been reviewed. You are right that it will likely be a denial, as ORS 181.854 forbids disclosure of personnel investigations of police officers that don't result in discipline -- except under circumstances that we don't believe currently exist. The only reason why the formal response won't be immediate is that ORS 181.854(6) requires that any officer(s) who may have been the subject of the investigation must be notified of your request. This shouldn't take long, however. I expect the City could accomplish the required notification and provide a formal response within a week. Lee, I share your eagerness to

resolve this issue and can assure you that there will be no delay in getting you to the position where the City's response can be reviewed by the District Attorney's Office, if that is your desire.

The remainder of your new request raises timing and search questions. You ask for any and all documents in the City's possession that relate to the use of "NILO" by any City employee. First let me say that I would be very surprised if any such documents exist (with the possible exception of the police investigatory matters discussed above). I'm sure that you, of course, aren't requesting an actual review of every document in the possession of the City. I would like to discuss with you how a search could be focused on areas where, if documents relating to "NILO" did exist, they would most likely be found. Upon agreement as to the scope of the search, the timing and expense can be estimated.

I'd appreciate hearing from you at your earliest convenience.

Thank you,

David Powell

From: Lee van der Voo [mailto:lvandervoo@lakeoswegoreview.com]
Sent: Thu 2/26/2009 1:45 PM
To: Powell, David
Cc: COUNCIL; McIntyre, Alex; mforbes@ci.oswego.or.us; 'Paul, Dave'
Subject: RE: Public record petition

Hi David,

Regarding your letter to Senior Deputy District Attorney David Paul, I'm stumped.

Per our previous talks, I thought we agreed that I should keep my records requests as narrow as possible to save us both the time and effort it could take to gather records for requests that are overly broad. I'm holding up my end of the bargain. My understanding was that you would meet me halfway.

If you recall, you agreed to help me fine-tune records requests if my initial stab at narrow language did not get us where we needed to go. That cooperation is sorely lacking here. Had I ever received a written denial from you or a clear explanation for why I did not receive documents related to this request, we could have put our cooperative arrangement into play and been further along in this matter. Instead, we are now in front of the deputy district attorney with a semantic argument about whether my use of the word "complaint" really describes the "other" NILO documents which are clearly in the city's possession.

I hope we can agree that this particular step in our debate about whether the NILO documents should be released is a waste of time. Perhaps that is your intent.

If so, I'm going to restate my records request below and do so broadly. Given the enormous amount of time that's already been wasted with delays on this request - the original request was made Oct. 31, 2008 - I have to insist that you reply to me with a date that I can either expect documents in response or expect a denial of the request in writing. My hope is that if a denial is again forthcoming, it will be a proper written denial and a quick one so we can begin our slow paces back to the district attorney's office. The sooner we take up a discussion with the district attorney about whether the documents I've requested meet the public interest test for release, the sooner we can resolve this matter. Diversions aside, I do intend to resolve it.

As I side note, David, although I recognize that your response to the deputy district attorney in this matter is perfectly legal, I think it falls far short of embracing the spirit of Oregon Public Records Law. I question whether our newly elected leaders - many of whom backed calls for increased government transparency in Lake Oswego during the election - would support it.

Lee van der Voo

From: Powell, David [dpowell@ci.oswego.or.us]
Sent: Monday, March 02, 2009 11:39 AM
To: Van Der Voo, Lee
Subject: Modification of Public Record Request

Lee,

This is to confirm our conversation on Friday about the request in your Thursday, February 26, 2009 e-mail that was stated as follows:

"I would like a copy of any and all documents in possession of the city of Lake Oswego regarding use of the racially derogatory acronym "NILO" by city employees. Please interpret this request to include documents which include the term "NILO" or refer to the phrase in its fully spelled out version "Nigger in Lake Oswego." Please interpret this request to include both written and electronic forms of the documents requested. I am happy to accept redacted copies of the documents to protect employee privacy."

On Friday 2/27 you modified the request (at least for now) to request that, as opposed to searching all City records, instead Police Department management, Human Resources management, and the City Manager's Office each provide any and all documents (or identify the basis for any denial of disclosure of any documents) that they are aware of that relate to the subject as described in your written request, above. Depending on the responses received, you will then determine whether a search for records that they are not aware of will be requested.

