

John Hummel District Attorney

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March 4, 2021

Mary Winters
City Attorney
City of Bend
mwinters@bendoregon.gov

Michael Satcher
Central Oregon Peacekeepers
centraloregonpeacekeepers@gmail.com

Dear Ms. Winters and Mr. Satcher:

Thank you for your prompt and thorough briefing of the issues. This letter constitutes my ruling in the matter of Mr. Satcher's appeal of the City of Bend's (City) denial of his request for a waiver of the entire fee the City quoted him to process his public records request.

Background

- On January 19, 2021, Mr. Satcher submitted a public records request to the City. The details of the request are set forth in the City's March 1, 2021 response, and there is no need to include the details here. In summary, the request asked for a large amount of records related to events at Pilot Butte Park on October 3, 2020, with a specific focus on the City of Bend Police Department's actions and inactions on that day; and the request asked more broadly for records related to community members and organizations identified as advocates for racial justice and community members and organizations that are identified as less than supportive of racial justice movements.
- On January 21, 2021, the City acknowledged the request and thereafter engaged in extensive correspondence with the requestor. Details of the back-and-forth between the parties is well documented in the City's response, and there is no need to include the details here.
- The final fee estimate provided by the City (after concluding that there were no documents responsive to some of Mr. Satcher's requests) was \$4,777.62 to complete 62 hours of work. This figure was calculated using the City of Bend's rate of \$71.06 an hour to search police records and \$66.21 per hour to search emails.
- In response to Mr. Satcher's request for a public interest fee waiver, the City reduced their estimate by 25 percent, resulting in a final quoted fee to Mr. Satcher of \$3,583.22.

- On February 25, 2021, Mr. Satcher filed with me his appeal of the City’s decision to grant him a 25 percent fee reduction, as opposed to the 100 percent waiver he sought. (Exhibit A)
- On March 1, 2021, the City of Bend filed with me their legal argument. (Exhibit B)
- On March 2, 2021, Mr. Satcher filed with me his legal argument. (Exhibit C)

Legal Standards

A public body may waive or reduce its fee for the processing of a public records request if doing so “is in the public interest because making the record available primarily benefits the general public.” ORS 192.324(5).

- Public Interest Test:
 - “Waiving or reducing fees is in the public interest “when the furnishing of the record has utility—indeed, its greatest utility—to the community or society as a whole.” State of Oregon Department of Justice Attorney General’s Public Records and Meetings Manual, June 2019, p. 23 (citing: *In Defense of Animals v. OHSU*, 199 Or App 160, at 189 (2005)).
 - In determining whether the requester has established a sufficient public interest, relevant factors include the requester’s identity, the purpose for which the requester intends to use the information, the character of the information, whether the requested information is already in the public domain, and whether the requester can demonstrate the ability to disseminate the information to the public. DOJ Manual, at p. 24
- Fee Waiver Denial Test:
 - “If disclosure is in the public interest, the public body’s decision to deny a request for a fee waiver or reduction must be reasonable under the totality of the circumstances.” State of Oregon Department of Justice Attorney General’s Public Records and Meetings Manual, June 2019, p. 22 (citing: *In Defense of Animals v. OHSU*, 199 Or App 160, at 188–90 (2005)).
 - A public body’s fee-waiver decision should consider (1) the character of the public interest in the particular disclosure, (2) the extent to which the fee impedes that public interest, and (3) the extent to which a waiver would burden the public body. DOJ Manual at p. 24 (citing DOJ Public Records Order, Sept 10, 2009, Rogers, at 3.))
 - Facts typically relevant to a fee-waiver decision include how narrowly tailored the request is to a matter of public interest; the time and expense needed to fulfill the request; the volume of the records requested; the need to segregate exempt from nonexempt materials; whether the fee was avoidable; and the ability of the requester to pay the fee. DOJ Manual at p. 25 (citing DOJ Public Records Order, Apr 24, 2009, Harbaugh, at 3.))

Legal Arguments

The City makes two main arguments:

1. The existence of a public interest in a public records request does not require a public body to waive all fees. Instead, public bodies have discretion whether to reduce or waive fees so long as their decision is reasonable under the totality of the circumstances, and the City's decision to reduce the quoted fee by 25 percent, as opposed to waiving the entire fee, was reasonable.
2. In reviewing a public body's fee waiver decision, a district attorney may only determine whether the public body acted within the permissible bounds of discretion; it may not substitute its judgement for that of the public body.

Mr. Satcher argues:

1. The fee quoted after the 25 percent reduction (\$3,583.22) impedes the public interest in the records he seeks.
2. Granting the fee waiver would not burden the City because recent spending by the City reveals they have adequate resources to process his request without collecting the fee they quoted him.
3. The fee is unreasonable, in part because it is arbitrary. In support, he argues the hourly fee quoted to him is significantly greater than an hourly fee quoted in another public records request processed by the City in the same time period as his request.

Legal Analysis

I. Public Interest

The parties agree that Mr. Satcher's request is in the public interest. I accept the parties' stipulation.

II. Fee Waiver Denial

As the City correctly points out, even when a public interest exists, governments are authorized to deny fee waiver requests, as long as their denial is "reasonable." State of Oregon Department of Justice Attorney General's Public Records and Meetings Manual, June 2019, p. 22 (citing: *In Defense of Animals v. OHSU*, 199 Or App 160, at 188–90 (2005)).

When assessing whether the City's denial of Mr. Satcher's fee waiver request was reasonable, Oregon law instructs me to consider the following three factors:

a. The character of the public interest in the particular disclosure:

The character of the public interest of this request is the assessment of how the City of Bend Police Department interacts with people and organizations identified as supporting racial justice and police reform compared to how the City of Bend Police Department interacts with people and organizations identified as supporting the police and being less than supportive of racial justice.

I am struck by the City's apparent uncomfortableness with the topic of Mr. Satcher's request. In a previous and similar public records request submitted by The Central Oregon Peacekeepers (the organization Mr. Satcher is a member of) in the same time period as the request that is the topic of the case-at-bar, the City presented an equivocal argument about the public interest test (*Barnett v. City of Bend, Deschutes D.A. Decision, 1/26/21*). In their brief submitted in this previous case, the City chose to parse the distinction between records that would reveal the City to be engaged in a contractual relationship with a purported white supremacist and the absence of such records, which would reveal the City to not be so engaged. I ruled then that this was a distinction without a difference.

In the case-at-bar, the City also equivocates. They begin their argument by conceding there is a public interest in Mr. Satcher's request. Then, in the "character of the public interest" section of their brief, they make a distinction between "official" investigations, and what they refer to as the Central Oregon Peacekeepers' "unofficial" investigation. The City acknowledges that the Peacekeepers "have a right to request records," and in the same sentence say "but they are not conducting any kind of official investigation." Why does this matter? If an "official" investigation was being conducted, it would likely be supported by subpoena power, so public records laws would not be implicated. In addition, any "official" investigation of government, by government, runs the risk of not being trusted by the people who are most impacted by government abuses: people of color and people of low income. The Peacekeepers seek records to assess whether our government was biased against them because of the

color of their skin (not white) and their advocacy for improving policing. They also seek these records to assess whether our government was biased in favor of other groups because of the color of their skin (white) and their unreserved support of law enforcement. The apparent public interest in this case, and the previous Peacekeeper appeal case, is klieg light glaring.

I'll repeat here, verbatim, how I addressed this issue in my previous decision:

The request must be viewed in the context of the moment in time it is made. After George Floyd was killed by police in Minneapolis in May of last year, hundreds of thousands of Americans took to our streets to demand equality in policing, and to ask for recognition of something simple in concept: that Black Lives Matter in the United States of America. In response, hundreds of thousands of Americans told black, brown, indigenous, and other people of color, in no uncertain terms, that their lives do not matter and that the police can do no wrong.

And on January 6, 2021, thousands of primarily white Americans stormed the United States Capitol, many spewing vial, racist, and demonstrably false rants about majority black cities rigging the Presidential election. These insurrectionists attempted to stop, by force, the certification of the election of President Biden, and install as our next President their preferred candidate, former President Donald Trump. In the process of doing so, they murdered a Capitol Police Officer who gave his life defending our country.

The character of the public interest present in this case could not weigh more heavily in favor of a fee waiver. An investigation of government conducted by an organization that advocates on behalf of people who have been historically oppressed by government, during a period in our country's history when white supremacists tried to overturn, by force, the results of a free and fair election, should be embraced.

b. The extent to which the fee impedes the public interest:

The fee quoted by the City, after their 25 percent reduction, was \$3,583.22. Mr. Satcher represents that the Central Oregon Peacekeepers is comprised of volunteers, and the organization does not have the resources to pay this fee. The City does not dispute this representation.

The City points out that they suggested options to Mr. Satcher for how he could narrow and focus his search so as to reduce the amount of time the City would have to spend processing his request, which would result in a lower cost estimate. This option was rejected by Mr. Satcher, because he says the result of limiting the scope of his request might be that he and his organization fail to request records that reveal the City acted “appropriately” in the matters that are the subject of his request (and, while Mr. Satcher did not say this, the implication he makes is that by limiting the scope of his request, he might also fail to request records that reveal the City acted inappropriately in the matters that are the subject of his request).

c. The extent to which a waiver would burden the public body:

The City argues that they are under resourced in comparison to other cities in Oregon.¹ They also share that they have one only one person who processes public records requests, and she works only two hours per week on this task. Mr. Satcher responds by listing examples of recent large expenditures of money by the City, and argues by implication that the issue is not whether waiving the fee would impose a “burden” on the City, the issue is about priorities. Satcher argues that the City finds resources for what it wants to do and uses a lack of resources excuse to evade doing what is not a priority for them, and processing public records requests is not a priority for them.

Here’s the nut of the City’s argument:

To require City staff to expend at least 65 hours of time on a request where the requestor has refused to narrow or focus the scope would improperly discount the City’s judgment that doing the work without charging the fee allowed by state law and City policy would be an unreasonable burden.

¹ The City’s permanent tax rate is too low, and Oregon law impedes their ability to raise it. City staff are masters of stretching limited dollars, but at the end of the day, service to the public is compromised. I encourage the State Legislature to address barriers impeding cities with low permanent tax rates from raising the revenue necessary to provide their residents with the services they desire and deserve.

I don't read this argument to say that expending the 65 hours would be a burden. Rather, the City says that expending the 65 hours of work "without charging the fee" would constitute a burden. How so? Is the City arguing that if they do not collect this fee, the two hours a week of staff time that they devote to the processing of public records would be in jeopardy? Might they cut down to one hour a week devoted to processing public records requests?

Mr. Satcher's specific examples of recent City expenditures does not carry the day. All public bodies have to pay salaries, buy vehicles, process permits, and perform a myriad list of other duties that we rely on our municipalities to perform. Cherry picking one or two examples of things a public body spent money on to refute an argument from the public body that granting a fee waiver would constitute a burden, is not helpful to assessing the big picture.

Rather than focusing on the examples cited by Mr. Satcher, I consider the big picture: The City of Bend governs a community of 100,000 people, a staff of approximately 661 employees, a biennial budget of \$352,420,350, and devotes a mere two hours a week of one staff person's time for the processing of public records requests. While money does not grow on trees, and the City is under resourced compared to other cities, priority choices have been made by City management to under resource the processing of public records.

d. Arbitrariness

The three "reasonableness" factors previously discussed do not constitute an exclusive list of factors that can be considered by district attorneys or courts reviewing denial of fee waiver arguments. Case specific factors can and should always be addressed when relevant to the analysis. In the case-at-bar, one of the points Mr. Satcher makes in support of his argument that the denial of his fee waiver request was unreasonable is that the hourly rate quoted to him by the City was arbitrary. In support of his argument, Mr. Satcher points out that the City of Bend quoted the Peacekeepers a significantly lower

hourly rate in the previous case they recently appealed to me; I reviewed this case so know that Mr. Satcher is correct. I understand that the case-at-bar involves significantly more work than the previous case, which would explain the City estimating that more hours are required to process this case than that case. Mr. Satcher does not challenge the additional hours estimated in this case. Mr. Satcher wonders why the hourly rates are wildly different in the two cases; I do too.

CONCLUSION

Mr. Satcher's public records request is in the public interest. For the reasons explained in the body of my decision, the public interest in the subject matter of this request, at this moment in time, is immense and of significant importance. The City is correct that they worked with Mr. Satcher to find an accommodation that would reduce the cost estimate they provided to him (by encouraging him to narrow the scope of his request). The City is also correct that they granted Mr. Satcher a 25 percent fee reduction. The issue thus becomes whether the City's failure to waive the remaining 75 percent of the fee was reasonable.

This is a close call. I commend the City for working with Mr. Satcher and granting him a partial fee reduction. In retrospect, this would have been an appropriate case for the City or Mr. Satcher to take to Oregon's Public Records Advocate, Todd Albert, for a facilitated dispute resolution process, as set forth in ORS 192.464. Obviously, this did not happen.

The City is correct that Oregon law does not grant me authority to reduce a fee charged by a public body: I have to either find the denial of a complete waiver to be unreasonable, or I have to uphold the fee set by the City. If I was bestowed with authority to reduce the hourly rate quoted by the City I would have ordered a reduction to the hourly rate quoted by the City in the previous Peacekeepers' case, then I would have reduced this fee by 50 percent to reflect the significant public interest in involved in

the subject matter of the request, then declined to eliminate the fee entirely due to the amount of records involved and the complexity of the required search and review.

In the all-or-nothing posture of this case, the facts and law tip in favor of Mr. Satcher. I find the denial of Mr. Satcher's fee waiver request was unreasonable.

The two facts most important in my analysis were the fact the City devotes only two hours of staff time per week to processing public records cases, and that the fee quoted in this case was arbitrary, as evidenced by the City quoting another hourly rate in a similar case.

Another important factor was the City's tacit de-legitimization of the work being done by the Peacekeepers, as evidence by the "unofficial" label the City placed on their work.

It is unreasonable to devote a mere two hours of staff time per week to processing public records requests, and to then complain that your request will overly burden the City.

It is unreasonable to quote an hourly rate to process a public records requests one week, that is significantly more expensive than an hourly rate that was quoted to process a public records request a few weeks previously (absent a change in City policy that is noticed to the public).

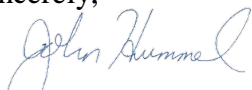
It is unreasonable to treat differently a public records request from an "official" source than a public records request from an "unofficial" source.

For these reasons, I rule in favor of Mr. Satcher. The City of Bend shall waive the fee to process this request and provide nonexempt material response to Mr. Satcher's request. The default length of time to comply, per ORS 192.407(2)(a), is seven days, but the statute grants me authority to extend this time when "appropriate." Because of the volume of documents the City will have to review, I extend the seven-day deadline to 30 days. By 5:00 PM on April 2, 2021, the City must either provide Mr. Satcher with nonexempt records responsive to his request, or seek review of my decision in Deschutes County Circuit Court. Alternatively, if both parties want to pursue a dispute resolution process with

Oregon's Public Records Advocate, and Advocate Albert accepts the case, I will consider extending the City's 30-day deadline.

Thank you again for your timely and thoughtful briefing of this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Hummel".

John Hummel
District Attorney

EXHIBIT A

Jessica Chandler

From: John Hummel
Sent: Thursday, February 25, 2021 1:40 PM
To: Jessica Chandler
Subject: FW: Public Interest Fee Waiver Appeal

Open a public records appeal file.



John Hummel
Deschutes County District Attorney

<u>Mailing Address</u>	<u>Physical Address</u>
1164 NW Bond St. Bend, OR 97703 john.hummel@dca.us 541-317-3134	1100 NW Bond St. Bend, OR 97703

From: John Hummel
Sent: Thursday, February 25, 2021 1:39 PM
To: Mary Winters <mwinters@bendoregon.gov>
Cc: Central Oregon Peacekeepers <centraloregonpeacekeepers@gmail.com>
Subject: RE: Public Interest Fee Waiver Appeal

Hello Mary,

Pursuant to ORS 192.324(6), Mike Satcher (copied on this email) petitioned my office to review what he describes as the City of Bend's denial of his request for a fee waiver for a public record request(s) he submitted to the Police Department.

Please provide me with the public record request(s) that Mr. Satcher submitted to your office. Also, please tell me if the City did in fact deny his request for a fee waiver, and if the City did, tell me the basis for the decision to deny the request. Finally, provide me with any legal argument you want me to consider. After I receive this information from you I'll offer Mr. Satcher the opportunity to reply, and then I'll make my decision.

Pursuant to ORS 192.311 and 192.478, I have to issue my decision within seven days, which will be March 4. So that I can meet my deadline, please provide me with the requested information by Noon on March 1. Mr. Satcher's deadline to reply will be 8:00 AM on March 3.

Thank you,
John Hummel



John Hummel

Deschutes County District Attorney

<u>Mailing Address</u>	<u>Physical Address</u>
1164 NW Bond St. Bend, OR 97703 john.hummel@dca.us 541-317-3134	1100 NW Bond St. Bend, OR 97703

From: Central Oregon Peacekeepers [<mailto:centraloregonpeacekeepers@gmail.com>]

Sent: Thursday, February 25, 2021 1:10 PM

To: John Hummel <John.Hummel@dca.us>

Subject: Public Interest Fee Waiver Appeal

District Attorney Hummel,

I'm writing to you to file an appeal after having been denied a public interest fee waiver for a records request I submitted to the City of Bend.

The records request is part of an ongoing investigation our organization is conducting regarding Bend Police and their handling of the October 3rd attacks at Pilot Butte Park, surveillance conducted by BPD on BLM organizers and activists, and of BPD's relationships with counter protesters.

As you know, this is the second time the City has denied a fee waiver for records of this kind. As they did before, they've cited a "duty to collect" argument for why they are insisting on the fee.

I'm prepared to argue for why this request satisfies every element of the public interest test, and for why the City's denial is arbitrary and capricious.

Thank you for your time.

- Mike Satcher
Central Oregon Peacekeepers

EXHIBIT B



CITY OF BEND

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MAYOR
Sally Russell

MAYOR PRO TEM
Gena Goodman-Campbell

CITY COUNCILOR
Barb Campbell
Anthony Broadman
Melanie Kebler
Megan Perkins
Rita Schenkelberg

CITY MANAGER
Eric King

CITY ATTORNEY
Mary A. Winters

March 1, 2021

Via email and first class mail

John Hummel
Deschutes County District Attorney
1164 NW Bond Street
Bend, OR 97703

Re: Mike Satcher fee waiver appeal

Dear John:

This responds to your request for information and legal argument regarding Mr. Satcher's ("the requestor") appeal of the City's decision to offer a 25% reduction in the fee to complete a public records request. The requestor demanded a complete waiver of the fee. We hope you will find the following background and statement of the City's position useful.

Background

The requestor submitted a public records request to the City on January 19, 2021. The request is attached. The broad request encompassed what the City identified as five different requests or categories of records, created or held by employees, officers, or officials of the City of Bend:

1. All records that discuss or pertain to events at Pilot Butte Neighborhood Park on October 3, 2020, including but not limited to:
 - a. All records related to the planning and organization by Bend Police ahead of the October 3 racial justice event at the park.
 - b. All records related to the planning and organization by Bend Police ahead of the October 3 "pro-Trump" rally originally planned by Nicholas Dieringer to take place at Drake Park.

- c. All records pertaining to surveillance conducted by Bend Police or any organizations or persons Bend Police believed to be involved in planning or executing those events of October 3, 2020, whether before, on, or after that date.
2. All records regarding the events at Pilot Butte Park on October 3, 2020.
3. All records discussing or pertaining to the following organizations or persons in existence or created by the time of the January 19, 2021 request:
 - a. Central Oregon Peacekeepers
 - b. Central Oregon Diversity Project
 - c. Central Oregon Black Leaders Assembly
 - d. Bend for BLM
 - e. Verbal Judo Institute
 - f. Proud Boys
 - g. Patriot Prayer
 - h. Three Percent Militia
 - i. Oregon Zone 5
 - j. Peoples' Rights Network
 - k. Luke Richter
 - l. Joslyn "Josie" Stanfield
 - m. Kerstin Arias
 - n. Adrianna Aquarius
 - o. Mylea Parker
 - p. Riccardo Waites
 - q. Nutasha Duran
 - r. Mike Satcher
 - s. Stephanie VanKlootwyk
 - t. John "Jay" Wells
 - u. Nicholas Dieringer
 - v. Jake Strayer
 - w. Michael Green
 - x. Kalan Roberts
 - y. Alan Stout
 - z. BJ Soper
 - aa. Jerrad Robison
 - bb. Adam Sutterfield
 - cc. Laura Jones
 - dd. Matt Heagy
 - ee. Scott Martin
 - ff. Stewart Poths
 - gg. Greg Walker
 - hh. Kyle Wayne Zollman
 - ii. Bart Lewis

4. Names of all Bend Police officers and/or employees on scene at Pilot Butte Neighborhood Park on October 3, 2020, the times they were present, the capacity in which they were present, and all records created by those officers and/or employees on October 3, 2020

5. Any communications made by any officer, employee, or elected official of the City of Bend and/or Bend Police Department make on the social media platform Parler at any time on or before the time of the January 18, 2021 public records request. This includes communications from or to the Bend Police Department Parler account, applies to all officers, employees, or elected officials of the City of Bend and/or Bend Police Department while on duty, acting (or reasonably expected to acting) in an official capacity, on City property or in a City vehicle,

City Recorder Robyn Christie acknowledged the request on January 21, 2021, and thereafter engaged in extensive correspondence with the requestor, all of which is attached along with the public records request.

On February 3, 2021, Ms. Christie sent a letter to the requestor discussing the request and offering an opportunity to clarify or narrow the scope. Ms. Christie also alerted the requestor to the possibility that some exemptions from disclosure could apply to some of the records sought. She also relayed an initial estimate of some of the time and expense involved in completing the request, subject to further clarification. She indicated that Requests 1 and 2 were currently too broad to prepare an estimate. She estimated an estimated 5.67 hours for Request 3, at an estimated cost of \$473.97. She responded to Requests 4 and 5 explaining that there were no responsive records. She asked the requestor if he could narrow any portions of requests 1-3 to reduce the cost and time required to respond.

After further email correspondence with the requestor, Ms. Christie sent another letter on February 9, 2021. She again informed the requestor that some exemptions could apply, and provided a more detailed estimate of time and expense based on the requestor's decision to not narrow or focus the scope of the request. On the question of the request for a complete fee waiver, Ms. Christie offered a fee reduction of 25%, either in total or for any of the individual items requested. She cited the many hours of City employee time required to fulfill the request, the requestor's refusal to narrow the scope to reduce time and expense, and the need to review potentially responsive records for potential exemptions. Ms. Christie wrote:

"By way of explanation, the amount of work required to complete this request is extensive, representing many hours of City employee time. While we asked if you would consider narrowing the scope of the request, which could have lessened the time, complexity, and expense, you did not wish to do so. Many of the responsive records could be subject to various exemptions, including ORS 192.345(18 and (23). It is your right to make a broad request, but the City has a responsibility to recover at least a substantial portion of its costs in providing the records when so much City employee time is required. If you reconsider your position on narrowing the scope of the request, please let us know."