Lee, this is how I remember the discussion. Please let me know if I don't have it right.

Thanks,

David

PUBLIC RECORDS LAW DISCLOSURE

This e-mail is a public record of the City of Lake Oswego and is subject to public disclosure unless exempt from disclosure under Oregon Public Records Law. This email is subject to the State Retention Schedule.



March 10, 2009

CITY
ATTORNEY'S
OFFICE
CITY OF
LAKE OSWEGO

Ms. Lee van der Voo
Lake Oswego Review
400 Second Street
Lake Oswego, OR 97034

380 A Avenue
P.O. Box 369
Lake Oswego
Oregon 97034

Via First-Class Mail and Email to: lvandervoo@lakeoswegoreview.com

Re: Response to Public Records Request

(503) 635-0225
Fax (503) 699-7453
www.ci.lakeoswego.or.us

Dear Lee:

This is to respond to your public records request, which was originally stated as follows:

I would like a copy of any and all documents in possession of the city of Lake Oswego regarding use of the racially derogatory acronym "NILO" by city employees. Please interpret this request to include documents which include the term "NILO" or refer to the phrase in its fully spelled out version "Nigger in Lake Oswego." Please interpret this request to include both written and electronic forms of the documents requested. I am happy to accept redacted copies of the documents to protect employee privacy.

This request was later modified to request that, as opposed to searching all City records, instead Police Department management, Human Resources management, and the City Manager's Office each provide any and all documents (or identify the basis for any denial of disclosure of any documents) that they are aware of that relate to the subject as described in your original request, above.

This is to report that, with the exception of the Police records mentioned below, the City Manager's Office and Human Resources management are not aware of any documents that are within the scope of your request.

Police Department management is aware of two documents that would be within the scope of your request. However, both of these documents are part of a personnel investigation of a public safety employee or employees of the City that did not result in discipline of an employee. ORS 181.854(3) prohibits the City from disclosing such documents, except under certain conditions that do not currently exist.



Ms. Lee van der Voo
Lake Oswego Review
March 10, 2009
Page 2

Police Department management is not aware of any other documents within the scope of your request.

Please contact me if you would like to discuss this response.

Sincerely,

A handwritten signature in cursive script, appearing to read "David Powell".

David Powell
Lake Oswego City Attorney



Beaverton Valley Times • The Bee • Clackamas Review • The Coupon Tabloid • East County News • Estacada News • Forest Grove News-Times • Gresham Outlook • Lake Oswego Review
Lifestyles Northwest • Oregon City News • The Regal Courier • Sandy Post • Sherwood Gazette • Southwest Community Connection • The Times: Tigard-Tualatin-Sherwood
West Linn Tidings • Commercial Publishing & Contract Publishing, including: The Jewish Review • The Realtor • The Scribe • Chamber Directories and other publications

**Lee van der Voo
and the Lake Oswego Review**
400 Second Street
Lake Oswego, OR 97034

Senior Deputy District Attorney David Paul
807 Main Street
Oregon City, OR 97045

March 13, 2009

Dear Mr. Paul,

We respectfully request your assistance in obtaining copies of documents from the Lake Oswego Police Department and city of Lake Oswego under Oregon Public Records Law.

We requested copies of any and all documents in possession of the city of Lake Oswego regarding use of the racially derogatory acronym "NILO" by city employees Feb. 26, 2009.

We learned of the documents through a related complaint filed with the Oregon Department of Public Safety Standards and Training March 31, 2008, which you have previously received. According to that complaint — filed by a former Lake Oswego police officer — sexually and racially derogatory terms and beliefs, including the term “NILO,” are problematic in the Lake Oswego Police Department and at one time affected the department’s pursuit of a criminal matter involving a Jewish person.

The complaint states that: “(Officer Jerold) Ross filed a complaint with Human Resources regarding supervisor misconduct at LOPD. Ross used (several examples) that pertained to inappropriate sexual and racist comments made by supervisors at the LOPD. It is unknown if then Assistant City Manager Janice Deardorff ever did an investigation since many of the named witnesses were never interviewed.”

Release of the affidavit and complaint were denied by Lake Oswego City Attorney David Powell in a letter dated March 10, 2009. Mr. Powell denied release of the records on the grounds that they were part of a personnel investigation of a public safety employee or employees and are exempt from disclosure under 181.854(3).

We disagree for two reasons.

1) Our understanding of the documents is that they do not allege misconduct by any particular individual but instead allege a pattern of behavior among police officers and supervisors in the Lake Oswego Police Department. We are happy to accept redacted copies of both documents should personnel privacy be deemed at issue. But it is our understanding that the records we requested speak to overall departmental operations. Further, according to the DPSST complaint quoted above, a personnel investigation did not arise from the filing of these documents.

2) We also believe the public's interest in disclosure of these documents should outweigh any concern for personnel privacy. The Oregon Court of Appeals has defined the public interest in disclosure as reflecting on the Oregon Legislature's intent that "members of the public are entitled to information that will facilitate their understanding of how public business is conducted." The court has also characterized the public interest as "the right of citizens to monitor what elected and appointed officials are doing on the job."

We believe the requested documents speak directly to how the Lake Oswego Police Department conducts its business with minorities and how high-ranking officials appointed to the department set standards for behavior on the job. It is our opinion that the documents' meet the criteria for public interest as described by the Oregon Court of Appeals.

We consider the public's interest in knowing whether ethnic minorities can expect fair treatment from the Lake Oswego Police Department to be clear and very pressing. We do not agree that an issue as critical as public safety for minorities should be left unexamined out of concern for privacy for public employees, particularly when the actions of those few employees may jeopardize the well-being of many and where a remedy exists to protect employee privacy.

According to former Attorney General Hardy Myer's Public Records and Meetings Manual, the "fundamental premise" of the Oregon Public Records Law is that "any doubts in interpreting whether a document is public should be resolved in favor of providing the public information."

It is our belief that there is considerable doubt as to whether these records are exempt from public disclosure. We respectfully request that you find in our favor and order the Lake Oswego Police Department and the city of Lake Oswego to release the affidavit and complaint so we may continue our newsgathering in this matter.

Thank you for your attention to this matter,

Sincerely,

Lee van der Voo
and the Lake Oswego Review



John S. Foote, District Attorney for Clackamas County

Clackamas County Courthouse, 807 Main Street, Room 7, Oregon City, Oregon 97045
503 655-8431, FAX 503 650-8943, www.co.clackamas.or.us/da/

March 18, 2009

City of Lake Oswego/Lake Oswego Police Department
PO Box 369
Lake Oswego, Oregon 97034

RE: Public Record Petition
Public Record Holder: City of Lake Oswego/Lake Oswego Police Department
Petitioner: Lee van der Voo/Lake Oswego Review
Date of Request: March 13, 2009

Dear City of Lake Oswego/Lake Oswego Police Department:

We have received a petition in the above matter for the issuance of an order that the petitioner be allowed to inspect the designated records.

ORS 192.460 through 192.470 requires us to notify you promptly of such petition and requires that you transmit the public record, or a copy, to us together with a statement of the reasons why you believe the public record not be disclosed. In appropriate cases (such as voluminous documents), you may disclose to us the nature or substance of the public record in lieu of providing copies.

Please note that the definitions for certain terms are contained in ORS 192.410 and the list of exemptions is contained in ORS 192.501 and ORS 192.502.

Sincerely,

David F. Paul
Senior Deputy District Attorney

DFP/cjo
Attachment

cc: Lee van der Voo/Lake Oswego Review



John S. Foote, District Attorney for Clackamas County

Clackamas County Courthouse, 807 Main Street, Room 7, Oregon City, Oregon 97045
503 655-8431, FAX 503 650-8943, www.co.clackamas.or.us/da/

May 18, 2009

Lee van der Voo
400 Second Street
Lake Oswego, OR 97034

City of Lake Oswego
PO Box 369
Lake Oswego, OR 97034

RE: Public Record Petition
Public Record Holder: City of Lake Oswego
Petitioner: Lee van der Voo
Date of Request: March 13, 2009

Dear Lee van der Voo and City of Lake Oswego:

Petitioner, Lee van der Voo (Lake Oswego Review), requests copies of any and all documents in possession of the City of Lake Oswego (Police Department, Human Resources, and City Manager's Office) regarding use of a racially derogatory acronym "NILO" by city employees. Public Record Holder in its response dated May 11, 2009, has identified 7 pages of documents (some duplicate) which include mention of the subject matter of Petitioner's request. Public Record Holder has submitted 241 pages of documents for review; those documents will be returned to the Public Record Holder with this opinion letter.