Ms. Christie informed the requestor she had identified 6,545 potentially responsive email messages and that would take at least 65 hours of City employee time to review those messages assuming 100 messages reviewed per hour. Combined with the time from other City employees, the fee estimate for the work known so far is approximately \$5,000 based on the hourly rates of the personnel qualified to do the work.¹ A 25% discount would save the requestor approximately \$1,250, a substantial amount. The City Recorder explained there would also be time and expense to search Police records, detailing the process the City would use to be responsive. Ms. Christie further offered a detailed breakdown for the time and expense involved. She explained staffing limitations, and offered to provide records on a rolling basis as they were reviewed, to reduce wait time for receiving responsive records. See *February 9, 2021 letter*.

Further correspondence ensued. The requestor seemed to believe the City was required to agree to offer a complete fee waiver if the request was in the public interest. On February 23 and 25, 2021, as part of an ongoing correspondence, Ms. Christie told the requestor the City had some discretion on whether to reduce or waive fees, and that the time required, volume of records, need to review materials, and the choice to not narrow the scope of the request as presented to reduce the expense, and the need for the City Recorder and other staff to set aside other important work, did not warrant a full fee waiver. She further asked, again, if he would like to refine the request. She also asked if he would consider payment for a smaller sub-set of the request or wanted discuss other options.

The requestor filed this appeal on February 25, 2021. The appeal does not contest whether the fee is reasonable, asserting only that the City is required to completely waive the fee.

Response

Public bodies are authorized to establish fees reasonably calculated to reimburse the public body for its actual cost of making public records available. ORS 192.324(4)(a). The City has done so through its adopted Public Records Administrative Policy, which provides that after the first 15 minutes of staff time, the City will estimate the cost for the City staff time of locating the requested records. Decisions on requests for fee waivers are made in the discretion of the custodian of public records.

The decision whether to reduce or waive fees is within the reasonable discretion of the City. ORS 192.324(5) governs public records fee waivers, providing the following:

The custodian of a public record may furnish copies without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public.

The City does not contest that there is a public interest component to this request. However, the existence of a public interest does not require the public body to waive fees in every instance. Instead, the public body has discretion whether to reduce or waive fees so long as

¹ The amount is based on 65 hours at \$66.21/hour, and 5.67 hours at \$71.06 per hour.

the decision is reasonable under the totality of the circumstances. See *In Defense of Animals v. Oregon Health Sciences University*, 199 Or App 160, 187–89 (2005). A public body's fee waiver decision should consider: 1) the character of the public interest in the particular disclosure; 2) the extent to which the fee impedes that public interest; and 3) the extent to which a waiver would burden the public body. Attorney General Public Records and Meetings Manual, June 2019, p. 24.

Fact typically relevant to a fee-waiver decision include how narrowly tailored the request is to a matter of public interest; the time and expense needed to fulfill the request; the volume of records requested; the need to segregate exempt from nonexempt material; whether the fee was avoidable; and the ability of the requestor to pay the fee. Attorney General's Public Records and Meetings Manual, June 2019, p. 25.

In reviewing the public body's fee waiver decision, the district attorney may only determine whether or not the agency acted within the permissible bounds of discretion; it may not substitute its judgment for that of the public body. ORS 192.324(6); *Wood*, Multnomah County District Attorney Order 18-50; *Terdal*, Multnomah County District Attorney Orders 19-37, 19-38.

The requestor wrote that his organization, Central Oregon Peacekeepers, is conducting an ongoing investigation of the Bend Police Department regarding the handling of the October 3, 2020 events at Pilot Butte Park, including surveillance of BLM organizers and activists, and any relationships with counter protestors. The requestor and his organization have a right to request records, but they are not conducting any kind of official investigation or inquiry. Here, where the requestor has made no specific allegations of wrongdoing in presenting the request as part of an unofficial investigation, the character of the public interest at stake is not as clear as it might be in some other cases. Indeed, the character of the public interest in these particular requested disclosures is obscured by the breadth of the five requests, the second of which seeks "all records regarding the events at Pilot Butte Park on October 3, 2020." The requests themselves are not sufficiently narrowly tailored to the matter of public interest cited by the requestor to justify a full waiver of the fee, especially considering the volume of the records requested (6,545 records) and the significant time and expense needed to fulfill the request (65 hours). See Attorney General's Public Records and Meetings Manual, June 2019, p. 25 (citing facts relevant to the fee-waiver decision).

Accordingly, the City offered to apply the reduced fee to certain parts of the request, at the requestor's option, or to the request as a whole. The requestor rejected that option. The City offered the requestor the choice, many times, so as to minimize the extent to which the fee might impede the public interest. The requestor could have agreed to focus the work, and/ or to prioritize the parts of the request he believed were most important, or otherwise work with the City based on the information provided about staff hours and the workload for limited City staff. He had an opportunity to advance what he viewed as the most important interests by prioritizing any aspects of the very broad request he chose to reduce time and costs. If the fee is an impediment to the public interest, the City has done what it can to reduce the impediment by agreeing to reduce the cost of an extremely broad request by 25%, and demonstrating its willingness to work with the requestor to structure the work and the cost at

the requestor's option. The requestor has made no comparable efforts and the impediment of the fee, to extent there is one, cannot be laid at the City's feet alone.

The requestor's refusal to even consider narrowing the scope of the request is another factor showing the requestor's choices could have avoided or reduced some of the expense and resulted in a lower fee. The unwillingness to collaborate on options for focusing or narrowing the request is playing a role in preventing the process from moving forward, and satisfying the public interest in ultimately producing the records that are subject to disclosure.

In this particular case, a complete fee waiver would burden the City, and the City's decision to reduce the fee by 25% is objectively reasonable. The City estimates it will take at least 65 hours of staff time to complete the request.² The requestor does not challenge that time estimate, but insists a complete waiver is required. The City informed the requestor in the February 9, 2021 letter that it had a responsibility to recover at least some of the actual costs when so much staff time would be required to complete the request.

The City can demonstrate why it is important to recover its costs in fulfilling public records requests. Bend is a city that is an exemplar of the need to manage resources and to generally do more with less. The City of Bend's permanent tax rate is relatively low compared to many other cities in Oregon.³ Looking to Oregon cities locally and east of the Cascades for comparisons, Bend's permanent tax rate of \$2.80/\$1,000 is less than Redmond (\$4.41/\$1,000), Prineville (\$3.02/\$1,000), and Klamath Falls (\$5.44/\$1,000). Around the state, other mid-size cities with higher permanent rates than Bend include Gresham (\$3.61/\$1,000), Hillsboro (\$3.67/\$1,000), and Medford (\$5.30/\$1,000). Bend's low permanent tax rate impacts its ability to deliver services, which extends to its ability to maintain the staffing needed to manage and deliver those services.

Responding to public records request is a small portion of the City Recorder's responsibilities. The position reports to the City Manager and is the Clerk to the Council, Elections Officer, advises on citywide on records management and is responsible for additional management and administrative duties. In 2020, she received over 300 records requests. She has two hours of time dedicated each week for coordinating responses to records requests.

The City Recorder is the only member of her work unit with the training, expertise, and experience to efficiently assess and process public records requests of this kind (significant email request). Understandably, there is limited access to the City's email system. Due to the broad nature of the request, the email search was conducted across the entire organization, including over 1000 email accounts. The limited access is necessary due to potential access to confidential or sensitive information. The review will require reading each message, identifying and redacting exempt material, and tracking a large volume of records.

² This does not include time for additional Police Department staff or time for Legal review, if required.

³ See the 2016 League of Oregon Cities 2016 City Property Tax Report, pp. 23-37, at https://www.orcities.org/application/files/4015/7480/9685/City_Property_Tax_Report_2016.pdf

As the fact finder, the district attorney may not substitute their judgment for the City's in reviewing the denial of a fee waiver; their role is only to determine whether the City acted within the permissible bounds of discretion. ORS 192.324(6). To require City staff to expend at least 65 hours of time on a request where the requestor has refused to narrow or focus the scope would improperly discount the City's judgment that doing the work without charging the fee allowed by state law and City policy would be an unreasonable burden.

There is additional support for the City's judgment from fee waiver cases where agency decisions to deny waivers in less comprehensive requests than this one have been upheld. For example, in *Wilson*, Multnomah County District Attorney Order 18-48, the requestor demanded a complete fee waiver from Portland State University for a request the university estimated would take 15.5 hours of staff time. The District Attorney denied the appeal and concluded the university did not abuse its discretion, citing the breadth of the request and the fact that the requestor did not work with the university to focus or limit the scope of the request.

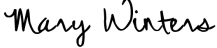
The situation here is similar. If it is not unreasonable for an agency to deny a fee waiver request when 15.5 hours of time are involved, it cannot be unreasonable to offer a 25% reduction but not a complete waiver when over 65 hours of time will be required. *Cf Woodworth*, Attorney General Public Records Order No. 291011-GA0126-17, Sept. 5, 2017 (finding that a 20% fee reduction was reasonable where 56 hours of staff time was needed to process a broad request and the requestor declined the public body's "invitations to consider ways in which its request might be narrowed").

If you find that the City's decision in this request is not reasonable, where at least 65 hours of staff time are required and the requestor has refused to even entertain narrowing, prioritizing, or focusing any aspect of his broad request, you will be displacing the City's judgment and signaling that any request with a public interest element demands a complete fee waiver. That is simply not what the law allows of you or requires of the City. See Attorney General's Public Records and Meetings Manual, June 2019, p. 25 ("A public body may consider the aggregate effect of numerous public requests from the same requestor in assessing its burden.")

The City remains willing to work with the requestor or his organization if there are ways to more effectively complete this request.

Please let us know if we can offer any additional information or answer any questions.

Sincerely,

DocuSigned by:


FOC398BD345A438...

Mary Winters, City Attorney
mwinters@bendoregon.gov

Enclosures

From: [Central Oregon Peacekeepers](#)
To: [Robyn Christie](#)
Cc: [Barbara Campbell](#)
Subject: Public Records Request
Date: Tuesday, January 19, 2021 8:48:28 AM

CAUTION: External Email. Use caution when opening attachments, clicking links, or responding to this email.

City Recorder Robyn Christie,

This email is to serve as notification that the Central Oregon Peacekeepers as a "partnership, firm or association" (as described by the Oregon Department of Justice), and Michael Satcher as an individual, are requesting the public records described below.

Given the limited utility of the City's online request portal, and the delays we have experienced in the past with public records requests when using it, we are sending this request to you in this form instead. We've taken care to ensure that we have satisfied all requirements for a public records request in accordance with ORS 192.324, and with Bend City Policy ADM 2019-12. All information required by law and asked for on the portal are provided below:

Name: Michael Satcher

Phone Number: (512) 909 -6483

Email Address: mikesatcher@gmail.com centraloregonpeacekeepers@gmail.com

Street Address: 16962 Buck Horn Drive

City: Sisters

State: Oregon

Zip Code: 97759

The request is as follows:

....

1. In the context described below, and in accordance with ORS 192.324 (1) I am requesting the following records on my own behalf and on behalf of the Central Oregon Peacekeepers. We are requesting ALL records (as described below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) that:
 - a. Discuss or pertain to events at Pilot Butte Neighborhood Park on October 3rd, 2020. These records shall include (but not be limited to):

- i. All records (as described below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) related to the planning and organization by Bend Police ahead of the October 3rd racial justice event at Pilot Butte Neighborhood Park.
 - ii. All records (as described below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) related to the planning and organization by Bend Police ahead of the October 3rd "Pro-Trump" rally originally planned by Nicholas Dieringer to take place at Drake park.
 - iii. All records (as described below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) pertaining to Surveillance conducted by Bend Police of ANY organizations or persons Bend Police believed to be involved in the planning or execution of those events on October 3rd.
 1. This shall include all surveillance of those organizations and persons conducted both BEFORE, ON and AFTER October 3rd, 2020.
 - iv. Any record (as described below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) of any kind created by any officer or employee of the City of Bend and/or Bend Police Department in any way related to the events at Pilot Butte Neighborhood Park on October 3rd.
 - v. These records shall include (but not be limited to) ALL records (as described below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) created by Corporal Jeff Frickey on that date or about that day (October 3rd, 2020).
- b. Discuss or pertain to the following organizations or persons, at any time on or before the filing of this request (1/18/2021):
- i. Organizations: Central Oregon Peacekeepers, the Central Oregon Diversity Project, The Central Oregon Black Leaders Assembly, Bend for BLM, the Verbal Judo Institute, the Proud Boys, Patriot Prayer, the Three Percent Militia, Oregon Zone Five, The People's Rights

Network,

- ii. Persons: Luke Richter, Joslyn "Josie" Stanfield, Kerstin Arias, Adrianna Aquarius, Mylea Parker, Riccardo Waits, Nutasha Duran, Mike Satcher, Stephanie VanKlootwyk, John "Jay" Wells, Nicholas Dieringer, Jake Strayer, Michael Green, Kalan Roberts, Alan Stout, BJ Soper, Jerrad Robison, Adam Sutterfield, Laura Jones, Matt Heagy, Scott Martin, Stewart Poths, Greg Walker, Kyle Wayne Zollman, Bart Lewis.

2.

We are also requesting:

- a. The names of all Bend Police officers and/or employees on scene at Pilot Butte Neighborhood park on October 3rd, 2020,
 - i. the times they were present,
 - ii. the capacity in which they were present.
 - iii. And all records (as described above and in accordance with the definition of "record" described by the Oregon Dept. of Justice) that were created by those officers and/or employees on October 3rd, .
- b. Any communications made by any officer, employee, or elected official of the City of Bend and/or Bend Police Department made on the social media platform "Parler", at any time on or before the filing of this request (1/18/2021):
 - i. This shall include all communications from or to the official Bend Police Department Parler account.
 - ii. All communications from or to any officer or employee of the Bend Police Department on the social media platform "Parler" sent or received while on Bend Police Department property, and/or inside a Bend Police Department vehicle, and/or while that employee or officer was or could be reasonably expected to be performing in an official capacity. This shall include all posts sent or received from personal accounts on the social media platform "Parler", if they were sent or received while the employee or officer was on duty and acting in an

official capacity.

iii.

All communications from or to any employee or elected official of the City of Bend on the social media platform "Parler" sent or received while on City of Bend property, and/or inside a City of Bend vehicle, and/or while that employee or elected official was or could be reasonably expected to be performing in an official capacity. This shall include all posts sent or received from personal accounts on the social media platform "Parler", if they were sent or received while the employee or elected official was on duty and acting in an official capacity.

3.

The requested records described above shall include all those in the possession of or rightfully maintained by:

a.

The City of Bend, any employee of the City of Bend, or any elected official of the City of Bend, including (but not limited to): the City Manager, the Mayor, and all City Councilors (past and present).

b.

The Bend Police Department, any officer of the Bend Police Department, or any employee of the Bend Police Department, including (but not limited to): the Chief of Police Mike Krantz, The Captain of the Patrol Division Nick Parker, and Corporal Jeff Frickey.

c.

These shall include any record in the possession of the City of Bend and/or Bend Police Department that may not have been originally prepared by the City of Bend and/or the Bend Police Department, but that are owned, used, or retained by the City of Bend and/or Bend Police Department.

4.

We are requesting ALL records rightfully maintained by the City of Bend and/or the Bend Police Department, as described by Oregon law as a "public record", in accordance with the definition of "record" described by the Oregon Dept. of Justice. These records shall include:

a.

All "writings" relevant to the matters, organizations, and persons described above. Writings shall include handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings.

- b. These writings shall include those on ANY medium, including (but not limited to) information maintained in “machine readable or electronic form.”
- c. Examples of the sorts of writings we are requesting shall include (but not be limited to) all paper documents, e-mails, electronic documents (e.g., Word, Excel, and PDF formats or equivalent), photographs, and audio or video recordings.

5.

In accordance with ORS 192.324 (2), the City of Bend and/or Bend Police Department shall, within 5 business days:

- a. Confirm that the City of Bend and/or the Bend Police Department are the custodians of the requested records. Or,
- b. Inform us that the the City of Bend and/or the Bend Police Department are not the custodians of the requested records.Or,
- c. Notify us that the City of Bend and/or the Bend Police Department is uncertain whether the City of Bend and/or the Bend Police Department are the custodians of the requested records.
- d. The date of this request is 1/19/2021. According to ORS 192.324 (2), the City of Bend and/or the Bend Police Department shall respond in the manner described above no later than 1/26/2021.

6.

Upon receipt of this request (1/19/2021), the City of Bend and/or Bend Police Department shall (as soon as reasonably possible but not longer than 10 business days):

- a. Complete the public records request, or,
- b. Provide a written statement that the City of Bend and/or the Bend Police Department are still processing the request, and a reasonable estimated date by which the City of Bend and/or the Bend Police Department expects to complete it's response.
- c.

The date of this request is 1/19/2021. According to ORS 192.324 (2), the City of Bend and/or the Bend Police Department shall respond in the manner described above no later than 2/02/2021.

7.

If there exist any records (as described above and in accordance with the definition of "record" described by the Oregon Dept. of Justice) fitting the descriptions above, but that the City of Bend and/or the Bend Police Department believe are exempt from disclosure, then:

a.

The City of Bend and/or Bend Police Department must describe their number, and the reason for the withholding of them, each and separately.

b.

These exemptions must be described (each and separately), citing the specific language within ORS 192.355 that qualifies them for exemption.

8.

In accordance with ORS 192.324 (5), the records requested are "in the public interest because making the records available primarily benefits the general public."

a.

Release of the records requested will benefit the general public by answering outstanding questions about the Bend Police Department and City of Bend handling of the October 3rd violence at Pilot Butte Neighborhood Park.

i.

This information is not currently in the public domain.

ii.

Fees will inhibit our ability to obtain these records and report on them.

b.

Neither myself nor the Central Oregon Peacekeepers will derive a personal benefit (financial or otherwise) from the disclosure of these records. It is our intention to deliver these documents to the general public, in their entirety and free of charge.

c.

The Central Oregon Peacekeepers have the capacity to deliver these records to the public. Our various platforms regularly reach thousands or tens of thousands of readers in Central Oregon and beyond.

d.

For these reasons, we argue that our request for records satisfies every

requirement of the “public interest test” described in the Oregon Attorney General’s “Public Records and Meetings Manual”.

i.

Therefore, we believe we qualify for a fee waiver in accordance with ORS 192.324 (5).

From: [Central Oregon Peacekeepers](#)
To: [Robyn Christie](#)
Cc: [Barbara Campbell](#)
Subject: Re: Public Records Request
Date: Thursday, January 21, 2021 3:02:11 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

City Recorder Christie,

Thank you for your response, but there are two important points of clarification required:

- 1) ORS 192.324 (2) requires that your acknowledgement of receipt include a statement about your custodianship of the records requested. Your email did not explicitly confirm that you are the custodian of the requested records, but we are taking it to mean that you are.
- 2) ORS 192.329 (5) allows you ten (not fifteen) days to complete the request or provide an estimate for completion. As you have acknowledged receipt today, then in accordance with the statute we will expect completion of the request (or an estimate for completion) no later than ten business days from today.

Thank you,

The Central Oregon Peacekeepers.

On Thu, Jan 21, 2021 at 1:17 PM Robyn Christie <rchristie@bendoregon.gov> wrote:

In accordance with ORS 192.324, this is to acknowledge our receipt of your request for records.

We will provide the records or provide an estimate of the time and fees for disclosure of the public records within fifteen days.



Robyn Christie | City Recorder

City of Bend 541-388-5517



From: Central Oregon Peacekeepers <centraloregonpeacekeepers@gmail.com>
Sent: Tuesday, January 19, 2021 8:48 AM
To: Robyn Christie <rchristie@bendoregon.gov>
Cc: Barbara Campbell <bcampbell@bendoregon.gov>
Subject: Public Records Request

CAUTION: External Email. Use caution when opening attachments, clicking links, or responding to this email.

City Recorder Robyn Christie,

This email is to serve as notification that the Central Oregon Peacekeepers as a "partnership, firm or association" (as described by the Oregon Department of Justice), and Michael Satcher as an individual, are requesting the public records described below.

Given the limited utility of the City's online request portal, and the delays we have experienced in the past with public records requests when using it, we are sending this request to you in this form instead. We've taken care to ensure that we have satisfied all requirements for a public records request in accordance with ORS 192.324, and with Bend City Policy ADM 2019-12. All information required by law and asked for on the portal are provided below:

Name: Michael Satcher

Phone Number: (512) 909 -6483

Email Address: mikesatcher@gmail.com centraloregonpeacekeepers@gmail.com

Street Address: 16962 Buck Horn Drive

City: Sisters

State: Oregon

Zip Code: 97759

The request is as follows:

....

1.

2. In the context described

3. below, and in accordance with ORS 192.324 (1) I am requesting the following records on my own behalf and on behalf of the Central Oregon Peacekeepers. We are requesting ALL records (as described below and in accordance with the definition of "record" described

4. by the Oregon Dept. of Justice) that:

5.

a.

b. Discuss or pertain to events

c. at Pilot Butte Neighborhood Park on October 3rd, 2020. These records shall include (but not be limited to):

d.

i.

ii. All records (as described

iii. below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) related to the planning and organization by Bend Police ahead of the October 3rd racial justice event at Pilot Butte Neighborhood Park.

iv.

ii.

iii. All records (as described

iv. below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) related to the planning and organization by Bend Police ahead of the October 3rd "Pro-Trump" rally originally planned by Nicholas Dieringer to take place at Drake

v. park.

vi.

iii.

iv. All records (as described

v. below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) pertaining to Surveillance conducted by Bend Police of ANY organizations or persons Bend Police believed to be involved in the planning or execution of those

vi. events on October 3rd.

vii.

1.

2. This shall include all surveillance

3. of those organizations and persons conducted both BEFORE, ON and AFTER October 3rd, 2020.

4.

iv.

v. Any record (as described

vi. below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) of any kind created by any officer or employee of the City of Bend and/or Bend Police Department in any way related to the events at Pilot Butte Neighborhood

vii. Park on October 3rd.

viii.

v.

vi. These records shall include

vii. (but not be limited to) ALL records (as described below and in accordance with the definition of “record” described by the Oregon Dept. of Justice) created by Corporal Jeff Frickey on that date or about that day (October 3rd, 2020).

viii.

b.

c. Discuss or pertain to the

d. following organizations or persons, at any time on or before the filing of this request (1/18/2021):

e.

f.

i.

ii. Organizations: Central Oregon

iii. Peacekeepers, the Central Oregon Diversity Project, The Central Oregon Black Leaders Assembly, Bend for BLM, the Verbal Judo Institute, the Proud Boys, Patriot Prayer, the Three Percent Militia, Oregon Zone Five, The People's Rights Network,

iv.

ii.

iii. Persons: Luke Richter, Joslyn

iv. “Josie” Stanfield, Kerstin Arias, Adrianna Aquarius, Mylea Parker, Riccardo Waits, Nutasha Duran, Mike Satcher, Stephanie VanKlootwyk, John “Jay” Wells, Nicholas Dieringer, Jake Strayer, Michael Green, Kalan Roberts, Alan Stout, BJ Soper, Jerrad Robison, Adam

v. Sutterfield, Laura Jones, Matt Heagy, Scott Martin, Stewart Poths, Greg Walker, Kyle Wayne Zollman, Bart Lewis.

vi.

3. We are also requesting:

4.

a.

b. The names of all Bend Police

c. officers and/or employees on scene at Pilot Butte Neighborhood park on October 3rd, 2020,

d.

i.

ii. the times they were present,

iii.

ii.

iii. the capacity in which they

iv. were present.

v.

iii.

iv. And all records (as described

v. above and in accordance with the definition of "record" described by the Oregon Dept. of Justice) that were created by those officers and/or employees on October 3rd, .

vi.

b.

c. Any communications made

d. by any officer, employee, or elected official of the City of Bend and/or Bend Police Department made on the social media platform "Parler", at

any time on or before the filing of this request (1/18/2021):

e.

i.

ii. This shall include all communications

iii. from or to the official Bend Police Department Parler account.

iv.

ii.

iii. All communications from

iv. or to any officer or employee of the Bend Police Department on the social media platform "Parler" sent or received while on Bend Police Department property, and/or inside a Bend Police Department vehicle, and/or while that employee or officer was or could

v. be reasonably expected to be performing in an official capacity. This shall include all posts sent or received from personal accounts on the social media platform "Parler", if they were sent or received while the employee or officer was on duty and acting

vi. in an official capacity.

vii.

iii.

iv. All communications from

v. or to any employee or elected official of the City of Bend on the social media platform "Parler" sent or received while on City of Bend property, and/or inside a City of Bend vehicle, and/or while that employee or elected official was or could be reasonably

vi. expected to be performing in an official capacity. This shall include all posts sent or received from personal accounts on the social media platform "Parler", if they were sent or received while the employee or elected official was on duty and acting in an

vii. official capacity.

viii.

3.

4. The requested records described

5. above shall include all those in the possession of or rightfully maintained by:

6.

a.

b. The City of Bend, any employee

c. of the City of Bend, or any elected official of the City of Bend, including (but not limited to): the City Manager, the Mayor, and all City Councilors (past and present).

d.

b.

c. The Bend Police Department,

d. any officer of the Bend Police Department, or any employee of the Bend Police Department, including (but not limited to): the Chief of Police Mike Krantz, The Captain of the Patrol Division Nick Parker, and Corporal Jeff Frickey.

e.

c.

d. These shall include any

e. record in the possession of the City of Bend and/or Bend Police Department that may not have been originally prepared by the City of Bend and/or the Bend Police Department, but that are owned, used, or retained by the City of Bend and/or Bend Police Department.

f.

4.

5. We are requesting ALL records
6. rightfully maintained by the City of Bend and/or the Bend Police Department, as described by Oregon law as a “public record”, in accordance with the definition of “record” described by the Oregon Dept. of Justice. These records shall include:
 7.
 - a.
 - b. All “writings” relevant
 - c. to the matters, organizations, and persons described above. Writings shall include handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers,
 - d. maps, files, facsimiles or electronic recordings.
 - e.
 - b.
 - c. These writings shall include
 - d. those on ANY medium, including (but not limited to) information maintained in “machine readable or electronic form.”
 - e.
 - c.
 - d. Examples of the sorts of
 - e. writings we are requesting shall include (but not be limited to) all paper documents, e-mails, electronic documents (e.g., Word, Excel, and PDF formats or equivalent), photographs, and audio or video recordings.
 - f.
- 5.
6. In accordance with ORS 192.324
7. (2), the City of Bend and/or Bend Police Department shall, within 5 business days:
- 8.

- a.
 - b. Confirm that the City of
 - c. Bend and/or the Bend Police Department are the custodians of the requested records. Or,
 - d.
 - b.
 - c. Inform us that the the City
 - d. of Bend and/or the Bend Police Department are not the custodians of the requested records.Or,
 - e.
 - c.
 - d. Notify us that the City
 - e. of Bend and/or the Bend Police Department is uncertain whether the City of Bend and/or the Bend Police Department are the custodians of the requested records.
 - f.
 - d.
 - e. The date of this request
 - f. is 1/19/2021. According to ORS 192.324 (2), the City of Bend and/or the Bend Police Department shall respond in the manner described above no later than 1/26/2021.
 - g.
- 6.
- 7. Upon receipt of this request
 - 8. (1/19/2021), the City of Bend and/or Bend Police Department shall (as soon as reasonably possible but not longer than 10 business days):

9.

- a.
- b. Complete the public records
- c. request, or,
- d.
- b.
- c. Provide a written statement
- d. that the City of Bend and/or the Bend Police Department are still processing the request, and a reasonable estimated date by which the City of Bend and/or the Bend Police Department expects to complete it's response.
- e.
- c.
- d. The date of this request
- e. is 1/19/2021. According to ORS 192.324 (2), the City of Bend and/or the Bend Police Department shall respond in the manner described above no later than 2/02/2021.
- f.

7.

8. If there exist any records

9. (as described above and in accordance with the definition of "record" described by the Oregon Dept. of Justice) fitting the descriptions above, but that the City of Bend and/or the Bend Police Department believe are exempt from disclosure, then:

10.

- a.
- b. The City of Bend and/or
- c. Bend Police Department must describe their number, and the reason for the

withholding of them, each and separately.

d.

b.

c. These exemptions must be

d. described (each and separately), citing the specific language within ORS 192.355 that qualifies them for exemption.

e.

8.

9. In accordance with ORS 192.324

10. (5), the records requested are "in the public interest because making the records available primarily benefits the general public."

11.

a.

b. Release of the records requested

c. will benefit the general public by answering outstanding questions about the Bend Police Department and City of Bend handling of the October 3rd violence at Pilot Butte Neighborhood Park.

d.

i.

ii. This information is not

iii. currently in the public domain.

iv.

ii.

iii. Fees will inhibit our ability

iv. to obtain these records and report on them.

v.

b.

c. Neither myself nor the Central

d. Oregon Peacekeepers will derive a personal benefit (financial or otherwise) from the disclosure of these records. It is our intention to deliver these documents to the general public, in their entirety and free of charge.

e.

c.

d. The Central Oregon Peacekeepers

e. have the capacity to deliver these records to the public. Our various platforms regularly reach thousands or tens of thousands of readers in Central Oregon and beyond.

f.

d.

e. For these reasons, we argue

f. that our request for records satisfies every requirement of the “public interest test” described in the Oregon Attorney General’s “Public Records and Meetings Manual”.

g.

i.

ii. Therefore, we believe we

iii. qualify for a fee waiver in accordance with ORS 192.324 (5).

iv.

PUBLIC RECORDS LAW DISCLOSURE: Emails are generally public records and therefore subject to public disclosure unless exempt from disclosure under Oregon Public Records Law. Emails can be sent inadvertently to unintended recipients and contain

confidential or privileged information. If you are not the intended recipient (or authorized to receive for the recipient), please advise by return email and delete immediately without reading or forwarding to others. Thank you.



CITY OF BEND

February 3, 2021

710 NW WALL STREET
PO BOX 431
BEND, OR 97709
(541) 388-5505 tel
Relay Users Dial 7-1-1
(541) 385-6676 fax
bendoregon.gov

MAYOR
Sally Russell

MAYOR PRO TEM
Gena Goodman-Campbell

CITY COUNCILORS
Melanie Kebler
Anthony Broadman
Megan Perkins
Rita Schenkelberg
Barb Campbell

CITY MANAGER
Eric King

Dear Mr. Satcher,

City of Bend staff have received and reviewed your request for records dated January 19, 2021 on behalf of the Central Oregon Peacekeepers. We cannot fully assess the fee waiver request until the scope of the records request is clarified. This letter is intended to help clarify the records request.

I have copied requests 1-5 below and included an initial staff response along with an estimate for each request when possible. The Public Records Policy describes that we will charge to recover the City's cost for providing these records. Labor charges can include researching, locating, compiling, or editing.

Portions of this request may be conditionally exempt from disclosure based on ORS 192.345(23) for security measures, ORS 192.345(18) related to specific operational plans, and other exemptions.

Records related to pending criminal investigations should be requested from the Deschutes County District Attorney (<http://www.dxda.us/c5/services/prr/>) per ORS 192.345(3).

Request #1

Discuss or pertain to events at Pilot Butte Neighborhood Park on October 3rd, 2020. These records shall include (but not be limited to):

- All records (as described below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) related to the planning and organization by Bend Police ahead of the October 3rd racial justice event at Pilot Butte Neighborhood Park.
- All records (as described below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) related to the planning and organization by Bend Police ahead of the October 3rd

“Pro-Trump” rally originally planned by Nicholas Dieringer to take place at Drake park.

- All records (as described below and in accordance with the definition of “record” described by the Oregon Dept. of Justice) pertaining to Surveillance conducted by Bend Police of ANY organizations or persons Bend Police believed to be involved in the planning or execution of those events on October 3rd.
- This shall include all surveillance of those organizations and persons conducted both BEFORE, ON and AFTER October 3rd, 2020.

Staff response to Request #1

Including a range of dates, search terms, and specific employees/departments to search will limit the cost and time for this estimate.

Cost estimate \$__ (currently too broad to prepare an estimate)

Request #2

Any records created by officer/employee regarding Pilot Butte Park on Oct 3, 2020:

- Any record (as described below and in accordance with the definition of “record” described by the Oregon Dept. of Justice) of any kind created by any officer or employee of the City of Bend and/or Bend Police Department in any way related to the events at Pilot Butte Neighborhood Park on October 3rd.
- These records shall include (but not be limited to) ALL records (as described below and in accordance with the definition of “record” described by the Oregon Dept. of Justice) created by Corporal Jeff Frickey on that date or about that day (October 3rd, 2020).

Staff response to Request #2

This may include police reports, which may require redaction time. Staff will coordinate with Corporal Frickey to identify relevant records.

Are there other specific employees? Including a range of dates, search terms, and specific employees/departments to search will limit the cost and time for this estimate.

Cost estimate \$__ (currently too broad to prepare an estimate)

Request #3

Discuss or pertain to the following organizations or persons, at any time on or before the filing of this request (1/18/2021):

- Organizations: Central Oregon Peacekeepers, the Central Oregon Diversity Project, The Central Oregon Black Leaders Assembly, Bend for BLM, the Verbal Judo Institute, the Proud Boys, Patriot Prayer, the Three Percent Militia, Oregon Zone Five, The People's Rights Network,

- Persons: Luke Richter, Joslyn “Josie” Stanfield, Kerstin Arias, Adrianna Aquarius, Mylea Parker, Riccardo Waits, Nutasha Duran, Mike Satcher, Stephanie VanKlootwyk, John “Jay” Wells, Nicholas Dieringer, Jake Strayer, Michael Green, Kalan Roberts, Alan Stout, BJ Soper, Jerrad Robison, Adam Sutterfield, Laura Jones, Matt Heagy, Scott Martin, Stewart Poths, Greg Walker, Kyle Wayne Zollman, Bart Lewis.

Staff response to Request #3

A search of Police records will take approximately 10 minutes per person/organization (34 listed). Additional staff time will be required for research, review and potential redaction.

Cost estimate \$473.97

(10 min. x 34 searches = 5.67 hours, plus one hour research, redaction, etc. at \$71.06/hour)

Request #4

The names of all Bend Police officers and/or employees on scene at Pilot Butte Neighborhood park on October 3rd, 2020, the times they were present, the capacity in which they were present.

And all records (as described above and in accordance with the definition of “record” described by the Oregon Dept. of Justice) that were created by those officers and/or employees on October 3rd, 2020.

Staff response to Request #4

Name and time present is documented on the dispatch records (CAD notes). There is no record that includes capacity of involvement.

Records related to dispatch records should be requested from Deschutes County 9-1-1. The City of Bend is not the custodian of these records.

(https://www.deschutes.org/sites/default/files/fileattachments/9-1-1_service_district/page/2001/recordsrequestform021320a.pdf)

Cost estimate NA

Request #5

Any communications made by any officer, employee, or elected official of the City of Bend and/or Bend Police Department made on the social media platform “Parler”, at any time on or before the filing of this request (1/18/2021):

- This shall include all communications from or to the official Bend Police Department Parler account.

- All communications from or to any officer or employee of the Bend Police Department on the social media platform “Parler” sent or received while on Bend Police Department property, and/or inside a Bend Police Department vehicle, and/or while that employee or officer was or could be reasonably expected to be performing in an official capacity. This shall include all posts sent or received from personal accounts on the social media platform “Parler”, if they were sent or received while the employee or officer was on duty and acting in an official capacity.
- All communications from or to any employee or elected official of the City of Bend on the social media platform “Parler” sent or received while on City of Bend property, and/or inside a City of Bend vehicle, and/or while that employee or elected official was or could be reasonably expected to be performing in an official capacity. This shall include all posts sent or received from personal accounts on the social media platform “Parler”, if they were sent or received while the employee or elected official was on duty and acting in an official capacity.

Staff response to Request #5

There is currently no access to this site. The City of Bend has not posted to Parler.

The City of Bend has no way to produce records created in an individual capacity on social media accounts by individual City employees. Records created by an employee in their individual capacity are not public records. The City of Bend is not the custodian of those records if they exist.

Cost estimate NA

Please respond and let us know if you would like us to proceed with Requests 1-3 as submitted or if you are able to narrow any portions of those requests to reduce the cost and time required to respond. The City of Bend has no responsive records to Requests 4 and 5.

Regards,

Robyn Christie,
City Recorder

From: [Central Oregon Peacekeepers](#)
To: [Robyn Christie](#)
Subject: Re: Public Records Request
Date: Thursday, February 4, 2021 3:24:21 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

City Recorder Christie,

I have read your response and will try to be as helpful as possible in assisting the City of Bend in fulfilling its legal obligation to produce these records. I do have to say up front, however, that your response is troubling on a number of levels, which I will detail below.

First, at two points your letter asserts that you are not the custodian of certain categories of record that I requested. ORS 192.324 (2) gives you five days from the receipt of the request to identify whether you are, are not, or are unsure whether or not you are the custodian of record. My request was made on January 19, 2021. You acknowledged receipt on January 21, 2021 and did not fulfill your obligation then to identify your custodianship. On that same day, I wrote you back reminding you of that obligation, and indicated that I took your omission to mean that you were the custodian of the records requested. Had you responded then that you did not believe yourself to be the custodian, you would have been within the legal window allowing you to do so. Furthermore, had you met your legal obligation at that time, it would have expedited this process significantly. I would have had the opportunity then to either submit a request to the County for some of the records you are now denying custodianship of, and/or would have had the opportunity (inside the window allowed by State statute) to argue for why I believe you are in fact the custodian. Instead, fifteen days have passed since I submitted my request and we're just now having this conversation. By failing in your legal obligation to respond regarding your custodianship, you've denied me and my organization the time we could have used pursuing these records. As the pursuit of this information is primarily in the Public Interest, this failure to meet your obligation has delayed and continues to delay the public receiving answers to these questions.

However, the damage is done and there's no getting back the time you cost us by failing to meet that obligation. Below, I will detail the reasons why I believe you are, in fact, the custodian of records that can answer my request. You'll see those arguments under sections 4 and 5.

Second, you are fast approaching the deadline by which you are obligated under ORS 192.329 (5) to provide an estimate for completion of the request. I understand from your letter that you would like some clarification on what I'm requesting. Once again, had you

made this request for clarification sooner, it would have saved us both time and effort. I'll do my best to clarify for you what I'm asking for (though I think any reasonable person could read my request and conclude that it was quite detailed as to exactly what I'm asking for.) Either way, the ten days afforded to you by Oregon statute to provide me an estimate will expire on Monday, February 8, 2021.

Request 1:

It is impossible for me or our organization to know precisely when the City of Bend started or concluded creating records related to what you've identified as request 1. Likewise, it is impossible for us to know which City employees produced records of that sort. As it is your responsibility to maintain those records, we are asking you to produce them. As I am unfamiliar with your protocols for storing the records you are obligated to maintain, or your protocols for retrieving and producing them, I don't know how to assist you in searching for them.

If it is a record produced by the City of Bend or the Bend Police department and it meets the criteria of my request (which was quite detailed) then I am requesting it. Asking me to narrow either the time frame or the employees is asking me to consult a crystal ball. Only the City knows when or by whom these records were created. If I were to arbitrarily provide you with an exclusive timeline or list of employees, then the City may then end up excluding records the public needs.

Please provide ALL documents that meet the criteria described, from the time the City started creating them until the City concluded creating them, and by all employees and officers who created them.

Request 2:

See above. Only the City knows the timeframe in which they created these records. If they meet the criteria described, then it is the City's responsibility to produce them. If the City's record management protocols are making retrieving these records difficult, then I hope you aren't arguing that it is the responsibility of unpaid volunteers to invent new protocols or serve the City in an advisory capacity in telling you how to proceed.

Please provide ALL documents that meet the criteria described, from the time the City started creating them until the City concluded creating them, and by all employees and officers who created them.

Request 3:

Producing these documents is primarily in the Public Interest. As stated in our initial request

for records submitted on January 19, we believe that we qualify for the Public Interest Fee Waiver as described in ORS 192.324 (5) and in the Attorney General's Public Records and Meetings Manual, 2019.

Your letter indicates that for this portion of the request, at least, you have protocols in place that allow you to begin the process of producing them. We would ask you to do so without delay.

Request 4:

We contest your assertion that you are not the custodian of this section of the requested records. First, as mentioned above, the time for you to make this assertion was within five days of receiving the request. Second, on January 21 I wrote to you reminding you of your obligation and indicating that I interpreted your acknowledgement as being one of custodianship. That would have been the time to say you did not believe you were the custodian. By not doing so, even after I reminded you, you tacitly confirmed that you are the custodian.

Furthermore, the City has produced records of exactly this type to our organization in the past. When we have made requests of the Bend Police Department to let us know which Officers were involved in particular incidents, the Bend Police Department has not objected on the grounds they are not the custodians and have produced a list. Denial of records of this sort now is arbitrary and capricious.

Lastly, the assertion that County 911 services are the custodians of these records defies credulity. Many (and perhaps all, though only the City knows for sure) of the officers involved that day were already staged nearby. They were not dispatched by County 911. They were dispatched by the command staff of the Bend Police Department.

The City either has records pertaining to those decisions (in which case they are obligated to produce them) or it does not (in which case there is a very serious failure on the part of the City to maintain records it is legally obligated to maintain.)

Request 5:

We contest your assertion that you are not the custodian of this section of the requested records. First, as mentioned above, the time for you to make this assertion was within five days of receiving the request. Second, on January 21 I wrote to you reminding you of your obligation and indicating that I interpreted your acknowledgement as being one of custodianship. That would have been the time to say you did not believe you were the custodian.

Furthermore, the records we are requesting here are records produced by employees/officers of the City of Bend and Bend Police Department while acting in their official capacity. If they were on duty and producing records, then those examples of “handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings” are public records. If the officers or employees were “on the clock” then they were not creating records in their “individual capacity.” They were creating records in their official capacity and while being paid with taxpayer money. Are you asserting that City of Bend and Bend Police Department employees and officers are being paid to create writings that are unsearchable? If so, that is an outrageous claim.

We also contest your assertion that the City of Bend did not produce records using the social media app “Parler.” The Bend Police Department DID have an account, and they did use it. Let me be clear on this. This is not a question in dispute. BPD used that app. That is knowledge already inside the public domain. The fact that the app has since been deplatformed is irrelevant to our request. It is and was the City’s responsibility to maintain those records.

For all of the reasons listed above, we are asking that you proceed with ALL of our requests for documents, and that you provide us an estimate for when you will complete the request. By Oregon statute, you are required to produce that estimate by Monday, February 8, 2021.

Thank you for your time,

Mike Satcher
Central Oregon Peacekeepers

On Wed, Feb 3, 2021 at 12:29 PM Robyn Christie <rchristie@bendoregon.gov> wrote:

Hello Mr. Satcher, Please see the attached response to your requests.

Regards,

Robyn



Robyn Christie | City Recorder

City of Bend 541-388-5517



From: Central Oregon Peacekeepers <centraloregonpeacekeepers@gmail.com>
Sent: Tuesday, January 19, 2021 8:48 AM
To: Robyn Christie <rchristie@bendoregon.gov>
Cc: Barbara Campbell <bcampbell@bendoregon.gov>
Subject: Public Records Request

CAUTION: External Email. Use caution when opening attachments, clicking links, or responding to this email.

City Recorder Robyn Christie,

This email is to serve as notification that the Central Oregon Peacekeepers as a "partnership, firm or association" (as described by the Oregon Department of Justice), and Michael Satcher as an individual, are requesting the public records described below.

Given the limited utility of the City's online request portal, and the delays we have experienced in the past with public records requests when using it, we are sending this request to you in this form instead. We've taken care to ensure that we have satisfied all requirements for a public records request in accordance with ORS 192.324, and with Bend City Policy ADM 2019-12. All information required by law and asked for on the portal are provided below:

Name: Michael Satcher

Phone Number: (512) 909 -6483

Email Address: mikesatcher@gmail.com centraloregonpeacekeepers@gmail.com

Street Address: 16962 Buck Horn Drive

City: Sisters

State: Oregon

Zip Code: 97759

The request is as follows:

....

- 1.
2. In the context described
3. below, and in accordance with ORS 192.324 (1) I am requesting the following records on my own behalf and on behalf of the Central Oregon Peacekeepers. We are requesting ALL records (as described below and in accordance with the definition of "record" described
4. by the Oregon Dept. of Justice) that:
5.
 - a.
 - b. Discuss or pertain to events
 - c. at Pilot Butte Neighborhood Park on October 3rd, 2020. These records shall include (but not be limited to):
 - d.
 - i.
 - ii. All records (as described
 - iii. below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) related to the planning and organization by Bend Police ahead of the October 3rd racial justice event at Pilot Butte Neighborhood Park.
 - iv.
 - ii.
 - iii. All records (as described
 - iv. below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) related to the planning and organization by Bend Police ahead of the October 3rd "Pro-Trump" rally originally planned by Nicholas Dieringer to

take place at Drake

v. park.

vi.

iii.

iv. All records (as described

v. below and in accordance with the definition of “record” described by the Oregon Dept. of Justice) pertaining to Surveillance conducted by Bend Police of ANY organizations or persons Bend Police believed to be involved in the planning or execution of those

vi. events on October 3rd.

vii.

1.

2. This shall include all surveillance

3. of those organizations and persons conducted both BEFORE, ON and AFTER October 3rd, 2020.