Public Record Holder claims that the documents are exempt from disclosure upon the following grounds:

- 1) ORS 192.502(9)(a) exempts from disclosure any "public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law."
- 2) ORS 181.854(3),
A public body may not disclose information about a personnel investigation of a public safety employee of the public body if the investigation does not result in discipline of the employee.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. ORS 192.420. The Public Records Law is primarily a disclosure rather than a confidentiality law. The general policy of the law favors public access to government records. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETING MANUAL (2008) at 23.

Upon review of the 241 pages of documents submitted by the Public Record Holder we are satisfied that they represent documents associated with a personnel investigation of a public safety employee by a public body. The investigative report prepared by former Human Resources Director Janice Deardorff concluded that the allegation had “no basis in fact”. Public Record Holder states that no employee discipline resulted from that investigation. ORS 181.854(4)(a) provides that the prohibition against disclosure does not apply “when the public interest requires disclosure of the information”.

The term “Public Interest” is not defined in Public Records Law; the Court of Appeals has stated that “the Public Records Law expresses the legislature’s view that members of the public are entitled to information that will facilitate their understanding of how public business is conducted.” ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETING MANUAL (2008) at 27.

Petitioner asserts the following as reasons for disclosure:

1. Members of the public are entitled to information that will facilitate their understanding of how public business is conducted.
2. The right of citizens to monitor what elected and appointed officials are doing on the job.
3. Documents speak directly to how LOPD conducts its business with minorities and how high-ranking officials appointed to the department set standards for behavior on the job.
4. Public’s interest in knowing whether ethnic minorities can expect fair treatment from LOPD.
5. An issue as critical as public safety for minorities should not be left unexamined out of concern for public employees when their actions may jeopardize the public and a remedy exists to protect employee privacy.

The Public Record Holder asserts the following as reasons for non-disclosure:

1. No precedent or legislative history for “public interest” exception under ORS 181.854(4)(a).
2. Disclosure of the requested documents is not required by a public interest in eliminating racism or misconduct toward minorities.
3. Public interest exception should not be misinterpreted as saying that the public interest requires disclosure of any untrue allegation, which, if true, would warrant public attention, thereby rendering the non-disclosure provision of ORS 181.854(3) meaningless.

The Attorney General has previously issued opinion letters regarding ORS 192.501(12) (Personnel Discipline exemption) which are helpful in analyzing the “Public Interest Test”.

In Attorney General Opinion July 3, 1995, Garrettson, the following factors were identified as increasing the public interest in disclosure and reducing the privacy expectations of the law enforcement employees:

1. The employees were law enforcement officers with supervisory responsibilities;
2. The basis for the discipline of the employees was identical to allegations which resulted in criminal prosecution and criminal sanctions;
3. The criminal proceedings were concluded; and
4. The criminal allegations and dispositions had been made public.

This case can be distinguished from the facts underlying the instant Public Record Petition in that no disciplinary action was taken; there were no allegations which resulted in criminal prosecution or criminal sanctions and the only evidence that these matters were made public is a letter from DPSST made available to the Petitioner, a member of the news media, containing a list of allegations including use of the term “NILO”.

Attorney General Opinion October 11, 1996, S. Bennett, J. Todd Foster; provides further insight into how the Attorney General interprets the “Public Interest” test. In that matter an Oregonian reporter sought disclosure of investigative notes, interview summaries, disciplinary findings and documentation of a public safety officer in a case where a disciplinary sanction had been imposed on the officer. The Attorney General interpreted the “public interest” test as it is applied to ORS 192.501(12), and cited City of Portland v. Rice, 308 Or 118 (1989) as controlling:

In City of Portland v. Rice, the court addressed the exemption in ORS 192.501(12), stating: “The policy intended by the legislature ... protects the public employee from ridicule for having been disciplined but does not shield the government from public efforts to obtain knowledge about its processes.” Id. at 124 n 5 (citation omitted)

Public Record Order October 11, 1996, (Bennett/Foster) at page 2.

The Attorney General concluded that under the circumstances presented in that case that the public interest required disclosure of the investigatory documents, even though discipline had been imposed. The Attorney General viewed a number of factors that both increased the public interest in disclosure of the documentation and to reduce the privacy expectation of the employee.

Citizens grant great authority to law enforcement officers. The public has a significant interest, therefore, in monitoring the manner in which law enforcement officers exercise their authority in the diverse communities within this state. The Public also has a legitimate interest in monitoring the effectiveness of the instruction given to law enforcement officers concerning their duty to treat all members of the State’s diverse communities equally under the law and with proper respect and dignity regardless of race, sex, religion, disability, age or ethnicity.

Public Record Order October 11, 1996 (Bennett/Foster) at page 3.

In City of Portland v. David Anderson and the Oregonian, 163 Or App 550 (1999), the newspaper sought to obtain disciplinary records relating to a Portland Police Bureau Captain. The Court found that the disciplinary records were not exempt under ORS 192.501(12) and made the following findings:

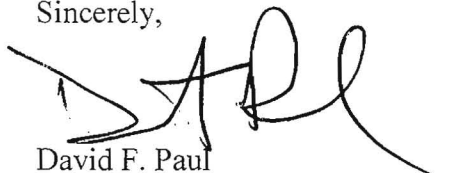
- a) Records relating to allegations for which the Captain was actually disciplined were records of a personnel discipline action and potentially exempt from disclosure;
- b) The public interest required disclosure of those records notwithstanding the exception, and
- c) The records were not exempt under the personal privacy exemption, ORS 183.502(2).

The personnel discipline and personal privacy exemptions are not applicable if the conduct involved directly bears on the possible compromise of a public official's integrity in the context of his/her public employment.

The allegations which gave rise to the instant Public Record Petition were made in the context of a Human Resources investigation of a complaint filed by a Police Officer employee. There is no evidence of any citizen complaints of the use of any of the terms cited by the Petitioner. The investigation was completed in June 2004 and resulted in a finding of "no basis in fact" in the allegations giving rise to the Public Record Petition. There is no evidence that any disciplinary action resulted from the investigation. The 241 pages submitted by the Public Record Holder support the Public Record Holder's claim that this was a personnel investigation and subject to the exemption granted by ORS 181.854(3). However, City of Portland v. Rice, supra, is controlling and the public has an interest in obtaining information about the process of government. In the instant case, the Public Record Holder, a government agency, responded to allegations of misconduct and conducted an investigation. Therefore, it is in the public interest to know that city officials are responsive to complaints about alleged misconduct by city employees and release of the documents assists the public in obtaining knowledge about its processes. This appears to be a circumstance that requires disclosure in the public interest. ORS 181.854(4)(a).

Therefore, it is hereby ordered Petitioner's request is allowed in part. To the extent that no discipline of public safety employees was imposed, those records are exempt and the Public Record Holder may redact information pertaining to individual employees. To the extent that the public interest requires disclosure of the information, redacted copies may be provided to the Petitioner.

Sincerely,



David F. Paul
Senior Deputy District Attorney

DFP/cjo



May 26, 2009

CITY
ATTORNEY'S
OFFICE

Via certified mail, return receipt requested

Via first class mail

CITY OF
LAKE OSWEGO

Lee van der Voo
Lake Oswego Review
400 Second Street
Lake Oswego, OR 97034
380 A Avenue
P.O. Box 369
Lake Oswego
Oregon 97034

David F. Paul
Senior Deputy District Attorney
Clackamas County District Attorney's Office
Clackamas County Courthouse
807 Main Street, Room 7
Oregon City, OR 97045


(503) 635-0225
Fax (503) 699-7453
www.ci.oswego.or.us

RE: Notice of Intent to Institute Proceedings
ORS 192.450; ORS 192.460

This constitutes notice, pursuant to ORS 192.450 and 192.460, that the City of Lake Oswego intends to institute proceedings for injunctive or declaratory relief in Clackamas County Circuit Court from the order by Senior Deputy District Attorney David Paul, as stated in a letter dated May 19, 2009, in response to the March 13, 2009 public record petition by Lee van der Voo and the Lake Oswego Review.