4.

iv.

v. Any record (as described

vi. below and in accordance with the definition of “record” described by the Oregon Dept. of Justice) of any kind created by any officer or employee of the City of Bend and/or Bend Police Department in any way related to the events at Pilot Butte Neighborhood

vii. Park on October 3rd.

viii.

v.

vi. These records shall include

vii. (but not be limited to) ALL records (as described below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) created by Corporal Jeff Frickey on that date or about that day (October 3rd, 2020).

viii.

b.

c. Discuss or pertain to the

d. following organizations or persons, at any time on or before the filing of this request (1/18/2021):

e.

f.

i.

ii. Organizations: Central Oregon

iii. Peacekeepers, the Central Oregon Diversity Project, The Central Oregon Black Leaders Assembly, Bend for BLM, the Verbal Judo Institute, the Proud Boys, Patriot Prayer, the Three Percent Militia, Oregon Zone Five, The People's Rights Network,

iv.

ii.

iii. Persons: Luke Richter, Joslyn

iv. "Josie" Stanfield, Kerstin Arias, Adrianna Aquarius, Mylea Parker, Riccardo Waits, Nutasha Duran, Mike Satcher, Stephanie VanKlootwyk, John "Jay" Wells, Nicholas Dieringer, Jake Strayer, Michael Green, Kalan Roberts, Alan Stout, BJ Soper, Jerrad Robison, Adam

v. Sutterfield, Laura Jones, Matt Heagy, Scott Martin, Stewart Poths, Greg Walker, Kyle Wayne Zollman, Bart Lewis.

vi.

2.

3. We are also requesting:

4.

a.

b. The names of all Bend Police

c. officers and/or employees on scene at Pilot Butte Neighborhood park on October 3rd, 2020,

d.

i.

ii. the times they were present,

iii.

ii.

iii. the capacity in which they

iv. were present.

v.

iii.

iv. And all records (as described

v. above and in accordance with the definition of "record" described by the Oregon Dept. of Justice) that were created by those officers and/or employees on October 3rd, .

vi.

b.

c. Any communications made

d. by any officer, employee, or elected official of the City of Bend and/or Bend Police Department made on the social media platform "Parler", at any time on or before the filing of this request (1/18/2021):

e.

i.

ii. This shall include all communications

iii. from or to the official Bend Police Department Parler account.

iv.

ii.

iii. All communications from

iv. or to any officer or employee of the Bend Police Department on the social media platform "Parler" sent or received while on Bend Police Department property, and/or inside a Bend Police Department vehicle, and/or while that employee or officer was or could

v. be reasonably expected to be performing in an official capacity. This shall include all posts sent or received from personal accounts on the social media platform "Parler", if they were sent or received while the employee or officer was on duty and acting

vi. in an official capacity.

vii.

iii.

iv. All communications from

v. or to any employee or elected official of the City of Bend on the social media platform "Parler" sent or received while on City of Bend property, and/or inside a City of Bend vehicle, and/or while that employee or elected official was or could be reasonably

vi. expected to be performing in an official capacity. This shall include all posts sent or received from personal accounts on the social media platform "Parler", if they were sent or received

while the employee or elected official was on duty and acting in an

vii. official capacity.

viii.

3.

4. The requested records described

5. above shall include all those in the possession of or rightfully maintained by:

6.

a.

b. The City of Bend, any employee

c. of the City of Bend, or any elected official of the City of Bend, including (but not limited to): the City Manager, the Mayor, and all City Councilors (past and present).

d.

b.

c. The Bend Police Department,

d. any officer of the Bend Police Department, or any employee of the Bend Police Department, including (but not limited to): the Chief of Police Mike Krantz, The Captain of the Patrol Division Nick Parker, and Corporal Jeff Frickey.

e.

c.

d. These shall include any

e. record in the possession of the City of Bend and/or Bend Police Department that may not have been originally prepared by the City of Bend and/or the Bend Police Department, but that are owned, used, or retained by the City of Bend and/or Bend Police Department.

f.

4.

5. We are requesting ALL records

6. rightfully maintained by the City of Bend and/or the Bend Police Department, as described by Oregon law as a "public record", in accordance with the definition of "record" described by the Oregon Dept. of Justice. These records shall include:

7.

a.

b. All "writings" relevant

c. to the matters, organizations, and persons described above. Writings shall include handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers,

d. maps, files, facsimiles or electronic recordings.

e.

b.

c. These writings shall include

d. those on ANY medium, including (but not limited to) information maintained in "machine readable or electronic form."

e.

c.

d. Examples of the sorts of

e. writings we are requesting shall include (but not be limited to) all paper documents, e-mails, electronic documents (e.g., Word, Excel, and PDF formats or equivalent), photographs, and audio or video recordings.

f.

5.

6. In accordance with ORS 192.324

7. (2), the City of Bend and/or Bend Police Department shall, within 5 business days:

8.

a.

b. Confirm that the City of

c. Bend and/or the Bend Police Department are the custodians of the requested records. Or,

d.

b.

c. Inform us that the the City

d. of Bend and/or the Bend Police Department are not the custodians of the requested records.Or,

e.

c.

d. Notify us that the City

e. of Bend and/or the Bend Police Department is uncertain whether the City of Bend and/or the Bend Police Department are the custodians of the requested records.

f.

d.

e. The date of this request

f. is 1/19/2021. According to ORS 192.324 (2), the City of Bend and/or the Bend Police Department shall respond in the manner described above no later than 1/26/2021.

g.

6.

7. Upon receipt of this request

8. (1/19/2021), the City of Bend and/or Bend Police Department shall (as soon as

reasonably possible but not longer than 10 business days):

9.

a.

b. Complete the public records

c. request, or,

d.

b.

c. Provide a written statement

d. that the City of Bend and/or the Bend Police Department are still processing the request, and a reasonable estimated date by which the City of Bend and/or the Bend Police Department expects to complete it's response.

e.

c.

d. The date of this request

e. is 1/19/2021. According to ORS 192.324 (2), the City of Bend and/or the Bend Police Department shall respond in the manner described above no later than 2/02/2021.

f.

7.

8. If there exist any records

9. (as described above and in accordance with the definition of "record" described by the Oregon Dept. of Justice) fitting the descriptions above, but that the City of Bend and/or the Bend Police Department believe are exempt from disclosure, then:

10.

a.

- b. The City of Bend and/or
- c. Bend Police Department must describe their number, and the reason for the withholding of them, each and separately.

d.

b.

c. These exemptions must be

d. described (each and separately), citing the specific language within ORS 192.355 that qualifies them for exemption.

e.

8.

9. In accordance with ORS 192.324

10. (5), the records requested are "in the public interest because making the records available primarily benefits the general public."

11.

a.

b. Release of the records requested

c. will benefit the general public by answering outstanding questions about the Bend Police Department and City of Bend handling of the October 3rd violence at Pilot Butte Neighborhood Park.

d.

i.

ii. This information is not

iii. currently in the public domain.

iv.

ii.

iii. Fees will inhibit our ability

iv. to obtain these records and report on them.

v.

b.

c. Neither myself nor the Central

d. Oregon Peacekeepers will derive a personal benefit (financial or otherwise) from the disclosure of these records. It is our intention to deliver these documents to the general public, in their entirety and free of charge.

e.

c.

d. The Central Oregon Peacekeepers

e. have the capacity to deliver these records to the public. Our various platforms regularly reach thousands or tens of thousands of readers in Central Oregon and beyond.

f.

d.

e. For these reasons, we argue

f. that our request for records satisfies every requirement of the "public interest test" described in the Oregon Attorney General's "Public Records and Meetings Manual".

g.

i.

ii. Therefore, we believe we

iii. qualify for a fee waiver in accordance with ORS 192.324 (5).

iv.

therefore subject to public disclosure unless exempt from disclosure under Oregon Public Records Law. Emails can be sent inadvertently to unintended recipients and contain confidential or privileged information. If you are not the intended recipient (or authorized to receive for the recipient), please advise by return email and delete immediately without reading or forwarding to others. Thank you.

From: [Central Oregon Peacekeepers](#)
To: [Robyn Christie](#)
Subject: Re: Public Records Request
Date: Monday, February 8, 2021 5:26:50 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

City Recorder Christie,

According to ORS 192.329 (5), today was the deadline by which you were required to have either completed my request or to have provided a written statement with a reasonable estimated date by which I could expect completion. It is now past the close of the business day, and the City has done neither.

At every step of this process, the City has failed in its obligations as set forth in Oregon statute. Without some sort of explanation to the contrary, I can only conclude that these failures are willful, and an attempt to delay (or altogether obstruct) producing the records.

I expect to be contacted as soon as possible during business hours tomorrow with an explanation for this failure to fulfill your legal obligations, and an estimated date for the completion of my lawful request.

- Mike Satcher
Central Oregon Peacekeepers

On Thu, Feb 4, 2021 at 3:24 PM Central Oregon Peacekeepers
<centraloregonpeacekeepers@gmail.com> wrote:

City Recorder Christie,

I have read your response and will try to be as helpful as possible in assisting the City of Bend in fulfilling its legal obligation to produce these records. I do have to say up front, however, that your response is troubling on a number of levels, which I will detail below.

First, at two points your letter asserts that you are not the custodian of certain categories of record that I requested. ORS 192.324 (2) gives you five days from the receipt of the request to identify whether you are, are not, or are unsure whether or not you are the custodian of record. My request was made on January 19, 2021. You acknowledged receipt on January 21, 2021 and did not fulfill your obligation then to identify your custodianship. On that same day, I wrote you back reminding you of that obligation, and indicated that I took your omission to mean that you were the custodian of the records requested. Had you responded then that you did not believe yourself to be the custodian, you would have been within the legal window allowing you to do so. Furthermore, had you met your legal obligation at that time, it would have expedited this process significantly. I would have had the opportunity then to either submit a request to the County for some of the records you are now denying custodianship of, and/or would have

had the opportunity (inside the window allowed by State statute) to argue for why I believe you are in fact the custodian. Instead, fifteen days have passed since I submitted my request and we're just now having this conversation. By failing in your legal obligation to respond regarding your custodianship, you've denied me and my organization the time we could have used pursuing these records. As the pursuit of this information is primarily in the Public Interest, this failure to meet your obligation has delayed and continues to delay the public receiving answers to these questions.

However, the damage is done and there's no getting back the time you cost us by failing to meet that obligation. Below, I will detail the reasons why I believe you are, in fact, the custodian of records that can answer my request. You'll see those arguments under sections 4 and 5.

Second, you are fast approaching the deadline by which you are obligated under ORS 192.329 (5) to provide an estimate for completion of the request. I understand from your letter that you would like some clarification on what I'm requesting. Once again, had you made this request for clarification sooner, it would have saved us both time and effort. I'll do my best to clarify for you what I'm asking for (though I think any reasonable person could read my request and conclude that it was quite detailed as to exactly what I'm asking for.) Either way, the ten days afforded to you by Oregon statute to provide me an estimate will expire on Monday, February 8, 2021.

Request 1:

It is impossible for me or our organization to know precisely when the City of Bend started or concluded creating records related to what you've identified as request 1. Likewise, it is impossible for us to know which City employees produced records of that sort. As it is your responsibility to maintain those records, we are asking you to produce them. As I am unfamiliar with your protocols for storing the records you are obligated to maintain, or your protocols for retrieving and producing them, I don't know how to assist you in searching for them.

If it is a record produced by the City of Bend or the Bend Police department and it meets the criteria of my request (which was quite detailed) then I am requesting it. Asking me to narrow either the time frame or the employees is asking me to consult a crystal ball. Only the City knows when or by whom these records were created. If I were to arbitrarily provide you with an exclusive timeline or list of employees, then the City may then end up excluding records the public needs.

Please provide ALL documents that meet the criteria described, from the time the City started creating them until the City concluded creating them, and by all employees and officers who created them.

Request 2:

See above. Only the City knows the timeframe in which they created these records. If they meet the criteria described, then it is the City's responsibility to produce them. If the City's record management protocols are making retrieving these records difficult, then I hope you aren't arguing that it is the responsibility of unpaid volunteers to invent new protocols or serve the City in an advisory capacity in telling you how to proceed.

Please provide ALL documents that meet the criteria described, from the time the City started creating them until the City concluded creating them, and by all employees and officers who created them.

Request 3:

Producing these documents is primarily in the Public Interest. As stated in our initial request for records submitted on January 19, we believe that we qualify for the Public Interest Fee Waiver as described in ORS 192.324 (5) and in the Attorney General's Public Records and Meetings Manual, 2019.

Your letter indicates that for this portion of the request, at least, you have protocols in place that allow you to begin the process of producing them. We would ask you to do so without delay.

Request 4:

We contest your assertion that you are not the custodian of this section of the requested records. First, as mentioned above, the time for you to make this assertion was within five days of receiving the request. Second, on January 21 I wrote to you reminding you of your obligation and indicating that I interpreted your acknowledgement as being one of custodianship. That would have been the time to say you did not believe you were the custodian. By not doing so, even after I reminded you, you tacitly confirmed that you are the custodian.

Furthermore, the City has produced records of exactly this type to our organization in the past. When we have made requests of the Bend Police Department to let us know which Officers were involved in particular incidents, the Bend Police Department has not objected on the grounds they are not the custodians and have produced a list. Denial of records of this sort now is arbitrary and capricious.

Lastly, the assertion that County 911 services are the custodians of these records defies credulity. Many (and perhaps all, though only the City knows for sure) of the officers involved that day were already staged nearby. They were not dispatched by County 911.

They were dispatched by the command staff of the Bend Police Department.

The City either has records pertaining to those decisions (in which case they are obligated to produce them) or it does not (in which case there is a very serious failure on the part of the City to maintain records it is legally obligated to maintain.)

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We contest your assertion that you are not the custodian of this section of the requested records. First, as mentioned above, the time for you to make this assertion was within five days of receiving the request. Second, on January 21 I wrote to you reminding you of your obligation and indicating that I interpreted your acknowledgement as being one of custodianship. That would have been the time to say you did not believe you were the custodian.

Furthermore, the records we are requesting here are records produced by employees/officers of the City of Bend and Bend Police Department while acting in their official capacity. If they were on duty and producing records, then those examples of "handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings" are public records. If the officers or employees were "on the clock" then they were not creating records in their "individual capacity." They were creating records in their official capacity and while being paid with taxpayer money. Are you asserting that City of Bend and Bend Police Department employees and officers are being paid to create writings that are unsearchable? If so, that is an outrageous claim.

We also contest your assertion that the City of Bend did not produce records using the social media app "Parler." The Bend Police Department DID have an account, and they did use it. Let me be clear on this. This is not a question in dispute. BPD used that app. That is knowledge already inside the public domain. The fact that the app has since been deplatformed is irrelevant to our request. It is and was the City's responsibility to maintain those records.

For all of the reasons listed above, we are asking that you proceed with ALL of our requests for documents, and that you provide us an estimate for when you will complete the request. By Oregon statute, you are required to produce that estimate by Monday, February 8, 2021.

Thank you for your time,

Mike Satcher
Central Oregon Peacekeepers

On Wed, Feb 3, 2021 at 12:29 PM Robyn Christie <rchristie@bendoregon.gov> wrote:

Hello Mr. Satcher, Please see the attached response to your requests.

Regards,

Robyn



Robyn Christie | City Recorder

City of Bend 541-388-5517



From: Central Oregon Peacekeepers <centraloregonpeacekeepers@gmail.com>

Sent: Tuesday, January 19, 2021 8:48 AM

To: Robyn Christie <rchristie@bendoregon.gov>

Cc: Barbara Campbell <bcampbell@bendoregon.gov>

Subject: Public Records Request

CAUTION: External Email. Use caution when opening attachments, clicking links, or responding to this email.

City Recorder Robyn Christie,

This email is to serve as notification that the Central Oregon Peacekeepers as a "partnership, firm or association" (as described by the Oregon Department of Justice), and Michael Satcher as an individual, are requesting the public records described below.

Given the limited utility of the City's online request portal, and the delays we have experienced in the past with public records requests when using it, we are sending this request to you in this form instead. We've taken care to ensure that we have satisfied all

requirements for a public records request in accordance with ORS 192.324, and with Bend City Policy ADM 2019-12. All information required by law and asked for on the portal are provided below:

Name: Michael Satcher

Phone Number: (512) 909 -6483

Email Address: mikesatcher@gmail.com centraloregonpeacekeepers@gmail.com

Street Address: 16962 Buck Horn Drive

City: Sisters

State: Oregon

Zip Code: 97759

The request is as follows:

....

- 1.
2. In the context described
3. below, and in accordance with ORS 192.324 (1) I am requesting the following records on my own behalf and on behalf of the Central Oregon Peacekeepers. We are requesting ALL records (as described below and in accordance with the definition of "record" described
4. by the Oregon Dept. of Justice) that:
5.
 - a.
 - b. Discuss or pertain to events
 - c. at Pilot Butte Neighborhood Park on October 3rd, 2020. These records shall include (but not be limited to):
 - d.
 - i.
 - ii. All records (as described

iii. below and in accordance with the definition of “record” described by the Oregon Dept. of Justice) related to the planning and organization by Bend Police ahead of the October 3rd racial justice event at Pilot Butte Neighborhood Park.

iv.

ii.

iii. All records (as described

iv. below and in accordance with the definition of “record” described by the Oregon Dept. of Justice) related to the planning and organization by Bend Police ahead of the October 3rd “Pro-Trump” rally originally planned by Nicholas Dieringer to take place at Drake

v. park.

vi.

iii.

iv. All records (as described

v. below and in accordance with the definition of “record” described by the Oregon Dept. of Justice) pertaining to Surveillance conducted by Bend Police of ANY organizations or persons Bend Police believed to be involved in the planning or execution of those

vi. events on October 3rd.

vii.

1.

2. This shall include all surveillance

3. of those organizations and persons conducted both BEFORE, ON and AFTER October 3rd, 2020.

4.

iv.

v. Any record (as described

vi. below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) of any kind created by any officer or employee of the City of Bend and/or Bend Police Department in any way related to the events at Pilot Butte Neighborhood

vii. Park on October 3rd.

viii.

v.

vi. These records shall include

vii. (but not be limited to) ALL records (as described below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) created by Corporal Jeff Frickey on that date or about that day (October 3rd, 2020).

viii.

b.

c. Discuss or pertain to the

d. following organizations or persons, at any time on or before the filing of this request (1/18/2021):

e.

f.

i.

ii. Organizations: Central Oregon

iii. Peacekeepers, the Central Oregon Diversity Project, The Central Oregon Black Leaders Assembly, Bend for BLM, the Verbal Judo Institute, the Proud Boys, Patriot Prayer, the Three Percent Militia, Oregon Zone Five, The People's Rights Network,

iv.

ii.

iii. Persons: Luke Richter, Joslyn

iv. "Josie" Stanfield, Kerstin Arias, Adrianna Aquarius, Mylea Parker, Riccardo Waits, Nutasha Duran, Mike Satcher, Stephanie VanKlootwyk, John "Jay" Wells, Nicholas Dieringer, Jake Strayer, Michael Green, Kalan Roberts, Alan Stout, BJ Soper, Jerrad Robison, Adam

v. Sutterfield, Laura Jones, Matt Heagy, Scott Martin, Stewart Poths, Greg Walker, Kyle Wayne Zollman, Bart Lewis.

vi.

2.

3. We are also requesting:

4.

a.

b. The names of all Bend Police

c. officers and/or employees on scene at Pilot Butte Neighborhood park on October 3rd, 2020,

d.

i.

ii.the times they were present,

iii.

ii.

iii. the capacity in which they

iv. were present.

v.

iii.

iv. And all records (as described

v. above and in accordance with the definition of "record" described by the Oregon Dept. of Justice) that were created by those officers and/or employees on October 3rd, .

vi.

b.

c. Any communications made

d. by any officer, employee, or elected official of the City of Bend and/or Bend Police Department made on the social media platform "Parler", at any time on or before the filing of this request (1/18/2021):

e.

i.

ii. This shall include all communications

iii. from or to the official Bend Police Department Parler account.

iv.

ii.

iii. All communications from

iv. or to any officer or employee of the Bend Police Department on the social media platform "Parler" sent or received while on Bend Police Department property, and/or inside a Bend Police Department vehicle, and/or while that employee or officer was or could

v. be reasonably expected to be performing in an official capacity. This shall include all posts sent or received from personal accounts on the social media platform "Parler", if they were sent or received while the employee or officer was on duty and acting

vi. in an official capacity.

vii.

iii.

iv. All communications from

v. or to any employee or elected official of the City of Bend on the social media platform "Parler" sent or received while on City of Bend property, and/or inside a City of Bend vehicle, and/or while that employee or elected official was or could be reasonably

vi. expected to be performing in an official capacity. This shall include all posts sent or received from personal accounts on the social media platform "Parler", if they were sent or received while the employee or elected official was on duty and acting in an

vii. official capacity.

viii.

3.

4. The requested records described

5. above shall include all those in the possession of or rightfully maintained by:

6.

a.

b. The City of Bend, any employee

c. of the City of Bend, or any elected official of the City of Bend, including (but not limited to): the City Manager, the Mayor, and all City Councilors (past and present).

d.

b.

c. The Bend Police Department,

d. any officer of the Bend Police Department, or any employee of the Bend Police Department, including (but not limited to): the Chief of Police Mike Krantz, The Captain of the Patrol Division Nick Parker, and

Corporal Jeff Frickey.

e.

c.

d. These shall include any

e. record in the possession of the City of Bend and/or Bend Police Department that may not have been originally prepared by the City of Bend and/or the Bend Police Department, but that are owned, used, or retained by the City of Bend and/or Bend Police Department.

f.

4.

5. We are requesting ALL records

6. rightfully maintained by the City of Bend and/or the Bend Police Department, as described by Oregon law as a "public record", in accordance with the definition of "record" described by the Oregon Dept. of Justice. These records shall include:

7.

a.

b. All "writings" relevant

c. to the matters, organizations, and persons described above. Writings shall include handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers,

d. maps, files, facsimiles or electronic recordings.

e.

b.

c. These writings shall include

d. those on ANY medium, including (but not limited to) information maintained in "machine readable or electronic form."

e.

c.

d. Examples of the sorts of

e. writings we are requesting shall include (but not be limited to) all paper documents, e-mails, electronic documents (e.g., Word, Excel, and PDF formats or equivalent), photographs, and audio or video recordings.

f.

5.

6. In accordance with ORS 192.324

7. (2), the City of Bend and/or Bend Police Department shall, within 5 business days:

8.

a.

b. Confirm that the City of

c. Bend and/or the Bend Police Department are the custodians of the requested records. Or,

d.

b.

c. Inform us that the the City

d. of Bend and/or the Bend Police Department are not the custodians of the requested records.Or,

e.

c.

d. Notify us that the City

e. of Bend and/or the Bend Police Department is uncertain whether the City of Bend and/or the Bend Police Department are the custodians of the requested records.

f.

d.

e. The date of this request

f. is 1/19/2021. According to ORS 192.324 (2), the City of Bend and/or the Bend Police Department shall respond in the manner described above no later than 1/26/2021.

g.

6.