Please feel free to contact me if you have questions.

Sincerely,


David Powell
Lake Oswego City Attorney

Via email to: lvandervoo@lakeoswegoreview.com
Via email to: davepau@co.clackamas.or.us



IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

CITY OF LAKE OSWEGO, an
Oregon municipal corporation,

Plaintiff,

v.

OREGON PUBLICATION CORP., an Oregon
corporation doing business as LAKE OSWEGO
REVIEW; and LEE van der VOO,

Defendants.

No. **CV09060075**

SUMMONS

TO: LEE van der VOO
c/o LAKE OSWEGO REVIEW
400 SECOND STREET
LAKE OSWEGO, OR 97034

IN THE NAME OF THE STATE OF OREGON: You are hereby required to appear and defend the complaint filed against you in the above-entitled cause within 30 days from the date of service of this summons upon you; and if you fail to appear and defend, the plaintiff City of Lake Oswego will apply to the court for relief demanded in the complaint.

NOTICE TO DEFENDANT:

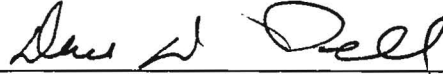
READ THESE PAPERS CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal document called a "motion" or "answer". The "motion" or "answer" must be given to the court clerk or administrator within thirty 30 days along with the required filing fee. It must be in proper form and have proof of service on the Plaintiff City of Lake Oswego's

attorney.

If you have any questions, you should see an attorney immediately. If you need help finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

CITY OF LAKE OSWEGO

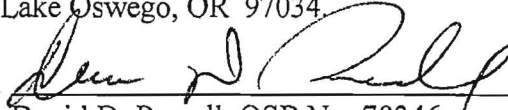


David D. Powell, OSB No. 78346
Lake Oswego City Attorney
380 A Avenue - PO Box 369
Lake Oswego, OR 97034
Telephone: (503) 635-0225
Facsimile: (503) 699-7453
Email: dpowell@ci.oswego.or.us

Attorney for Plaintiff – City of Lake Oswego

State of Oregon)
) ss.
County of Clackamas)

I, the undersigned attorney of record for the Plaintiff City of Lake Oswego, certify that the foregoing is an exact and complete copy of the original summons in the above entitled action. The mailing address at which papers in this action may be served upon plaintiff by mail is: Lake Oswego City Attorney's Office, PO Box 369, Lake Oswego, OR 97034.



David D. Powell, OSB No. 78346
Lake Oswego City Attorney
Attorney for Plaintiff – City of Lake Oswego

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS:

You are hereby directed to serve a true copy of this summons, together with a true copy of the Complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom which this summons is directed, and to make your proof of service on the following attached paged entitled "PROOF OF SERVICE".



David D. Powell, OSB No. 78346
Lake Oswego City Attorney
Attorney for Plaintiff – City of Lake Oswego

PROOF OF SERVICE

State of Oregon)
) ss.
County of _____)

I, hereby certify that I made service of the foregoing Summons upon the individual(s) or other legal entity(ies) to be served, named below, by delivering or leaving true copies of said Summons and the Complaint mentioned therein, certified to be such by the attorney for the defendant, as follows:

PERSONAL SERVICE UPON INDIVIDUAL(S)

Upon _____, by delivering such true copy to him/her, personally and in person, at _____ on the _____ day of _____, 2009, at _____ o'clock, ____ M.

SUBSTITUTED SERVICE UPON INDIVIDUAL(S)

Upon _____, by delivering such true copy to his/her, dwelling house or usual place of abode, to wit: _____ to: _____, who is a person over the age of 14 years and a member of the household of the person served, on the _____ day of _____, 2009, at _____ o'clock, ____ M.

OFFICE SERVICE UPON INDIVIDUAL

Upon _____, at the office which he/she maintains for the conduct of business at _____, by leaving such true copy with _____, the person who is apparently in charge, on _____, 2009, during normal working hours, at to-wit: _____ o'clock, ____ M.

SERVICE ON CORPORATIONS, LIMITED PARTNERSHIPS or UNINCORPORATED ASSOCIATIONS SUBJECT TO SUIT UNDER A COMMON NAME

Upon _____,
by _____ (Name of Corporation, Limited Partnership, etc.)
who is a/the * _____, thereof; OR
(b) leaving such true copy with _____, the person who is apparently in charge of the office of _____, who is a/the * _____ thereof; at _____,
on _____, 2009, at _____ o'clock ____ M.

*Specify registered agent, officer (by title), director, general partner, managing agent.

///

I further certify that I am a competent person 18 years of age or older and a resident of the State of Oregon; that I am not a party to nor an officer, director or employee of, nor attorney for any party, corporate or otherwise; and that the person, firm or corporation served by me is the identical person, firm or corporation named in this action.

DATED this _____ day of _____, 2009.

Signature

I HEREBY CERTIFY THE FOREGOING
A TRUE COPY OF THE ORIGINAL

[Handwritten Signature]

Clackamas County Court
Received
JUN 02 2009
By _____
Trial Court Administrator

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

CITY OF LAKE OSWEGO, an
Oregon municipal corporation,

Plaintiff,

v.

OREGON PUBLICATION CORP., an Oregon
corporation doing business as LAKE
OSWEGO REVIEW; and LEE van der VOO,

Defendants.

No.

CV09060075

PLAINTIFF'S COMPLAINT
(Declaratory Relief)

NOT SUBJECT TO
MANDATORY ARBITRATION

COMES NOW PLAINTIFF, CITY OF LAKE OSWEGO and alleges as follows:

1.

Plaintiff is a municipal corporation existing and duly incorporated and organized under the laws of the State of Oregon, having its administrative offices in Clackamas County, Oregon.

2.

Defendant Oregon Publication Corp., (hereinafter "Defendant OPC") is an Oregon domestic corporation operating at all times relevant herein under the assumed business name: Lake Oswego Review.

3.

At all times relevant herein, Defendant Lee van der Voo (hereinafter "Defendant van der Voo") was a reporter for Defendant OPC.

1 4.

2 On or about February 26, 2009, Defendants OPC and van der Voo requested that Plaintiff
3 produce certain public records as follows:

4 I would like a copy of any and all documents in possession of the city of Lake
5 Oswego regarding use of the racially derogatory acronym "NILO" by city
6 employees. Please interpret this request to include documents which include the
7 term "NILO" or refer to the phrase in its fully spelled out version "Nigger in Lake
8 Oswego." Please interpret this request to include both written and electronic
9 forms of the documents requested. I am happy to accept redacted copies of the
10 documents to protect employee privacy.

11 5.

12 Defendants subsequently modified their public records request to state that Plaintiff,
13 rather than searching all city records, instead should produce any documents within the scope of
14 the request as stated in paragraph 4 of this Complaint of which Plaintiff's Police Department
15 management, Human Resources management and City Manager's Office were aware.

16 6.

17 On or about March 10, 2009, Plaintiff notified Defendants OPC and van der Voo that
18 records existed within the scope of their request, but that such records were part of a personnel
19 investigation of a public safety employee or employees that did not result in discipline, and
20 therefore disclosure was prohibited pursuant to ORS 181.854(3).

21 7.

22 On or about March 13, 2009, Defendants petitioned the Clackamas County District
23 Attorney for an order requiring Plaintiff to release the requested records.

24 8.

25 On or about May 19, 2009, the District Attorney ordered disclosure of the requested
26 records to the extent that no discipline was imposed, with identities of individual employees
redacted, based upon a conclusion that the public interest required disclosure.

1 9.

2 Within seven days of the District Attorney's order, Plaintiff issued a Notice of Intent to
3 Institute Proceedings for Injunctive or Declaratory Relief, pursuant to ORS 192.450(2) and ORS
4 192.460.

5 10.

6 ORS 181.854(3) prohibits disclosure of the records.

7 11.

8 Defendants contend that the prohibition of ORS 181.854(3) is not applicable because the
9 public interest requires disclosure of the information under ORS 181.854(4)(a). The public
10 interest does not require disclosure.

11 12.

12 A current, justiciable controversy exists between Plaintiff and the Defendants. Plaintiff is
13 entitled to a declaratory judgment that the requested records are not subject to disclosure.