7. Upon receipt of this request

8. (1/19/2021), the City of Bend and/or Bend Police Department shall (as soon as reasonably possible but not longer than 10 business days):

9.

a.

b. Complete the public records

c. request, or,

d.

b.

c. Provide a written statement

d. that the City of Bend and/or the Bend Police Department are still processing the request, and a reasonable estimated date by which the City of Bend and/or the Bend Police Department expects to complete it's response.

e.

c.

d. The date of this request

e. is 1/19/2021. According to ORS 192.324 (2), the City of Bend and/or

the Bend Police Department shall respond in the manner described above no later than 2/02/2021.

f.

7.

8. If there exist any records

9. (as described above and in accordance with the definition of "record" described by the Oregon Dept. of Justice) fitting the descriptions above, but that the City of Bend and/or the Bend Police Department believe are exempt from disclosure, then:

10.

a.

b. The City of Bend and/or

c. Bend Police Department must describe their number, and the reason for the withholding of them, each and separately.

d.

b.

c. These exemptions must be

d. described (each and separately), citing the specific language within ORS 192.355 that qualifies them for exemption.

e.

8.

9. In accordance with ORS 192.324

10. (5), the records requested are "in the public interest because making the records available primarily benefits the general public."

11.

a.

b. Release of the records requested

c. will benefit the general public by answering outstanding questions about the

Bend Police Department and City of Bend handling of the October 3rd violence at Pilot Butte Neighborhood Park.

d.

i.

ii. This information is not

iii. currently in the public domain.

iv.

ii.

iii. Fees will inhibit our ability

iv. to obtain these records and report on them.

v.

b.

c. Neither myself nor the Central

d. Oregon Peacekeepers will derive a personal benefit (financial or otherwise) from the disclosure of these records. It is our intention to deliver these documents to the general public, in their entirety and free of charge.

e.

c.

d. The Central Oregon Peacekeepers

e. have the capacity to deliver these records to the public. Our various platforms regularly reach thousands or tens of thousands of readers in Central Oregon and beyond.

f.

d.

e. For these reasons, we argue

f. that our request for records satisfies every requirement of the “public interest test” described in the Oregon Attorney General’s “Public Records and Meetings Manual”.

g.

i.

ii. Therefore, we believe we

iii. qualify for a fee waiver in accordance with ORS 192.324 (5).

iv.

PUBLIC RECORDS LAW DISCLOSURE: Emails are generally public records and therefore subject to public disclosure unless exempt from disclosure under Oregon Public Records Law. Emails can be sent inadvertently to unintended recipients and contain confidential or privileged information. If you are not the intended recipient (or authorized to receive for the recipient), please advise by return email and delete immediately without reading or forwarding to others. Thank you.

From: [Central Oregon Peacekeepers](#)
To: [Robyn Christie](#)
Subject: Re: Public Records Request
Date: Tuesday, February 9, 2021 6:33:12 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

City Recorder Christie,

This was a quite detailed response, and there are a great many problematic pieces of it. In the interests of time, I'm not going to go into all of them now but will focus instead on the two that are most immediately relevant.

1) Completion estimate:

Notably missing from your response is the timeframe for completion that Oregon statute required you to provide yesterday. We can (and no doubt will) continue to debate many of the other things you said in your response. What isn't up for debate is the fact that Oregon law gives you ten days to either complete the request or tell us when you expect to be done with it. I appreciate you giving estimates for the staff hours it will take you to complete portions of the request, but you still haven't actually told me when I should reasonably expect to receive the responsive records.

In your opening paragraph you assert that you can only determine how many records there will be and how long it will take to complete my lawful request AFTER I pay your fee. That is precisely opposite of how this process works. You are obligated to keep the records. You are obligated to have processes for retrieving the records. Oregon statute obligates you to either complete the request or provide me with a reasonable estimate for how long it will take to complete the request, and to do so within ten days. That's the stage of this process we're in now, and you've still not completed that step.

In your next response, please give me a date range in which you expect to complete this lawful request.

2) Fees:

In your response, you offered to waive 25% of the fees. Thank you for acknowledging that this request is primarily in the public interest. You then go on to assert that you have a responsibility to "recover the costs" associated with fulfilling your obligation. I know that you are aware of the precedent set in *Diamond v. FBI* in which it was clearly established that "An agency may not decline to waive fees because of a perceived obligation to the public to collect them." I know that you know this, because the Oregon Department of Justice uses this precedent explicitly in its guidance on Public Interest fee waivers as described in the "Public Records and Meetings Manual." Simply put, this is not a valid basis for declining a fee waiver. Therefore (because this request is primarily in the public interest, because the

fee impedes that public interest by placing an undue burden on myself and on our organization, because the fee amounts you have quoted are not a burden upon a public body like the City of Bend, and because your cited reason for denial is one explicitly disallowed) I am asking once again that you grant the fee waiver in full.

Please note that none of the above are reasons to delay the process of starting to retrieve those records. There is quite a lot more to say about your response, but for now we really need these two issues addressed as soon as possible.

-Mike Satcher
Central Oregon Peacekeepers

On Tue, Feb 9, 2021 at 4:10 PM Robyn Christie <rchristie@bendoregon.gov> wrote:

The City's response is attached.

Regards,

Robyn

From: Central Oregon Peacekeepers <centraloregonpeacekeepers@gmail.com>
Sent: Thursday, February 4, 2021 3:24 PM
To: Robyn Christie <rchristie@bendoregon.gov>
Subject: Re: Public Records Request

City Recorder Christie,

I have read your response and will try to be as helpful as possible in assisting the City of Bend in fulfilling its legal obligation to produce these records. I do have to say up front, however, that your response is troubling on a number of levels, which I will detail below.

First, at two points your letter asserts that you are not the custodian of certain categories of record that I requested. ORS 192.324 (2) gives you five days from the receipt of the request to identify whether you are, are not, or are unsure whether or not you are the custodian of record. My request was made on January 19, 2021. You acknowledged receipt on January 21, 2021 and did not fulfill your obligation then to identify your custodianship. On that same day, I wrote you back reminding you of that obligation, and indicated that I took your omission to mean that you were the custodian of the records requested. Had you responded then that you did not believe yourself to be the custodian, you would have been within the legal window allowing you to do so. Furthermore, had you met your legal obligation at that time, it would have expedited this process significantly. I would have had the opportunity then to either submit a request to the County for some of the records you are now denying custodianship of, and/or would

have had the opportunity (inside the window allowed by State statute) to argue for why I believe you are in fact the custodian. Instead, fifteen days have passed since I submitted my request and we're just now having this conversation. By failing in your legal obligation to respond regarding your custodianship, you've denied me and my organization the time we could have used pursuing these records. As the pursuit of this information is primarily in the Public Interest, this failure to meet your obligation has delayed and continues to delay the public receiving answers to these questions.

However, the damage is done and there's no getting back the time you cost us by failing to meet that obligation. Below, I will detail the reasons why I believe you are, in fact, the custodian of records that can answer my request. You'll see those arguments under sections 4 and 5.

Second, you are fast approaching the deadline by which you are obligated under ORS 192.329 (5) to provide an estimate for completion of the request. I understand from your letter that you would like some clarification on what I'm requesting. Once again, had you made this request for clarification sooner, it would have saved us both time and effort. I'll do my best to clarify for you what I'm asking for (though I think any reasonable person could read my request and conclude that it was quite detailed as to exactly what I'm asking for.) Either way, the ten days afforded to you by Oregon statute to provide me an estimate will expire on Monday, February 8, 2021.

Request 1:

It is impossible for me or our organization to know precisely when the City of Bend started or concluded creating records related to what you've identified as request 1. Likewise, it is impossible for us to know which City employees produced records of that sort. As it is your responsibility to maintain those records, we are asking you to produce them. As I am unfamiliar with your protocols for storing the records you are obligated to maintain, or your protocols for retrieving and producing them, I don't know how to assist you in searching for them.

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For all of the reasons listed above, we are asking that you proceed with ALL of our requests for documents, and that you provide us an estimate for when you will complete the request. By Oregon statute, you are required to produce that estimate by Monday, February 8, 2021.

Thank you for your time,

Mike Satcher
Central Oregon Peacekeepers

On Wed, Feb 3, 2021 at 12:29 PM Robyn Christie <rchristie@bendoregon.gov> wrote:

| Hello Mr. Satcher, Please see the attached response to your requests.

Regards,

Robyn



Robyn Christie | City Recorder

City of Bend 541-388-5517



From: Central Oregon Peacekeepers <centraloregonpeacekeepers@gmail.com>
Sent: Tuesday, January 19, 2021 8:48 AM
To: Robyn Christie <rchristie@bendoregon.gov>
Cc: Barbara Campbell <bcampbell@bendoregon.gov>
Subject: Public Records Request

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Name: Michael Satcher

Phone Number: (512) 909 -6483

Email Address: mikesatcher@gmail.com centraloregonpeacekeepers@gmail.com

Street Address: 16962 Buck Horn Drive

City: Sisters

State: Oregon

Zip Code: 97759

The request is as follows:

....

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 - ii. All records (as described

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iv.

ii.

iii. All records (as described

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vi.

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iv.

v. Any record (as described

vi. below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) of any kind created by any officer or employee of the City of Bend and/or Bend Police Department in any way related to the events at Pilot Butte Neighborhood

vii. Park on October 3rd.

viii.

v.

vi. These records shall include

vii. (but not be limited to) ALL records (as described below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) created by Corporal Jeff Frickey on that date or about that day (October 3rd, 2020).

viii.

b.

c. Discuss or pertain to the

d. following organizations or persons, at any time on or before the filing of this request (1/18/2021):

e.

f.

i.

ii. Organizations: Central Oregon

iii. Peacekeepers, the Central Oregon Diversity Project, The Central Oregon Black Leaders Assembly, Bend for BLM, the Verbal Judo Institute, the Proud Boys, Patriot Prayer, the Three Percent Militia, Oregon Zone Five, The People's Rights Network,

iv.

ii.

iii. Persons: Luke Richter, Joslyn

iv. "Josie" Stanfield, Kerstin Arias, Adrianna Aquarius, Mylea Parker, Riccardo Waits, Nutasha Duran, Mike Satcher, Stephanie VanKlootwyk, John "Jay" Wells, Nicholas Dieringer, Jake Strayer, Michael Green, Kalan Roberts, Alan Stout, BJ Soper, Jerrad Robison, Adam

v. Sutterfield, Laura Jones, Matt Heagy, Scott Martin, Stewart Poths, Greg Walker, Kyle Wayne Zollman, Bart Lewis.

vi.

2.

3. We are also requesting:

4.

a.

b. The names of all Bend Police

c. officers and/or employees on scene at Pilot Butte Neighborhood park on October 3rd, 2020,

d.

i.

ii. the times they were present,

iii.

ii.

iii. the capacity in which they

iv. were present.

v.

iii.

iv. And all records (as described

v. above and in accordance with the definition of "record" described by the Oregon Dept. of Justice) that were created by those officers and/or employees on October 3rd, .

vi.

b.

c. Any communications made

d. by any officer, employee, or elected official of the City of Bend and/or Bend Police Department made on the social media platform "Parler", at any time on or before the filing of this request (1/18/2021):

e.

i.

ii. This shall include all communications

iii. from or to the official Bend Police Department Parler account.

iv.

ii.

iii. All communications from

iv. or to any officer or employee of the Bend Police Department on the social media platform "Parler" sent or received while on Bend Police Department property, and/or inside a Bend Police Department vehicle, and/or while that employee or officer was or could

v. be reasonably expected to be performing in an official capacity. This shall include all posts sent or received from personal accounts on the social media platform "Parler", if they were sent or received while the employee or officer was on duty and acting

vi. in an official capacity.

vii.

iii.

iv. All communications from

v. or to any employee or elected official of the City of Bend on the social media platform "Parler" sent or received while on City of Bend property, and/or inside a City of Bend vehicle, and/or while that employee or elected official was or could be reasonably

vi. expected to be performing in an official capacity. This shall include all posts sent or received from personal accounts on the social media platform "Parler", if they were sent or received while the employee or elected official was on duty and acting in an

vii. official capacity.

viii.

3.

4. The requested records described

5. above shall include all those in the possession of or rightfully maintained by:

6.

a.

b. The City of Bend, any employee

c. of the City of Bend, or any elected official of the City of Bend, including (but not limited to): the City Manager, the Mayor, and all City Councilors (past and present).

d.

b.

c. The Bend Police Department,

d. any officer of the Bend Police Department, or any employee of the Bend Police Department, including (but not limited to): the Chief of Police Mike Krantz, The Captain of the Patrol Division Nick Parker, and

Corporal Jeff Frickey.

e.

c.

d. These shall include any

e. record in the possession of the City of Bend and/or Bend Police Department that may not have been originally prepared by the City of Bend and/or the Bend Police Department, but that are owned, used, or retained by the City of Bend and/or Bend Police Department.

f.

4.

5. We are requesting ALL records

6. rightfully maintained by the City of Bend and/or the Bend Police Department, as described by Oregon law as a "public record", in accordance with the definition of "record" described by the Oregon Dept. of Justice. These records shall include:

7.

a.

b. All "writings" relevant

c. to the matters, organizations, and persons described above. Writings shall include handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers,

d. maps, files, facsimiles or electronic recordings.

e.

b.

c. These writings shall include

d. those on ANY medium, including (but not limited to) information maintained in "machine readable or electronic form."

e.

c.

d. Examples of the sorts of

e. writings we are requesting shall include (but not be limited to) all paper documents, e-mails, electronic documents (e.g., Word, Excel, and PDF formats or equivalent), photographs, and audio or video recordings.

f.

5.

6. In accordance with ORS 192.324

7. (2), the City of Bend and/or Bend Police Department shall, within 5 business days:

8.

a.

b. Confirm that the City of

c. Bend and/or the Bend Police Department are the custodians of the requested records. Or,

d.

b.

c. Inform us that the the City

d. of Bend and/or the Bend Police Department are not the custodians of the requested records.Or,

e.

c.

d. Notify us that the City

e. of Bend and/or the Bend Police Department is uncertain whether the City of Bend and/or the Bend Police Department are the custodians of the requested records.

f.

d.

e. The date of this request

f. is 1/19/2021. According to ORS 192.324 (2), the City of Bend and/or the Bend Police Department shall respond in the manner described above no later than 1/26/2021.

g.

6.

7. Upon receipt of this request

8. (1/19/2021), the City of Bend and/or Bend Police Department shall (as soon as reasonably possible but not longer than 10 business days):

9.

a.

b. Complete the public records

c. request, or,

d.

b.

c. Provide a written statement

d. that the City of Bend and/or the Bend Police Department are still processing the request, and a reasonable estimated date by which the City of Bend and/or the Bend Police Department expects to complete it's response.

e.

c.

d. The date of this request

e. is 1/19/2021. According to ORS 192.324 (2), the City of Bend and/or the Bend Police Department shall respond in the manner described above no later than 2/02/2021.

f.

7.

8. If there exist any records

9. (as described above and in accordance with the definition of "record" described by the Oregon Dept. of Justice) fitting the descriptions above, but that the City of Bend and/or the Bend Police Department believe are exempt from disclosure, then:

10.

a.

b. The City of Bend and/or

c. Bend Police Department must describe their number, and the reason for the withholding of them, each and separately.

d.

b.

c. These exemptions must be

d. described (each and separately), citing the specific language within ORS 192.355 that qualifies them for exemption.

e.

8.

9. In accordance with ORS 192.324

10. (5), the records requested are "in the public interest because making the records available primarily benefits the general public."

11.

a.

b. Release of the records requested

c. will benefit the general public by answering outstanding questions about the Bend Police Department and City of Bend handling of the October 3rd violence at Pilot Butte Neighborhood Park.

d.

i.

ii. This information is not

iii. currently in the public domain.

iv.

ii.

iii. Fees will inhibit our ability

iv. to obtain these records and report on them.

v.

b.

c. Neither myself nor the Central

d. Oregon Peacekeepers will derive a personal benefit (financial or otherwise) from the disclosure of these records. It is our intention to deliver these documents to the general public, in their entirety and free of charge.

e.

c.

d. The Central Oregon Peacekeepers

e. have the capacity to deliver these records to the public. Our various platforms regularly reach thousands or tens of thousands of readers in Central Oregon and beyond.

f.

d.

e. For these reasons, we argue

f. that our request for records satisfies every requirement of the “public interest test” described in the Oregon Attorney General’s “Public Records and Meetings Manual”.

g.

i.

ii. Therefore, we believe we

iii. qualify for a fee waiver in accordance with ORS 192.324 (5).

iv.

PUBLIC RECORDS LAW DISCLOSURE: Emails are generally public records and therefore subject to public disclosure unless exempt from disclosure under Oregon Public Records Law. Emails can be sent inadvertently to unintended recipients and contain confidential or privileged information. If you are not the intended recipient (or authorized to receive for the recipient), please advise by return email and delete immediately without reading or forwarding to others. Thank you.

PUBLIC RECORDS LAW DISCLOSURE: Emails are generally public records and therefore subject to public disclosure unless exempt from disclosure under Oregon Public Records Law. Emails can be sent inadvertently to unintended recipients and contain confidential or privileged information. If you are not the intended recipient (or authorized to receive for the recipient), please advise by return email and delete immediately without reading or forwarding to others. Thank you.



CITY OF BEND

February 9, 2021

Dear Mr. Satcher,

City of Bend staff have received your response dated February 4, 2021 on behalf of the Central Oregon Peacekeepers.

We maintain that some records responsive to this request may be exempt from disclosure based on ORS 192.345(23) for security measures, ORS 192.345(18) related to specific operational plans, and other exemptions. So that you can understand our process, we do not know the nature, content, or exact number of responsive records until we complete a search and review the results. The records you have requested raise the possibility that several exemptions may apply to some of the records, but we will only be able to make this determination if you pay the required fee and we carry out the work required to complete your request.

I have copied requests 1-5 below and included an initial staff response along with an estimate for each request when possible. ORS 192.324 authorizes the City to establish and charge fees for the actual costs of making the requested records available, and the City's Public Records Policy describes that we will charge to recover the City's cost for providing these records. Labor charges can include researching, locating, compiling, editing, or otherwise processing the request.

You have asked that the City waive all fees for this request. While the City has discretion to waive or substantially reduce fees where there is a public interest, the City is not required to do so. In this case, the City is willing to reduce the fee by 25%, either in total or for any of the individual items. By way of explanation, the amount of work required to complete this request is extensive, representing many hours of City employee time. While we asked if you would consider narrowing the scope of the request, which could have lessened the time, complexity, and expense, you did not wish to do so. Many of the responsive records could be subject to various exemptions, including ORS 192.345(18) and (23). It is your right to make a broad request, but the City has a responsibility to recover at least a substantial portion of its costs in providing the records

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MAYOR
Sally Russell

MAYOR PRO TEM
Gena Goodman-Campbell

CITY COUNCILORS
Melanie Kebler
Anthony Broadman
Megan Perkins
Rita Schenkelberg
Barb Campbell

CITY MANAGER
Eric King

when so much City employee time is required. If you reconsider your position on narrowing the scope of the request, please let us know.

For items 2 and 3, we will search the exact names and organizations listed in the request in the Police Records Management System (RMS). We will also search for responsive reports from Oct. 3, 2020 and confirm they are not still open cases with Circuit Court and releasable. A search of Police records will take approximately 10 minutes per person/organization you have identified (34 listed). Additional staff time will be required for research, review, separation of exempt and non-exempt material, and potential redaction. The cost estimate is \$473.97 (10 min. x 34 searches = 5.67 hours, plus one hour research, redaction, etc. at \$71.06/hour).

We maintain that the City of Bend is not the custodian of records for items 4 and 5. The City of Bend does not have access to Parler. Staff confirms that the City did not post or create content on that site. There were therefore no records for the City to maintain.

An initial email search resulted in 6545 messages. I estimate up to an hour of my time per 100 messages to review and flag any content that may need legal review and redaction. The work to do this review needs to be scheduled with my other duties. This is based on the time I have available to devote to this request. If you choose to proceed, we could provide responsive records on a rolling basis as they are reviewed, so that you do not need to wait to begin receiving records. It is unknown at this point the time and cost that could be required for legal review.

Request #1

Discuss or pertain to events at Pilot Butte Neighborhood Park on October 3rd, 2020. These records shall include (but not be limited to):

- All records (as described below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) related to the planning and organization by Bend Police ahead of the October 3rd racial justice event at Pilot Butte Neighborhood Park.
- All records (as described below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) related to the planning and organization by Bend Police ahead of the October 3rd "Pro-Trump" rally originally planned by Nicholas Dieringer to take place at Drake park.
- All records (as described below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) pertaining to Surveillance conducted by Bend Police of ANY organizations or persons Bend Police believed to be involved in the planning or execution of those events on October 3rd.
- This shall include all surveillance of those organizations and persons conducted both BEFORE, ON and AFTER October 3rd, 2020.

Request #2

Any records created by officer/employee regarding Pilot Butte Park on Oct 3, 2020:

- Any record (as described below and in accordance with the definition of “record” described by the Oregon Dept. of Justice) of any kind created by any officer or employee of the City of Bend and/or Bend Police Department in any way related to the events at Pilot Butte Neighborhood Park on October 3rd.
- These records shall include (but not be limited to) ALL records (as described below and in accordance with the definition of “record” described by the Oregon Dept. of Justice) created by Corporal Jeff Frickey on that date or about that day (October 3rd, 2020).

Request #3

Discuss or pertain to the following organizations or persons, at any time on or before the filing of this request (1/18/2021):

- Organizations: Central Oregon Peacekeepers, the Central Oregon Diversity Project, The Central Oregon Black Leaders Assembly, Bend for BLM, the Verbal Judo Institute, the Proud Boys, Patriot Prayer, the Three Percent Militia, Oregon Zone Five, The People's Rights Network,
- Persons: Luke Richter, Joslyn “Josie” Stanfield, Kerstin Arias, Adrianna Aquarius, Mylea Parker, Riccardo Waits, Nutasha Duran, Mike Satcher, Stephanie VanKlootwyk, John “Jay” Wells, Nicholas Dieringer, Jake Strayer, Michael Green, Kalan Roberts, Alan Stout, BJ Soper, Jerrad Robison, Adam Sutterfield, Laura Jones, Matt Heagy, Scott Martin, Stewart Poths, Greg Walker, Kyle Wayne Zollman, Bart Lewis.

Staff response to Request #1-3

A search of Police records will take approximately 10 minutes per person/organization (34 listed). Additional staff time will be required for research, review and potential redaction.

Cost estimate \$473.97

(10 min. x 34 searches = 5.67 hours, plus one hour research, redaction, etc. at \$71.06/hour)

An initial email search resulted in 6545 messages. At 100 messages per hour.

Cost estimate \$4303.65

(65 hours at \$66.21/hour)

Legal review, TBD

Request #4

The names of all Bend Police officers and/or employees on scene at Pilot Butte Neighborhood park on October 3rd, 2020, the times they were present, the capacity in which they were present.

And all records (as described above and in accordance with the definition of "record" described by the Oregon Dept. of Justice) that were created by those officers and/or employees on October 3rd, 2020.

Staff response to Request #4

Cost estimate NA

Request #5

Any communications made by any officer, employee, or elected official of the City of Bend and/or Bend Police Department made on the social media platform "Parler", at any time on or before the filing of this request (1/18/2021):

- This shall include all communications from or to the official Bend Police Department Parler account.
- All communications from or to any officer or employee of the Bend Police Department on the social media platform "Parler" sent or received while on Bend Police Department property, and/or inside a Bend Police Department vehicle, and/or while that employee or officer was or could be reasonably expected to be performing in an official capacity. This shall include all posts sent or received from personal accounts on the social media platform "Parler", if they were sent or received while the employee or officer was on duty and acting in an official capacity.
- All communications from or to any employee or elected official of the City of Bend on the social media platform "Parler" sent or received while on City of Bend property, and/or inside a City of Bend vehicle, and/or while that employee or elected official was or could be reasonably expected to be performing in an official capacity. This shall include all posts sent or received from personal accounts on the social media platform "Parler", if they were sent or received while the employee or elected official was on duty and acting in an official capacity.

Staff response to Request #5

Cost estimate NA

Please respond and let us know if you would like us to proceed with Requests 1-3 as submitted. The City of Bend has no responsive records to Requests 4 and 5.

Regards,

Robyn Christie,
City Recorder

From: [Central Oregon Peacekeepers](#)
To: [Robyn Christie](#)
Subject: Re: Public Records Request
Date: Friday, February 19, 2021 6:00:55 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

City Recorder Christie,

I could not have been more clear about the fact that I would like you to proceed with all of the record requests. I've said so many times.

In my last letter to you, I cited for you the case law relevant to your stated reason for denying my fee waiver request. Your stated rationale for denying the waiver is one that has been explicitly found to be invalid.

Once again, and I'm perplexed by the fact we have to keep going over this, you are now long past the point by which you were required by Oregon statute to have given me an estimate for completion. The question of the fee is entirely separate from your duty to either complete the request or provide an estimate for completion within the timeframe allowed by ORS 192.329 (5). There is absolutely no language in the statute that allows you to avoid providing that estimate until the requester gives in and agrees to the arbitrary and capricious fee you are demanding. You were required to have given me that estimate 11 days ago. The continuing failure to meet that obligation is entirely the City's failure, and has absolutely nothing to do with this separate debate about fees.

Let me be clear. At this point, the willful slow walking by the City in fulfilling it's duty to provide these records constitutes a violation of the law, and of my civil rights. You have already acknowledged that this request is in the public interest. Your reason for continuing to demand a fee is a reason that the courts have settled, and found to be invalid.

Please proceed with the entirety of the request. Please do so with haste and with seriousness of purpose. Please immediately provide an estimate for when you expect to have compiled ALL of the records I have requested.

- Mike Satcher
Central Oregon Peacekeepers

On Fri, Feb 19, 2021 at 2:28 PM Robyn Christie <rchristie@bendoregon.gov> wrote:

Hello Mr. Satcher, In my last letter to you, I suggested a rolling response where we would provide the records as they are compiled and reviewed. I would suggest we could do this on a weekly basis until complete. It's difficult to know what the final completion date may be without your direction to proceed with all or portions of the request. We maintain our fee estimate with the 25% waiver. This request continues to be on hold pending your approval to pay the fees.

Regards,

Robyn

From: Central Oregon Peacekeepers <centraloregonpeacekeepers@gmail.com>

Sent: Tuesday, February 9, 2021 6:33 PM

To: Robyn Christie <christie@bendoregon.gov>

Subject: Re: Public Records Request

City Recorder Christie,

This was a quite detailed response, and there are a great many problematic pieces of it. In the interests of time, I'm not going to go into all of them now but will focus instead on the two that are most immediately relevant.

1) Completion estimate:

Notably missing from your response is the timeframe for completion that Oregon statute required you to provide yesterday. We can (and no doubt will) continue to debate many of the other things you said in your response. What isn't up for debate is the fact that Oregon law gives you ten days to either complete the request or tell us when you expect to be done with it. I appreciate you giving estimates for the staff hours it will take you to complete portions of the request, but you still haven't actually told me when I should reasonably expect to receive the responsive records.

In your opening paragraph you assert that you can only determine how many records there will be and how long it will take to complete my lawful request AFTER I pay your fee. That is precisely opposite of how this process works. You are obligated to keep the records. You are obligated to have processes for retrieving the records. Oregon statute obligates you to either complete the request or provide me with a reasonable estimate for how long it will take to complete the request, and to do so within ten days. That's the stage of this process we're in now, and you've still not completed that step.

In your next response, please give me a date range in which you expect to complete this lawful request.

2) Fees:

In your response, you offered to waive 25% of the fees. Thank you for acknowledging that this request is primarily in the public interest. You then go on to assert that you have a responsibility to "recover the costs" associated with fulfilling your obligation. I know that you are aware of the precedent set in *Diamond v. FBI* in which it was clearly established that "An agency may not decline to waive fees because of a perceived obligation to the public to collect them." I know that you know this, because the Oregon Department of

Justice uses this precedent explicitly in it's guidance on Public Interest fee waivers as described in the "Public Records and Meetings Manual." Simply put, this is not a valid basis for declining a fee waiver. Therefore (because this request is primarily in the public interest, because the fee impedes that public interest by placing an undue burden on myself and on our organization, because the fee amounts you have quoted are not a burden upon a public body like the City of Bend, and because your cited reason for denial is one explicitly disallowed) I am asking once again that you grant the fee waiver in full.

Please note that none of the above are reasons to delay the process of starting to retrieve those records. There is quite a lot more to say about your response, but for now we really need these two issues addressed as soon as possible.

-Mike Satcher
Central Oregon Peacekeepers

On Tue, Feb 9, 2021 at 4:10 PM Robyn Christie <rchristie@bendoregon.gov> wrote:

The City's response is attached.

Regards,

Robyn

From: Central Oregon Peacekeepers <centraloregonpeacekeepers@gmail.com>

Sent: Thursday, February 4, 2021 3:24 PM

To: Robyn Christie <rchristie@bendoregon.gov>

Subject: Re: Public Records Request

City Recorder Christie,

I have read your response and will try to be as helpful as possible in assisting the City of Bend in fulfilling its legal obligation to produce these records. I do have to say up front, however, that your response is troubling on a number of levels, which I will detail below.

First, at two points your letter asserts that you are not the custodian of certain categories of record that I requested. ORS 192.324 (2) gives you five days from the receipt of the request to identify whether you are, are not, or are unsure whether or not you are the custodian of record. My request was made on January 19, 2021. You acknowledged receipt on January 21, 2021 and did not fulfill your obligation then to identify your custodianship. On that same day, I wrote you back reminding you of that obligation, and indicated that I took your omission to mean that you were the custodian

of the records requested. Had you responded then that you did not believe yourself to be the custodian, you would have been within the legal window allowing you to do so. Furthermore, had you met your legal obligation at that time, it would have expedited this process significantly. I would have had the opportunity then to either submit a request to the County for some of the records you are now denying custodianship of, and/or would have had the opportunity (inside the window allowed by State statute) to argue for why I believe you are in fact the custodian. Instead, fifteen days have passed since I submitted my request and we're just now having this conversation. By failing in your legal obligation to respond regarding your custodianship, you've denied me and my organization the time we could have used pursuing these records. As the pursuit of this information is primarily in the Public Interest, this failure to meet your obligation has delayed and continues to delay the public receiving answers to these questions.

However, the damage is done and there's no getting back the time you cost us by failing to meet that obligation. Below, I will detail the reasons why I believe you are, in fact, the custodian of records that can answer my request. You'll see those arguments under sections 4 and 5.

Second, you are fast approaching the deadline by which you are obligated under ORS 192.329 (5) to provide an estimate for completion of the request. I understand from your letter that you would like some clarification on what I'm requesting. Once again, had you made this request for clarification sooner, it would have saved us both time and effort. I'll do my best to clarify for you what I'm asking for (though I think any reasonable person could read my request and conclude that it was quite detailed as to exactly what I'm asking for.) Either way, the ten days afforded to you by Oregon statute to provide me an estimate will expire on Monday, February 8, 2021.

Request 1:

It is impossible for me or our organization to know precisely when the City of Bend started or concluded creating records related to what you've identified as request 1. Likewise, it is impossible for us to know which City employees produced records of that sort. As it is your responsibility to maintain those records, we are asking you to produce them. As I am unfamiliar with your protocols for storing the records you are obligated to maintain, or your protocols for retrieving and producing them, I don't know how to assist you in searching for them.

If it is a record produced by the City of Bend or the Bend Police department and it meets the criteria of my request (which was quite detailed) then I am requesting it. Asking me to narrow either the time frame or the employees is asking me to consult a crystal ball. Only the City knows when or by whom these records were created. If I were to arbitrarily provide you with an exclusive timeline or list of employees, then the City may then end up excluding records the public needs.

Please provide ALL documents that meet the criteria described, from the time the City started creating them until the City concluded creating them, and by all employees and officers who created them.

Request 2:

See above. Only the City knows the timeframe in which they created these records. If they meet the criteria described, then it is the City's responsibility to produce them. If the City's record management protocols are making retrieving these records difficult, then I hope you aren't arguing that it is the responsibility of unpaid volunteers to invent new protocols or serve the City in an advisory capacity in telling you how to proceed.

Please provide ALL documents that meet the criteria described, from the time the City started creating them until the City concluded creating them, and by all employees and officers who created them.

Request 3:

Producing these documents is primarily in the Public Interest. As stated in our initial request for records submitted on January 19, we believe that we qualify for the Public Interest Fee Waiver as described in ORS 192.324 (5) and in the Attorney General's Public Records and Meetings Manual, 2019.

Your letter indicates that for this portion of the request, at least, you have protocols in place that allow you to begin the process of producing them. We would ask you to do so without delay.

Request 4:

We contest your assertion that you are not the custodian of this section of the requested records. First, as mentioned above, the time for you to make this assertion was within five days of receiving the request. Second, on January 21 I wrote to you reminding you of your obligation and indicating that I interpreted your acknowledgement as being one of custodianship. That would have been the time to say you did not believe you were the custodian. By not doing so, even after I reminded you, you tacitly confirmed that you are the custodian.

Furthermore, the City has produced records of exactly this type to our organization in the past. When we have made requests of the Bend Police Department to let us know which Officers were involved in particular incidents, the Bend Police Department has not objected on the grounds they are not the custodians and have produced a list. Denial of records of this sort now is arbitrary and capricious.

Lastly, the assertion that County 911 services are the custodians of these records defies credulity. Many (and perhaps all, though only the City knows for sure) of the officers involved that day were already staged nearby. They were not dispatched by County 911. They were dispatched by the command staff of the Bend Police Department.

The City either has records pertaining to those decisions (in which case they are obligated to produce them) or it does not (in which case there is a very serious failure on the part of the City to maintain records it is legally obligated to maintain.)

Request 5:

We contest your assertion that you are not the custodian of this section of the requested records. First, as mentioned above, the time for you to make this assertion was within five days of receiving the request. Second, on January 21 I wrote to you reminding you of your obligation and indicating that I interpreted your acknowledgement as being one of custodianship. That would have been the time to say you did not believe you were the custodian.

Furthermore, the records we are requesting here are records produced by employees/officers of the City of Bend and Bend Police Department while acting in their official capacity. If they were on duty and producing records, then those examples of "handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings" are public records. If the officers or employees were "on the clock" then they were not creating records in their "individual capacity." They were creating records in their official capacity and while being paid with taxpayer money. Are you asserting that City of Bend and Bend Police Department employees and officers are being paid to create writings that are unsearchable? If so, that is an outrageous claim.

We also contest your assertion that the City of Bend did not produce records using the social media app "Parler." The Bend Police Department DID have an account, and they did use it. Let me be clear on this. This is not a question in dispute. BPD used that app. That is knowledge already inside the public domain. The fact that the app has since been deplatformed is irrelevant to our request. It is and was the City's responsibility to maintain those records.

For all of the reasons listed above, we are asking that you proceed with ALL of our requests for documents, and that you provide us an estimate for when you will complete the request. By Oregon statute, you are required to produce that estimate by Monday, February 8, 2021.

Thank you for your time,

Mike Satcher
Central Oregon Peacekeepers

On Wed, Feb 3, 2021 at 12:29 PM Robyn Christie <rchristie@bendoregon.gov> wrote:

Hello Mr. Satcher, Please see the attached response to your requests.

Regards,

Robyn



Robyn Christie | City Recorder

City of Bend 541-388-5517



From: Central Oregon Peacekeepers <centraloregonpeacekeepers@gmail.com>

Sent: Tuesday, January 19, 2021 8:48 AM

To: Robyn Christie <rchristie@bendoregon.gov>

Cc: Barbara Campbell <bcampbell@bendoregon.gov>

Subject: Public Records Request

CAUTION: External Email. Use caution when opening attachments, clicking links, or responding to this email.

City Recorder Robyn Christie,

This email is to serve as notification that the Central Oregon Peacekeepers as a "partnership, firm or association" (as described by the Oregon Department of Justice), and Michael Satcher as an individual, are requesting the public records described below.

Given the limited utility of the City's online request portal, and the delays we have experienced in the past with public records requests when using it, we are sending this request to you in this form instead. We've taken care to ensure that we have satisfied all requirements for a public records request in accordance with ORS 192.324, and with Bend City Policy ADM 2019-12. All information required by law and asked for on the portal are provided below:

Name: Michael Satcher

Phone Number: (512) 909 -6483

Email Address: mikesatcher@gmail.com centraloregonpeacekeepers@gmail.com

Street Address: 16962 Buck Horn Drive

City: Sisters

State: Oregon

Zip Code: 97759

The request is as follows:

....

- 1.
2. In the context described
3. below, and in accordance with ORS 192.324 (1) I am requesting the following records on my own behalf and on behalf of the Central Oregon Peacekeepers. We are requesting ALL records (as described below and in accordance with the definition of "record" described
4. by the Oregon Dept. of Justice) that:
5.
 - a.
 - b. Discuss or pertain to events
 - c. at Pilot Butte Neighborhood Park on October 3rd, 2020. These records shall include (but not be limited to):

d.

i.

ii. All records (as described

iii. below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) related to the planning and organization by Bend Police ahead of the October 3rd racial justice event at Pilot Butte Neighborhood Park.

iv.

ii.

iii. All records (as described

iv. below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) related to the planning and organization by Bend Police ahead of the October 3rd "Pro-Trump" rally originally planned by Nicholas Dieringer to take place at Drake

v. park.

vi.

iii.

iv. All records (as described

v. below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) pertaining to Surveillance conducted by Bend Police of ANY organizations or persons Bend Police believed to be involved in the planning or execution of those

vi. events on October 3rd.

vii.

1.

2. This shall include all surveillance

3. of those organizations and persons conducted both BEFORE, ON and AFTER October 3rd, 2020.

4.

iv.

v. Any record (as described

vi. below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) of any kind created by any officer or employee of the City of Bend and/or Bend Police Department in any way related to the events at Pilot Butte Neighborhood

vii. Park on October 3rd.

viii.

v.

vi. These records shall include

vii. (but not be limited to) ALL records (as described below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) created by Corporal Jeff Frickey on that date or about that day (October 3rd, 2020).

viii.

b.

c. Discuss or pertain to the

d. following organizations or persons, at any time on or before the filing of this request (1/18/2021):

e.

f.

i.

ii. Organizations: Central Oregon
iii. Peacekeepers, the Central Oregon Diversity Project, The Central Oregon Black Leaders Assembly, Bend for BLM, the Verbal Judo Institute, the Proud Boys, Patriot Prayer, the Three Percent Militia, Oregon Zone Five, The People's Rights Network,

iv.

ii.

iii. Persons: Luke Richter, Joslyn

iv. "Josie" Stanfield, Kerstin Arias, Adrianna Aquarius, Mylea Parker, Riccardo Waits, Nutasha Duran, Mike Satcher, Stephanie VanKlootwyk, John "Jay" Wells, Nicholas Dieringer, Jake Strayer, Michael Green, Kalan Roberts, Alan Stout, BJ Soper, Jerrad Robison, Adam

v. Sutterfield, Laura Jones, Matt Heagy, Scott Martin, Stewart Poths, Greg Walker, Kyle Wayne Zollman, Bart Lewis.

vi.

2.

3. We are also requesting:

4.

a.

b. The names of all Bend Police

c. officers and/or employees on scene at Pilot Butte Neighborhood park on October 3rd, 2020,

d.

i.

ii.the times they were present,

iii.

ii.

iii. the capacity in which they

iv. were present.

v.

iii.

iv. And all records (as described

v. above and in accordance with the definition of "record" described by the Oregon Dept. of Justice) that were created by those officers and/or employees on October 3rd, .

vi.

b.

c. Any communications made

d. by any officer, employee, or elected official of the City of Bend and/or Bend Police Department made on the social media platform "Parler", at any time on or before the filing of this request (1/18/2021):

e.

i.

ii. This shall include all communications

iii. from or to the official Bend Police Department Parler account.

iv.

ii.

iii. All communications from

iv. or to any officer or employee of the Bend Police Department on the social media platform "Parler" sent or received while on Bend Police Department property, and/or inside a Bend Police Department vehicle, and/or while that

employee or officer was or could

v. be reasonably expected to be performing in an official capacity. This shall include all posts sent or received from personal accounts on the social media platform "Parler", if they were sent or received while the employee or officer was on duty and acting

vi. in an official capacity.

vii.

iii.

iv. All communications from

v. or to any employee or elected official of the City of Bend on the social media platform "Parler" sent or received while on City of Bend property, and/or inside a City of Bend vehicle, and/or while that employee or elected official was or could be reasonably

vi. expected to be performing in an official capacity. This shall include all posts sent or received from personal accounts on the social media platform "Parler", if they were sent or received while the employee or elected official was on duty and acting in an

vii. official capacity.

viii.

- 3.
4. The requested records described
5. above shall include all those in the possession of or rightfully maintained by:
6.
 - a.
 - b. The City of Bend, any employee
 - c. of the City of Bend, or any elected official of the City of Bend, including (but not limited to): the City Manager, the Mayor, and all City Councilors (past and present).

- d.
 - b.
 - c. The Bend Police Department,
 - d. any officer of the Bend Police Department, or any employee of the Bend Police Department, including (but not limited to): the Chief of Police Mike Krantz, The Captain of the Patrol Division Nick Parker, and Corporal Jeff Frickey.
 - e.
 - c.
 - d. These shall include any
 - e. record in the possession of the City of Bend and/or Bend Police Department that may not have been originally prepared by the City of Bend and/or the Bend Police Department, but that are owned, used, or retained by the City of Bend and/or Bend Police Department.
 - f.
- 4.
5. We are requesting ALL records
6. rightfully maintained by the City of Bend and/or the Bend Police Department, as described by Oregon law as a "public record", in accordance with the definition of "record" described by the Oregon Dept. of Justice. These records shall include:
- 7.
- a.
 - b. All "writings" relevant
 - c. to the matters, organizations, and persons described above. Writings shall include handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers,
 - d. maps, files, facsimiles or electronic recordings.
 - e.

- b.
- c. These writings shall include
- d. those on ANY medium, including (but not limited to) information maintained in "machine readable or electronic form."
- e.

- c.
- d. Examples of the sorts of
- e. writings we are requesting shall include (but not be limited to) all paper documents, e-mails, electronic documents (e.g., Word, Excel, and PDF formats or equivalent), photographs, and audio or video recordings.
- f.

5.

6. In accordance with ORS 192.324

7. (2), the City of Bend and/or Bend Police Department shall, within 5 business days:

8.

- a.
- b. Confirm that the City of
- c. Bend and/or the Bend Police Department are the custodians of the requested records. Or,

d.

b.

c. Inform us that the the City

d. of Bend and/or the Bend Police Department are not the custodians of the requested records.Or,

e.

c.

d. Notify us that the City

e. of Bend and/or the Bend Police Department is uncertain whether the City of Bend and/or the Bend Police Department are the custodians of the requested records.

f.

d.

e. The date of this request

f. is 1/19/2021. According to ORS 192.324 (2), the City of Bend and/or the Bend Police Department shall respond in the manner described above no later than 1/26/2021.

g.

6.

7. Upon receipt of this request

8. (1/19/2021), the City of Bend and/or Bend Police Department shall (as soon as reasonably possible but not longer than 10 business days):

9.

a.

b. Complete the public records

c. request, or,

d.

b.

c. Provide a written statement

d. that the City of Bend and/or the Bend Police Department are still processing the request, and a reasonable estimated date by which

the City of Bend and/or the Bend Police Department expects to complete it's response.

e.

c.

d. The date of this request

e. is 1/19/2021. According to ORS 192.324 (2), the City of Bend and/or the Bend Police Department shall respond in the manner described above no later than 2/02/2021.

f.

7.

8. If there exist any records

9. (as described above and in accordance with the definition of "record" described by the Oregon Dept. of Justice) fitting the descriptions above, but that the City of Bend and/or the Bend Police Department believe are exempt from disclosure, then:

10.

a.

b. The City of Bend and/or

c. Bend Police Department must describe their number, and the reason for the withholding of them, each and separately.

d.

b.

c. These exemptions must be

d. described (each and separately), citing the specific language within ORS 192.355 that qualifies them for exemption.

e.

8.

9. In accordance with ORS 192.324
10. (5), the records requested are "in the public interest because making the records available primarily benefits the general public."

11.

a.

b. Release of the records requested

c. will benefit the general public by answering outstanding questions about the Bend Police Department and City of Bend handling of the October 3rd violence at Pilot Butte Neighborhood Park.

d.

i.

ii. This information is not

iii. currently in the public domain.

iv.

ii.

iii. Fees will inhibit our ability

iv. to obtain these records and report on them.

v.

b.

c. Neither myself nor the Central

d. Oregon Peacekeepers will derive a personal benefit (financial or otherwise) from the disclosure of these records. It is our intention to deliver these documents to the general public, in their entirety and free of charge.

e.

c.

- d. The Central Oregon Peacekeepers
- e. have the capacity to deliver these records to the public. Our various platforms regularly reach thousands or tens of thousands of readers in Central Oregon and beyond.
- f.
- d.
- e. For these reasons, we argue
- f. that our request for records satisfies every requirement of the “public interest test” described in the Oregon Attorney General’s “Public Records and Meetings Manual”.
- g.

- i.
- ii. Therefore, we believe we
- iii. qualify for a fee waiver in accordance with ORS 192.324 (5).
- iv.

PUBLIC RECORDS LAW DISCLOSURE: Emails are generally public records and therefore subject to public disclosure unless exempt from disclosure under Oregon Public Records Law. Emails can be sent inadvertently to unintended recipients and contain confidential or privileged information. If you are not the intended recipient (or authorized to receive for the recipient), please advise by return email and delete immediately without reading or forwarding to others. Thank you.

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From: [Robyn Christie](#)
To: [Central Oregon Peacekeepers](#)
Subject: RE: Public Records Request
Date: Thursday, January 21, 2021 1:17:00 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

In accordance with ORS 192.324, this is to acknowledge our receipt of your request for records.