14 WHEREFORE Plaintiff prays as follows:

15 1. For a declaratory judgment determining that the records requested by Defendants
16 are not subject to disclosure by Plaintiff.

17 2. For Plaintiff's costs and disbursements herein.

18 3. For such other relief that is consistent with a determination that the requested
19 records are not subject to disclosure by Plaintiff.
20

21 ///

22 ///

1 DATED this 2nd day of June, 2009.

2 CITY OF LAKE OSWEGO

3 

4 David D. Powell, OSB No. 78346

5 Lake Oswego City Attorney

6 380 A Avenue - PO Box 369

7 Lake Oswego, OR 97034

8 Telephone: (503) 635-0225

9 Facsimile: (503) 699-7453

10 Email: dpowell@ci.oswego.or.us

11 Attorney for Plaintiff – City of Lake Oswego

12 Trial Attorney:

13 David D. Powell, OSB No. 78346

SAMPLES

Washington State law regarding fees, bill report

42.56.120

Charges for copying.

No fee shall be charged for the inspection of public records. No fee shall be charged for locating public documents and making them available for copying. A reasonable charge may be imposed for providing copies of public records and for the use by any person of agency equipment or equipment of the office of the secretary of the senate or the office of the chief clerk of the house of representatives to copy public records, which charges shall not exceed the amount necessary to reimburse the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives for its actual costs directly incident to such copying. Agency charges for photocopies shall be imposed in accordance with the actual per page cost or other costs established and published by the agency. In no event may an agency charge a per page cost greater than the actual per page cost as established and published by the agency. To the extent the agency has not determined the actual per page cost for photocopies of public records, the agency may not charge in excess of fifteen cents per page. An agency may require a deposit in an amount not to exceed ten percent of the estimated cost of providing copies for a request. If an agency makes a request available on a partial or installment basis, the agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the agency is not obligated to fulfill the balance of the request.

[2005 c 483 § 2. Prior: 1995 c 397 § 14; 1995 c 341 § 2; 1973 c 1 § 30 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW [42.17.300](#).]

FINAL BILL REPORT

ESSB 5597

C 341 L 95

Synopsis as Enacted

Brief Description: Copying public records.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators C. Anderson, Roach, Smith, Schow, McCaslin, Pelz, Hargrove, Long and Johnson).

Senate Committee on Law & Justice

House Committee on Government Operations

Background: The state Public Disclosure Act (PDA) prohibits state and local agencies from charging a fee for the inspection of public records. Agencies are authorized to impose a reasonable charge for providing copies of public records, and for use of agency equipment to copy public records, but the charge may not exceed the amount necessary to reimburse the agency for "actual costs incident to such copying."

Confusion exists as to exactly what copying costs agencies may be reimbursed for under the PDA. Some agencies charge for staff time to locate, copy, post, and refile the material. Some agencies charge for paper, equipment costs, envelopes and postage. Many agencies do not provide a breakdown of their costs, nor are they required to do so under the PDA.

Additionally, some agencies charge a first page differential for public records (e.g. \$5), with subsequent pages costing much less (e.g., \$.50).

Summary: Unless it creates an undue burden, state and local agencies are required to produce and make available a statement of the actual per page costs and other costs that they charge for providing photocopies of public records. This statement must contain the factors and manner used to determine the costs, if any.

In determining per page costs, agencies may include the cost of the paper and the per page cost of using agency copying equipment. Agencies may not include the costs of staff salaries and benefits, nor may they include general administrative or overhead charges, unless these costs are directly related to actual photocopying costs. If calculating this per page cost is unduly burdensome for an agency, a statutory amount of 15 cents per page is established.

In determining other costs, agencies may include direct shipping costs, such as the costs of envelopes or other containers, and the postage costs or delivery charges.

Agencies are prohibited from charging more than the actual per page costs that they establish and publish, or, if applicable, the statutory limit of 15 cents per page. Agencies are also prohibited from charging fees for locating public documents and making them available for copying.

These provisions do not supersede other statutory provisions specifying fees for copying public records, other than the provisions in the chapter on public disclosure.

Votes on Final Passage:

Senate	46	2	
Senate	40	8	(Senate reconsidered)
House	89	5	(House amended)
Senate	34	13	(Senate concurred)

Effective: July 23, 1995