We will provide the records or provide an estimate of the time and fees for disclosure of the public records within fifteen days.



From: Central Oregon Peacekeepers <centraloregonpeacekeepers@gmail.com>
Sent: Tuesday, January 19, 2021 8:48 AM
To: Robyn Christie <rchristie@bendoregon.gov>
Cc: Barbara Campbell <bcampbell@bendoregon.gov>
Subject: Public Records Request

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City Recorder Robyn Christie,

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ADM 2019-12. All information required by law and asked for on the portal are provided below:

Name: Michael Satcher

Phone Number: (512) 909 -6483

Email Address: mikesatcher@gmail.com centraloregonpeacekeepers@gmail.com

Street Address: 16962 Buck Horn Drive

City: Sisters

State: Oregon

Zip Code: 97759

The request is as follows:

....

- 1.
2. In the context described
3. below, and in accordance with ORS 192.324 (1) I am requesting the following records on my own behalf and on behalf of the Central Oregon Peacekeepers. We are requesting ALL records (as described below and in accordance with the definition of "record" described
4. by the Oregon Dept. of Justice) that:
5.
 - a.
 - b. Discuss or pertain to events
 - c. at Pilot Butte Neighborhood Park on October 3rd, 2020. These records shall include (but not be limited to):
 - d.
 - i.
 - ii. All records (as described
 - iii. below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) related to the planning and organization by Bend Police ahead of the October 3rd racial justice event at Pilot Butte Neighborhood Park.

iv.

ii.

iii. All records (as described

iv. below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) related to the planning and organization by Bend Police ahead of the October 3rd "Pro-Trump" rally originally planned by Nicholas Dieringer to take place at Drake

v. park.

vi.

iii.

iv. All records (as described

v. below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) pertaining to Surveillance conducted by Bend Police of ANY organizations or persons Bend Police believed to be involved in the planning or execution of those

vi. events on October 3rd.

vii.

1.

2. This shall include all surveillance

3. of those organizations and persons conducted both BEFORE, ON and AFTER October 3rd, 2020.

4.

iv.

v. Any record (as described

vi. below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) of any kind created by any officer or employee of the City of Bend and/or Bend Police Department in any way related to the events at Pilot Butte Neighborhood

vii. Park on October 3rd.

viii.

v.

vi. These records shall include

vii. (but not be limited to) ALL records (as described below and in accordance with the definition of "record" described by the Oregon

Dept. of Justice) created by Corporal Jeff Frickey on that date or about that day (October 3rd, 2020).

viii.

b.

c. Discuss or pertain to the

d. following organizations or persons, at any time on or before the filing of this request (1/18/2021):

e.

f.

i.

ii. Organizations: Central Oregon

iii. Peacekeepers, the Central Oregon Diversity Project, The Central Oregon Black Leaders Assembly, Bend for BLM, the Verbal Judo Institute, the Proud Boys, Patriot Prayer, the Three Percent Militia, Oregon Zone Five, The People's Rights Network,

iv.

ii.

iii. Persons: Luke Richter, Joslyn

iv. "Josie" Stanfield, Kerstin Arias, Adrianna Aquarius, Mylea Parker, Riccardo Waits, Nutasha Duran, Mike Satcher, Stephanie VanKlootwyk, John "Jay" Wells, Nicholas Dieringer, Jake Strayer, Michael Green, Kalan Roberts, Alan Stout, BJ Soper, Jerrad Robison, Adam

v. Sutterfield, Laura Jones, Matt Heagy, Scott Martin, Stewart Poths, Greg Walker, Kyle Wayne Zollman, Bart Lewis.

vi.

2.

3. We are also requesting:

4.

a.

b. The names of all Bend Police

c. officers and/or employees on scene at Pilot Butte Neighborhood park on October 3rd, 2020,

d.

i.

ii. the times they were present,

- iii.
- ii.
- iii. the capacity in which they
- iv. were present.
- v.
- iii.
- iv. And all records (as described
- v. above and in accordance with the definition of "record" described by the Oregon Dept. of Justice) that were created by those officers and/or employees on October 3rd, .
- vi.
- b.
- c. Any communications made
- d. by any officer, employee, or elected official of the City of Bend and/or Bend Police Department made on the social media platform "Parler", at any time on or before the filing of this request (1/18/2021):
- e.
 - i.
 - ii. This shall include all communications
 - iii. from or to the official Bend Police Department Parler account.
 - iv.
 - ii.
 - iii. All communications from
 - iv. or to any officer or employee of the Bend Police Department on the social media platform "Parler" sent or received while on Bend Police Department property, and/or inside a Bend Police Department vehicle, and/or while that employee or officer was or could
 - v. be reasonably expected to be performing in an official capacity. This shall include all posts sent or received from personal accounts on the social media platform "Parler", if they were sent or received while the employee or officer was on duty and acting
 - vi. in an official capacity.
 - vii.
 - iii.

- iv. All communications from
 - v. or to any employee or elected official of the City of Bend on the social media platform "Parler" sent or received while on City of Bend property, and/or inside a City of Bend vehicle, and/or while that employee or elected official was or could be reasonably
 - vi. expected to be performing in an official capacity. This shall include all posts sent or received from personal accounts on the social media platform "Parler", if they were sent or received while the employee or elected official was on duty and acting in an
 - vii. official capacity.
 - viii.
- 3.
4. The requested records described
5. above shall include all those in the possession of or rightfully maintained by:
- 6.
- a.
 - b. The City of Bend, any employee
 - c. of the City of Bend, or any elected official of the City of Bend, including (but not limited to): the City Manager, the Mayor, and all City Councilors (past and present).
 - d.
 - b.
 - c. The Bend Police Department,
 - d. any officer of the Bend Police Department, or any employee of the Bend Police Department, including (but not limited to): the Chief of Police Mike Krantz, The Captain of the Patrol Division Nick Parker, and Corporal Jeff Frickey.
 - e.
 - c.
 - d. These shall include any
 - e. record in the possession of the City of Bend and/or Bend Police Department that may not have been originally prepared by the City of Bend and/or the Bend Police Department, but that are owned, used, or retained by the City of Bend and/or Bend Police Department.
 - f.
- 4.

5. We are requesting ALL records
6. rightfully maintained by the City of Bend and/or the Bend Police Department, as described by Oregon law as a "public record", in accordance with the definition of "record" described by the Oregon Dept. of Justice. These records shall include:

7.
 - a.
 - b. All "writings" relevant
 - c. to the matters, organizations, and persons described above. Writings shall include handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers,
 - d. maps, files, facsimiles or electronic recordings.
 - e.
 - b.
 - c. These writings shall include
 - d. those on ANY medium, including (but not limited to) information maintained in "machine readable or electronic form."
 - e.
 - c.
 - d. Examples of the sorts of
 - e. writings we are requesting shall include (but not be limited to) all paper documents, e-mails, electronic documents (e.g., Word, Excel, and PDF formats or equivalent), photographs, and audio or video recordings.
 - f.

5.

6. In accordance with ORS 192.324
7. (2), the City of Bend and/or Bend Police Department shall, within 5 business days:

8.
 - a.
 - b. Confirm that the City of
 - c. Bend and/or the Bend Police Department are the custodians of the requested records. Or,
 - d.
 - b.

- c. Inform us that the the City
 - d. of Bend and/or the Bend Police Department are not the custodians of the requested records.Or,
 - e.
 - c.
 - d. Notify us that the City
 - e. of Bend and/or the Bend Police Department is uncertain whether the City of Bend and/or the Bend Police Department are the custodians of the requested records.
 - f.
 - d.
 - e. The date of this request
 - f. is 1/19/2021. According to ORS 192.324 (2), the City of Bend and/or the Bend Police Department shall respond in the manner described above no later than 1/26/2021.
 - g.
- 6.
7. Upon receipt of this request
8. (1/19/2021), the City of Bend and/or Bend Police Department shall (as soon as reasonably possible but not longer than 10 business days):
- 9.
- a.
 - b. Complete the public records
 - c. request, or,
 - d.
 - b.
 - c. Provide a written statement
 - d. that the City of Bend and/or the Bend Police Department are still processing the request, and a reasonable estimated date by which the City of Bend and/or the Bend Police Department expects to complete it's response.
 - e.
 - c.
 - d. The date of this request

- e. is 1/19/2021. According to ORS 192.324 (2), the City of Bend and/or the Bend Police Department shall respond in the manner described above no later than 2/02/2021.
- f.

7.

8. If there exist any records

9. (as described above and in accordance with the definition of "record" described by the Oregon Dept. of Justice) fitting the descriptions above, but that the City of Bend and/or the Bend Police Department believe are exempt from disclosure, then:

10.

- a.
- b. The City of Bend and/or
- c. Bend Police Department must describe their number, and the reason for the withholding of them, each and separately.
- d.
- b.
- c. These exemptions must be
- d. described (each and separately), citing the specific language within ORS 192.355 that qualifies them for exemption.
- e.

8.

9. In accordance with ORS 192.324

10. (5), the records requested are "in the public interest because making the records available primarily benefits the general public."

11.

- a.
- b. Release of the records requested
- c. will benefit the general public by answering outstanding questions about the Bend Police Department and City of Bend handling of the October 3rd violence at Pilot Butte Neighborhood Park.
- d.
- i.
- ii. This information is not
- iii. currently in the public domain.

- iv.
- ii.
- iii. Fees will inhibit our ability
- iv. to obtain these records and report on them.
- v.
- b.
- c. Neither myself nor the Central
- d. Oregon Peacekeepers will derive a personal benefit (financial or otherwise) from the disclosure of these records. It is our intention to deliver these documents to the general public, in their entirety and free of charge.
- e.
- c.
- d. The Central Oregon Peacekeepers
- e. have the capacity to deliver these records to the public. Our various platforms regularly reach thousands or tens of thousands of readers in Central Oregon and beyond.
- f.
- d.
- e. For these reasons, we argue
- f. that our request for records satisfies every requirement of the “public interest test” described in the Oregon Attorney General’s “Public Records and Meetings Manual”.
- g.
- i.
- ii. Therefore, we believe we
- iii. qualify for a fee waiver in accordance with ORS 192.324 (5).
- iv.

From: [Central Oregon Peacekeepers](#)
To: [Robyn Christie](#)
Cc: [CouncilAll](#)
Subject: Re: Public Records Request
Date: Tuesday, February 23, 2021 5:19:53 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

City Recorder Christie,

I am truly at a loss for how to say this more clearly.

We are not at the fee stage of this request yet. I'll say that again. We are not at the fee stage yet. A third (and hopefully final) time. We are not at the fee stage yet.

ORS 192.329 (5) is unambiguous. Due to the willful disregard for the law being demonstrated by the City, we are stuck on the stage where you were supposed to provide an estimate for how long it will take you to complete the request. Your duty to provide that estimate is entirely separate from the question of the fee. In fact, your refusal to provide the legally required completion estimate calls the figure you have cited as the fee into question. How could you possibly know how much the request will cost if you don't even know how long it will take to complete?

We will discuss the fee once you have provided the completion estimate that you were required by law to have given me on February 8.

The City is willfully slow walking this request, and in doing so are violating my civil rights.

Please send the completion estimate. Please do so immediately.

I've copied the City Council on this email, because we are long past the point that any of this is acceptable.

- Mike Satcher

On Tue, Feb 23, 2021 at 4:31 PM Robyn Christie <rchristie@bendoregon.gov> wrote:

Mr. Satcher,

The case you cited is referenced in the Oregon Attorney General's Public Records and Meetings Manual for the question of whether there is a public interest. To be clear: the existence of a public interest is a prerequisite for the public body to consider waiving or reducing its fee. However, the existence of a public interest does not mean the public body is required to waive or reduce its fee in every instance. The law is clear on that subject.

We have indicated we are willing to reduce the fee by 25%, and provided you some options on how to move forward. As explained in my February 9 letter, you have chosen not to narrow your request, and completing it as presented will take many hours of staff time that will take myself and other staff away from other important work. The City is allowed to charge for the costs of that time, subject to exercising its discretion to waive or reduce fees.

We are not required to do further work until you agree to pay the estimate. If you would like to refine the request, or consider proceeding with payment for a smaller sub-set of the request, or would like to discuss other options, please let me know.



Robyn Christie | City Recorder

City of Bend 541-388-5517



From: Central Oregon Peacekeepers <centraloregonpeacekeepers@gmail.com>

Sent: Friday, February 19, 2021 6:00 PM

To: Robyn Christie <rchristie@bendoregon.gov>

Subject: Re: Public Records Request

City Recorder Christie,

I could not have been more clear about the fact that I would like you to proceed with all of

the record requests. I've said so many times.

In my last letter to you, I cited for you the case law relevant to your stated reason for denying my fee waiver request. Your stated rationale for denying the waiver is one that has been explicitly found to be invalid.

Once again, and I'm perplexed by the fact we have to keep going over this, you are now long past the point by which you were required by Oregon statute to have given me an estimate for completion. The question of the fee is entirely separate from your duty to either complete the request or provide an estimate for completion within the timeframe allowed by ORS 192.329 (5). There is absolutely no language in the statute that allows you to avoid providing that estimate until the requester gives in and agrees to the arbitrary and capricious fee you are demanding. You were required to have given me that estimate 11 days ago. The continuing failure to meet that obligation is entirely the City's failure, and has absolutely nothing to do with this separate debate about fees.

Let me be clear. At this point, the willful slow walking by the City in fulfilling its duty to provide these records constitutes a violation of the law, and of my civil rights. You have already acknowledged that this request is in the public interest. Your reason for continuing to demand a fee is a reason that the courts have settled, and found to be invalid.

Please proceed with the entirety of the request. Please do so with haste and with seriousness of purpose. Please immediately provide an estimate for when you expect to have compiled ALL of the records I have requested.

- Mike Satcher
Central Oregon Peacekeepers

On Fri, Feb 19, 2021 at 2:28 PM Robyn Christie <rchristie@bendoregon.gov> wrote:

Hello Mr. Satcher, In my last letter to you, I suggested a rolling response where we would provide the records as they are compiled and reviewed. I would suggest we could do this on a weekly basis until complete. It's difficult to know what the final completion date may be without your direction to proceed with all or portions of the request. We maintain our fee estimate with the 25% waiver. This request continues to be on hold pending your approval to pay the fees.

Regards,

Robyn

From: Central Oregon Peacekeepers <centraloregonpeacekeepers@gmail.com>

Sent: Tuesday, February 9, 2021 6:33 PM

To: Robyn Christie <rchristie@bendoregon.gov>

Subject: Re: Public Records Request

City Recorder Christie,

This was a quite detailed response, and there are a great many problematic pieces of it. In the interests of time, I'm not going to go into all of them now but will focus instead on the two that are most immediately relevant.

1) Completion estimate:

Notably missing from your response is the timeframe for completion that Oregon statute required you to provide yesterday. We can (and no doubt will) continue to debate many of the other things you said in your response. What isn't up for debate is the fact that Oregon law gives you ten days to either complete the request or tell us when you expect to be done with it. I appreciate you giving estimates for the staff hours it will take you to complete portions of the request, but you still haven't actually told me when I should reasonably expect to receive the responsive records.

In your opening paragraph you assert that you can only determine how many records there will be and how long it will take to complete my lawful request AFTER I pay your fee. That is precisely opposite of how this process works. You are obligated to keep the records. You are obligated to have processes for retrieving the records. Oregon statute obligates you to either complete the request or provide me with a reasonable estimate for how long it will take to complete the request, and to do so within ten days. That's the stage of this process we're in now, and you've still not completed that step.

In your next response, please give me a date range in which you expect to complete this lawful request.

2) Fees:

In your response, you offered to waive 25% of the fees. Thank you for acknowledging that this request is primarily in the public interest. You then go on to assert that you have a responsibility to "recover the costs" associated with fulfilling your obligation. I know that you are aware of the precedent set in *Diamond v. FBI* in which it was clearly established that "An agency may not decline to waive fees because of a perceived obligation to the public to collect them." I know that you know this, because the Oregon Department of Justice uses this precedent explicitly in its guidance on Public Interest fee waivers as described in the "Public Records and Meetings Manual." Simply put, this is not a valid basis for declining a fee waiver. Therefore (because this request is primarily in the public interest, because the fee impedes that public interest by placing an undue burden on myself and on our organization, because the fee amounts you have quoted are not a burden upon a public body like the City of Bend, and because your cited reason for denial is one explicitly disallowed) I am asking once again that you grant the fee waiver in full.

Please note that none of the above are reasons to delay the process of starting to retrieve those records. There is quite a lot more to say about your response, but for

now we really need these two issues addressed as soon as possible.

-Mike Satcher
Central Oregon Peacekeepers

On Tue, Feb 9, 2021 at 4:10 PM Robyn Christie <rchristie@bendoregon.gov> wrote:

The City's response is attached.

Regards,

Robyn

From: Central Oregon Peacekeepers <centraloregonpeacekeepers@gmail.com>
Sent: Thursday, February 4, 2021 3:24 PM
To: Robyn Christie <rchristie@bendoregon.gov>
Subject: Re: Public Records Request

City Recorder Christie,

I have read your response and will try to be as helpful as possible in assisting the City of Bend in fulfilling its legal obligation to produce these records. I do have to say up front, however, that your response is troubling on a number of levels, which I will detail below.

First, at two points your letter asserts that you are not the custodian of certain categories of record that I requested. ORS 192.324 (2) gives you five days from the receipt of the request to identify whether you are, are not, or are unsure whether or not you are the custodian of record. My request was made on January 19, 2021. You acknowledged receipt on January 21, 2021 and did not fulfill your obligation then to identify your custodianship. On that same day, I wrote you back reminding you of that obligation, and indicated that I took your omission to mean that you were the custodian of the records requested. Had you responded then that you did not believe yourself to be the custodian, you would have been within the legal window allowing you to do so. Furthermore, had you met your legal obligation at that time, it would have expedited this process significantly. I would have had the opportunity then to either submit a request to the County for some of the records you are now denying custodianship of, and/or would have had the opportunity (inside the window allowed by State statute) to argue for why I believe you are in fact the custodian. Instead, fifteen days have passed since I submitted my request and we're just now having this conversation. By failing in your legal obligation to respond regarding your custodianship, you've denied me and my organization the time we could have used pursuing these records. As the pursuit of this information is primarily in the Public Interest, this failure to meet your obligation has delayed and continues to delay the

public receiving answers to these questions.

However, the damage is done and there's no getting back the time you cost us by failing to meet that obligation. Below, I will detail the reasons why I believe you are, in fact, the custodian of records that can answer my request. You'll see those arguments under sections 4 and 5.

Second, you are fast approaching the deadline by which you are obligated under ORS 192.329 (5) to provide an estimate for completion of the request. I understand from your letter that you would like some clarification on what I'm requesting. Once again, had you made this request for clarification sooner, it would have saved us both time and effort. I'll do my best to clarify for you what I'm asking for (though I think any reasonable person could read my request and conclude that it was quite detailed as to exactly what I'm asking for.) Either way, the ten days afforded to you by Oregon statute to provide me an estimate will expire on Monday, February 8, 2021.

Request 1:

It is impossible for me or our organization to know precisely when the City of Bend started or concluded creating records related to what you've identified as request 1. Likewise, it is impossible for us to know which City employees produced records of that sort. As it is your responsibility to maintain those records, we are asking you to produce them. As I am unfamiliar with your protocols for storing the records you are obligated to maintain, or your protocols for retrieving and producing them, I don't know how to assist you in searching for them.

If it is a record produced by the City of Bend or the Bend Police department and it meets the criteria of my request (which was quite detailed) then I am requesting it. Asking me to narrow either the time frame or the employees is asking me to consult a crystal ball. Only the City knows when or by whom these records were created. If I were to arbitrarily provide you with an exclusive timeline or list of employees, then the City may then end up excluding records the public needs.

Please provide ALL documents that meet the criteria described, from the time the City started creating them until the City concluded creating them, and by all employees and officers who created them.

Request 2:

See above. Only the City knows the timeframe in which they created these records. If they meet the criteria described, then it is the City's responsibility to produce them. If the City's record management protocols are making retrieving these records

difficult, then I hope you aren't arguing that it is the responsibility of unpaid volunteers to invent new protocols or serve the City in an advisory capacity in telling you how to proceed.

Please provide ALL documents that meet the criteria described, from the time the City started creating them until the City concluded creating them, and by all employees and officers who created them.

Request 3:

Producing these documents is primarily in the Public Interest. As stated in our initial request for records submitted on January 19, we believe that we qualify for the Public Interest Fee Waiver as described in ORS 192.324 (5) and in the Attorney General's Public Records and Meetings Manual, 2019.

Your letter indicates that for this portion of the request, at least, you have protocols in place that allow you to begin the process of producing them. We would ask you to do so without delay.

Request 4:

We contest your assertion that you are not the custodian of this section of the requested records. First, as mentioned above, the time for you to make this assertion was within five days of receiving the request. Second, on January 21 I wrote to you reminding you of your obligation and indicating that I interpreted your acknowledgement as being one of custodianship. That would have been the time to say you did not believe you were the custodian. By not doing so, even after I reminded you, you tacitly confirmed that you are the custodian.

Furthermore, the City has produced records of exactly this type to our organization in the past. When we have made requests of the Bend Police Department to let us know which Officers were involved in particular incidents, the Bend Police Department has not objected on the grounds they are not the custodians and have produced a list. Denial of records of this sort now is arbitrary and capricious.

Lastly, the assertion that County 911 services are the custodians of these records defies credulity. Many (and perhaps all, though only the City knows for sure) of the officers involved that day were already staged nearby. They were not dispatched by County 911. They were dispatched by the command staff of the Bend Police Department.

The City either has records pertaining to those decisions (in which case they are obligated to produce them) or it does not (in which case there is a very serious failure on the part of the City to maintain records it is legally obligated to maintain.)

Request 5:

We contest your assertion that you are not the custodian of this section of the requested records. First, as mentioned above, the time for you to make this assertion was within five days of receiving the request. Second, on January 21 I wrote to you reminding you of your obligation and indicating that I interpreted your acknowledgement as being one of custodianship. That would have been the time to say you did not believe you were the custodian.

Furthermore, the records we are requesting here are records produced by employees/officers of the City of Bend and Bend Police Department while acting in their official capacity. If they were on duty and producing records, then those examples of "handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings" are public records. If the officers or employees were "on the clock" then they were not creating records in their "individual capacity." They were creating records in their official capacity and while being paid with taxpayer money. Are you asserting that City of Bend and Bend Police Department employees and officers are being paid to create writings that are unsearchable? If so, that is an outrageous claim.

We also contest your assertion that the City of Bend did not produce records using the social media app "Parler." The Bend Police Department DID have an account, and they did use it. Let me be clear on this. This is not a question in dispute. BPD used that app. That is knowledge already inside the public domain. The fact that the app has since been deplatformed is irrelevant to our request. It is and was the City's responsibility to maintain those records.

For all of the reasons listed above, we are asking that you proceed with ALL of our requests for documents, and that you provide us an estimate for when you will complete the request. By Oregon statute, you are required to produce that estimate by Monday, February 8, 2021.

Thank you for your time,

Mike Satcher
Central Oregon Peacekeepers

On Wed, Feb 3, 2021 at 12:29 PM Robyn Christie <rchristie@bendoregon.gov> wrote:

Hello Mr. Satcher, Please see the attached response to your requests.

Regards,

Robyn



Robyn Christie | City Recorder

City of Bend 541-388-5517



From: Central Oregon Peacekeepers <centraloregonpeacekeepers@gmail.com>

Sent: Tuesday, January 19, 2021 8:48 AM

To: Robyn Christie <rchristie@bendoregon.gov>

Cc: Barbara Campbell <bcampbell@bendoregon.gov>

Subject: Public Records Request

CAUTION: External Email. Use caution when opening attachments, clicking links, or responding to this email.

City Recorder Robyn Christie,

This email is to serve as notification that the Central Oregon Peacekeepers as a "partnership, firm or association" (as described by the Oregon Department of Justice), and Michael Satcher as an individual, are requesting the public records described below.

Given the limited utility of the City's online request portal, and the delays we have experienced in the past with public records requests when using it, we are sending this request to you in this form instead. We've taken care to ensure that we have

satisfied all requirements for a public records request in accordance with ORS 192.324, and with Bend City Policy ADM 2019-12. All information required by law and asked for on the portal are provided below:

Name: Michael Satcher

Phone Number: (512) 909 -6483

Email Address: mikesatcher@gmail.com centraloregonpeacekeepers@gmail.com

Street Address: 16962 Buck Horn Drive

City: Sisters

State: Oregon

Zip Code: 97759

The request is as follows:

....

- 1.
2. In the context described
3. below, and in accordance with ORS 192.324 (1) I am requesting the following records on my own behalf and on behalf of the Central Oregon Peacekeepers. We are requesting ALL records (as described below and in accordance with the definition of "record" described
4. by the Oregon Dept. of Justice) that:
5.
 - a.
 - b. Discuss or pertain to events
 - c. at Pilot Butte Neighborhood Park on October 3rd, 2020. These records shall include (but not be limited to):
 - d.
 - i.
 - ii. All records (as described
 - iii. below and in accordance with the

definition of "record" described by the Oregon Dept. of Justice) related to the planning and organization by Bend Police ahead of the October 3rd racial justice event at Pilot Butte Neighborhood Park.

iv.

ii.

iii. All records (as described

iv. below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) related to the planning and organization by Bend Police ahead of the October 3rd "Pro-Trump" rally originally planned by Nicholas Dieringer to take place at Drake

v. park.

vi.

iii.

iv. All records (as described

v. below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) pertaining to Surveillance conducted by Bend Police of ANY organizations or persons Bend Police believed to be involved in the planning or execution of those

vi. events on October 3rd.

vii.

1.

2. This shall include all surveillance

3. of those organizations and persons conducted both BEFORE, ON and AFTER October 3rd, 2020.

4.

iv.

v. Any record (as described

vi. below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) of any kind created by any officer or employee of the City of Bend and/or Bend Police Department in any way related to the events at Pilot Butte Neighborhood

vii. Park on October 3rd.

viii.

v.

vi. These records shall include

vii. (but not be limited to) ALL records (as described below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) created by Corporal Jeff Frickey on that date or about that day (October 3rd, 2020).

viii.

b.

c. Discuss or pertain to the

d. following organizations or persons, at any time on or before the filing of this request (1/18/2021):

e.

f.

i.

ii. Organizations: Central Oregon

iii. Peacekeepers, the Central Oregon Diversity Project, The Central Oregon Black Leaders Assembly, Bend for BLM, the Verbal Judo Institute, the Proud Boys, Patriot Prayer, the Three Percent Militia, Oregon Zone Five, The People's Rights Network,

iv.

ii.

iii. Persons: Luke Richter, Joslyn

iv. "Josie" Stanfield, Kerstin Arias, Adrianna Aquarius, Mylea Parker, Riccardo Waits, Nutasha Duran, Mike Satcher, Stephanie VanKlootwyk, John "Jay" Wells, Nicholas Dieringer, Jake Strayer, Michael Green, Kalan Roberts, Alan Stout, BJ Soper, Jerrad Robison, Adam

v. Sutterfield, Laura Jones, Matt Heagy, Scott Martin, Stewart Poths, Greg Walker, Kyle Wayne Zollman, Bart Lewis.

vi.

2.

3. We are also requesting:

4.

a.

b. The names of all Bend Police

c. officers and/or employees on scene at Pilot Butte Neighborhood park on October 3rd, 2020,

d.

i.

ii. the times they were present,

iii.

ii.

iii. the capacity in which they

iv. were present.

v.

iii.

iv. And all records (as described

v. above and in accordance with the definition of "record" described by the Oregon Dept. of Justice) that were created by those officers and/or employees on October 3rd, .

vi.

b.

c. Any communications made

d. by any officer, employee, or elected official of the City of Bend and/or Bend Police Department made on the social media platform "Parler", at any time on or before the filing of this request (1/18/2021):

e.

i.

ii. This shall include all communications

iii. from or to the official Bend Police Department Parler account.

iv.

ii.

iii. All communications from

iv. or to any officer or employee of the Bend Police Department on the social media platform "Parler" sent or received while on Bend Police Department property, and/or inside a Bend Police Department vehicle, and/or while that employee or officer was or could

v. be reasonably expected to be performing in an official capacity. This shall include all posts sent or received from personal accounts on the social media

platform "Parler", if they were sent or received while the employee or officer was on duty and acting

vi. in an official capacity.

vii.

iii.

iv. All communications from

v. or to any employee or elected official of the City of Bend on the social media platform "Parler" sent or received while on City of Bend property, and/or inside a City of Bend vehicle, and/or while that employee or elected official was or could be reasonably

vi. expected to be performing in an official capacity. This shall include all posts sent or received from personal accounts on the social media platform "Parler", if they were sent or received while the employee or elected official was on duty and acting in an

vii. official capacity.

viii.

3.

4. The requested records described

5. above shall include all those in the possession of or rightfully maintained by:

6.

a.

b. The City of Bend, any employee

c. of the City of Bend, or any elected official of the City of Bend, including (but not limited to): the City Manager, the Mayor, and all City Councilors (past and present).

d.

b.

c. The Bend Police Department,

d. any officer of the Bend Police Department, or any employee of the Bend Police Department, including (but not limited to): the Chief of Police Mike Krantz, The Captain of the Patrol Division Nick Parker, and Corporal Jeff Frickey.

e.

c.

d. These shall include any

e. record in the possession of the City of Bend and/or Bend Police Department that may not have been originally prepared by the City of Bend and/or the Bend Police Department, but that are owned, used, or retained by the City of Bend and/or Bend Police Department.

f.

4.

5. We are requesting ALL records

6. rightfully maintained by the City of Bend and/or the Bend Police Department, as described by Oregon law as a "public record", in accordance with the definition of "record" described by the Oregon Dept. of Justice. These records shall include:

7.

a.

b. All "writings" relevant

c. to the matters, organizations, and persons described above. Writings shall include handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers,

d. maps, files, facsimiles or electronic recordings.

e.

b.

c. These writings shall include

d. those on ANY medium, including (but not limited to) information maintained in "machine readable or electronic form."

e.

c.

d. Examples of the sorts of

e. writings we are requesting shall include (but not be limited to) all paper documents, e-mails, electronic documents (e.g., Word, Excel, and PDF formats or equivalent), photographs, and audio or video recordings.

f.

5.

6. In accordance with ORS 192.324

7. (2), the City of Bend and/or Bend Police Department shall, within 5 business days:

8.

a.

b. Confirm that the City of

c. Bend and/or the Bend Police Department are the custodians of the requested records. Or,

d.

b.

c. Inform us that the the City

d. of Bend and/or the Bend Police Department are not the custodians of the requested records.Or,

e.

c.

d. Notify us that the City

e. of Bend and/or the Bend Police Department is uncertain whether the City of Bend and/or the Bend Police Department are the custodians of the requested records.

f.

d.

e. The date of this request

f. is 1/19/2021. According to ORS 192.324 (2), the City of Bend and/or the Bend Police Department shall respond in the manner described above no later than 1/26/2021.

g.

6.

7. Upon receipt of this request

8. (1/19/2021), the City of Bend and/or Bend Police Department shall (as soon as reasonably possible but not longer than 10 business days):

9.

a.

b. Complete the public records

c. request, or,

d.

b.

c. Provide a written statement

d. that the City of Bend and/or the Bend Police Department are still processing the request, and a reasonable estimated date by which

the City of Bend and/or the Bend Police Department expects to complete it's response.

e.

c.

d. The date of this request

e. is 1/19/2021. According to ORS 192.324 (2), the City of Bend and/or the Bend Police Department shall respond in the manner described above no later than 2/02/2021.

f.

7.

8. If there exist any records

9. (as described above and in accordance with the definition of "record" described by the Oregon Dept. of Justice) fitting the descriptions above, but that the City of Bend and/or the Bend Police Department believe are exempt from disclosure, then:

10.

a.

b. The City of Bend and/or

c. Bend Police Department must describe their number, and the reason for the withholding of them, each and separately.

d.

b.

c. These exemptions must be

d. described (each and separately), citing the specific language within ORS 192.355 that qualifies them for exemption.

e.

8.

9. In accordance with ORS 192.324
10. (5), the records requested are "in the public interest because making the records available primarily benefits the general public."

11.

a.

b. Release of the records requested

c. will benefit the general public by answering outstanding questions about the Bend Police Department and City of Bend handling of the October 3rd violence at Pilot Butte Neighborhood Park.

d.

i.

ii. This information is not

iii. currently in the public domain.

iv.

ii.

iii. Fees will inhibit our ability

iv. to obtain these records and report on

them.

v.

b.

c. Neither myself nor the Central

d. Oregon Peacekeepers will derive a personal benefit (financial or otherwise) from the disclosure of these records. It is our intention to deliver these documents to the general public, in their entirety and free of charge.

e.

c.

d. The Central Oregon Peacekeepers

e. have the capacity to deliver these records to the public. Our various platforms regularly reach thousands or tens of thousands of readers in Central Oregon and beyond.

f.

d.

e. For these reasons, we argue

f. that our request for records satisfies every requirement of the “public interest test” described in the Oregon Attorney General’s “Public Records and Meetings Manual”.

g.

i.

ii. Therefore, we believe we

iii. qualify for a fee waiver in accordance with ORS 192.324 (5).

iv.

PUBLIC RECORDS LAW DISCLOSURE: Emails are generally public records and therefore subject to public disclosure unless exempt from disclosure under Oregon Public Records Law. Emails can be sent inadvertently to unintended recipients and contain confidential or privileged information. If you are not the intended recipient (or authorized to receive for the recipient), please advise by return email and delete immediately without reading or forwarding to others. Thank you.

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reading or forwarding to others. Thank you.

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From: [Central Oregon Peacekeepers](#)
To: [Robyn Christie](#); [CouncilAll](#)
Subject: Re: Public Records Request
Date: Wednesday, February 24, 2021 4:00:32 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

City Recorder Christie,

Thank you for acknowledging that the City's failure to fulfill its legal obligation to provide a completion estimate has been frustrating.

First, it is important that we immediately and finally dispense with the idea that the City does not understand the "scope of work." Our request for records was and has been very detailed and we clearly expressed what records we are asking for. No part of the unacceptable delay we've experienced thus far has been a result of a lack of clarity on my part or the part of the Peacekeepers. You understood the scope well enough to quote a figure and to have stalled your legal obligation to provide a completion estimate while you kept asking for up front payment. The City understood the scope well enough to decide how much it would cost, so it defies credulity that you didn't understand how long it would take to compile those records or that you don't understand the scope of what is being asked for. This continued narrative that your delays are the result of some failure of clarity on my part is frankly insulting.

Next, now that you've provided the completion estimate you were required to provide no later than February 8, we can finally discuss this matter of fees. The City has already acknowledged that the fulfillment of this records request is in the public interest. If necessary, I will walk through the steps of the public interest test (as described in the Oregon DOJ manual), but I think that we both know those steps. This request fully satisfies every step to that test. The fee that you are asking us to pay is an amount that does not constitute a burden on the City of Bend, but it is a burden and an obstacle to our organization. If the City absolutely insists on delaying this process even further, and on denying the public access to this information even longer than you already have, then we're certainly willing to go through the tedious and time consuming process of appeal.

All of these delays from the City have constituted an arbitrary and capricious violation of the public's right to these records. I am asking you to stop the delay tactics, and immediately begin the process of fulfilling your legal obligation to provide these records. In your next email, please be clear in whether you will be providing the waiver now or if the City plans to delay further by making us go through the motions of the appeal process.

- Mike Satcher
Central Oregon Peacekeepers

On Wed, Feb 24, 2021 at 2:29 PM Robyn Christie <rchristie@bendoregon.gov> wrote:

Mr. Satcher,

I acknowledge your frustration with not receiving a completion date estimate.

Without fully understanding the scope of work you are requesting and agreeing to pay for it is difficult to provide an accurate date. For the complete request of conducting 34 searches and reviewing over 6,500 email messages, we've estimated over 65 hours of staff time (assuming review of 100 messages per hour which is optimistic). Due to the potential need for review and redaction, this will require staff with specific training to complete. The work will need to be scheduled in with existing workload. At 2.5 to 5 hours per week, this will take 13 to 26 weeks from the time you approve the estimate (if that were to happen today, 13 weeks is May 26 to 26 weeks is July 14). This is a long time, and the reason I suggested a rolling response so we can provide the records as they become available.



Robyn Christie | City Recorder

City of Bend 541-388-5517



From: Central Oregon Peacekeepers <centraloregonpeacekeepers@gmail.com>

Sent: Tuesday, February 23, 2021 5:19 PM

To: Robyn Christie <rchristie@bendoregon.gov>

Cc: CouncilAll <councilall@bendoregon.gov>

Subject: Re: Public Records Request

City Recorder Christie,

I am truly at a loss for how to say this more clearly.

We are not at the fee stage of this request yet. I'll say that again. We are not at the fee stage yet. A third (and hopefully final) time. We are not at the fee stage yet.

ORS 192.329 (5) is unambiguous. Due to the willful disregard for the law being

demonstrated by the City, we are stuck on the stage where you were supposed to provide an estimate for how long it will take you to complete the request. Your duty to provide that estimate is entirely separate from the question of the fee. In fact, your refusal to provide the legally required completion estimate calls the figure you have cited as the fee into question. How could you possibly know how much the request will cost if you don't even know how long it will take to complete?

We will discuss the fee once you have provided the completion estimate that you were required by law to have given me on February 8.

The City is willfully slow walking this request, and in doing so are violating my civil rights.

Please send the completion estimate. Please do so immediately.

I've copied the City Council on this email, because we are long past the point that any of this is acceptable.

- Mike Satcher

On Tue, Feb 23, 2021 at 4:31 PM Robyn Christie <rchristie@bendoregon.gov> wrote:

Mr. Satcher,

The case you cited is referenced in the Oregon Attorney General's Public Records and Meetings Manual for the question of whether there is a public interest. To be clear: the existence of a public interest is a prerequisite for the public body to consider waiving or reducing its fee. However, the existence of a public interest does not mean the public body is required to waive or reduce its fee in every instance. The law is clear on that subject.

We have indicated we are willing to reduce the fee by 25%, and provided you some options on how to move forward. As explained in my February 9 letter, you have chosen not to narrow your request, and completing it as presented will take many hours of staff time that will take myself and other staff away from other important work. The City is allowed to charge for the costs of that time, subject to exercising its discretion to waive or reduce fees.

We are not required to do further work until you agree to pay the estimate. If you would like to refine the request, or consider proceeding with payment for a smaller sub-set of the request, or would like to discuss other options, please let me know.



Robyn Christie | City Recorder

City of Bend 541-388-5517



From: Central Oregon Peacekeepers <centraloregonpeacekeepers@gmail.com>
Sent: Friday, February 19, 2021 6:00 PM
To: Robyn Christie <rchristie@bendoregon.gov>
Subject: Re: Public Records Request

City Recorder Christie,

I could not have been more clear about the fact that I would like you to proceed with all of the record requests. I've said so many times.

In my last letter to you, I cited for you the case law relevant to your stated reason for denying my fee waiver request. Your stated rationale for denying the waiver is one that has been explicitly found to be invalid.

Once again, and I'm perplexed by the fact we have to keep going over this, you are now long past the point by which you were required by Oregon statute to have given me an estimate for completion. The question of the fee is entirely separate from your duty to either complete the request or provide an estimate for completion within the timeframe allowed by ORS 192.329 (5). There is absolutely no language in the statute that allows you to avoid providing that estimate until the requester gives in and agrees to the arbitrary and capricious fee you are demanding. You were required to have given me that estimate 11 days ago. The continuing failure to meet that obligation is entirely the City's failure, and has absolutely nothing to do with this separate debate about fees.

Let me be clear. At this point, the willful slow walking by the City in fulfilling it's duty to provide these records constitutes a violation of the law, and of my civil rights. You have already acknowledged that this request is in the public interest. Your reason for continuing to demand a fee is a reason that the courts have settled, and found to be invalid.

Please proceed with the entirety of the request. Please do so with haste and with seriousness of purpose. Please immediately provide an estimate for when you expect to have compiled ALL of the records I have requested.

- Mike Satcher
Central Oregon Peacekeepers

On Fri, Feb 19, 2021 at 2:28 PM Robyn Christie <rchristie@bendoregon.gov> wrote:

Hello Mr. Satcher, In my last letter to you, I suggested a rolling response where we would provide the records as they are compiled and reviewed. I would suggest we could do this on a weekly basis until complete. It's difficult to know what the final completion date may be without your direction to proceed with all or portions of the request. We maintain our fee estimate with the 25% waiver. This request continues to be on hold pending your approval to pay the fees.

Regards,

Robyn

From: Central Oregon Peacekeepers <centraloregonpeacekeepers@gmail.com>
Sent: Tuesday, February 9, 2021 6:33 PM
To: Robyn Christie <rchristie@bendoregon.gov>
Subject: Re: Public Records Request

City Recorder Christie,

This was a quite detailed response, and there are a great many problematic pieces of it. In the interests of time, I'm not going to go into all of them now but will focus instead on the two that are most immediately relevant.

1) Completion estimate:

Notably missing from your response is the timeframe for completion that Oregon statute required you to provide yesterday. We can (and no doubt will) continue to debate many of the other things you said in your response. What isn't up for debate

is the fact that Oregon law gives you ten days to either complete the request or tell us when you expect to be done with it. I appreciate you giving estimates for the staff hours it will take you to complete portions of the request, but you still haven't actually told me when I should reasonably expect to receive the responsive records.

In your opening paragraph you assert that you can only determine how many records there will be and how long it will take to complete my lawful request AFTER I pay your fee. That is precisely opposite of how this process works. You are obligated to keep the records. You are obligated to have processes for retrieving the records. Oregon statute obligates you to either complete the request or provide me with a reasonable estimate for how long it will take to complete the request, and to do so within ten days. That's the stage of this process we're in now, and you've still not completed that step.

In your next response, please give me a date range in which you expect to complete this lawful request.

2) Fees:

In your response, you offered to waive 25% of the fees. Thank you for acknowledging that this request is primarily in the public interest. You then go on to assert that you have a responsibility to "recover the costs" associated with fulfilling your obligation. I know that you are aware of the precedent set in *Diamond v. FBI* in which it was clearly established that "An agency may not decline to waive fees because of a perceived obligation to the public to collect them." I know that you know this, because the Oregon Department of Justice uses this precedent explicitly in its guidance on Public Interest fee waivers as described in the "Public Records and Meetings Manual." Simply put, this is not a valid basis for declining a fee waiver. Therefore (because this request is primarily in the public interest, because the fee impedes that public interest by placing an undue burden on myself and on our organization, because the fee amounts you have quoted are not a burden upon a public body like the City of Bend, and because your cited reason for denial is one explicitly disallowed) I am asking once again that you grant the fee waiver in full.

Please note that none of the above are reasons to delay the process of starting to retrieve those records. There is quite a lot more to say about your response, but for now we really need these two issues addressed as soon as possible.

-Mike Satcher
Central Oregon Peacekeepers

On Tue, Feb 9, 2021 at 4:10 PM Robyn Christie <rchristie@bendoregon.gov> wrote:

The City's response is attached.

Regards,

Robyn

From: Central Oregon Peacekeepers <centraloregonpeacekeepers@gmail.com>
Sent: Thursday, February 4, 2021 3:24 PM
To: Robyn Christie <rchristie@bendoregon.gov>
Subject: Re: Public Records Request

City Recorder Christie,

I have read your response and will try to be as helpful as possible in assisting the City of Bend in fulfilling its legal obligation to produce these records. I do have to say up front, however, that your response is troubling on a number of levels, which I will detail below.

First, at two points your letter asserts that you are not the custodian of certain categories of record that I requested. ORS 192.324 (2) gives you five days from the receipt of the request to identify whether you are, are not, or are unsure whether or not you are the custodian of record. My request was made on January 19, 2021. You acknowledged receipt on January 21, 2021 and did not fulfill your obligation then to identify your custodianship. On that same day, I wrote you back reminding you of that obligation, and indicated that I took your omission to mean that you were the custodian of the records requested. Had you responded then that you did not believe yourself to be the custodian, you would have been within the legal window allowing you to do so. Furthermore, had you met your legal obligation at that time, it would have expedited this process significantly. I would have had the opportunity then to either submit a request to the County for some of the records you are now denying custodianship of, and/or would have had the opportunity (inside the window allowed by State statute) to argue for why I believe you are in fact the custodian. Instead, fifteen days have passed since I submitted my request and we're just now having this conversation. By failing in your legal obligation to respond regarding your custodianship, you've denied me and my organization the time we could have used pursuing these records. As the pursuit of this information is primarily in the Public Interest, this failure to meet your obligation has delayed and continues to delay the public receiving answers to these questions.

However, the damage is done and there's no getting back the time you cost us by failing to meet that obligation. Below, I will detail the reasons why I believe you are, in fact, the custodian of records that can answer my request. You'll see those arguments under sections 4 and 5.

Second, you are fast approaching the deadline by which you are obligated under ORS 192.329 (5) to provide an estimate for completion of the request. I understand from your letter that you would like some clarification on what I'm requesting. Once again, had you made this request for clarification sooner, it would have saved us both time and effort. I'll do my best to clarify for you what I'm

asking for (though I think any reasonable person could read my request and conclude that it was quite detailed as to exactly what I'm asking for.) Either way, the ten days afforded to you by Oregon statute to provide me an estimate will expire on Monday, February 8, 2021.

Request 1:

It is impossible for me or our organization to know precisely when the City of Bend started or concluded creating records related to what you've identified as request 1. Likewise, it is impossible for us to know which City employees produced records of that sort. As it is your responsibility to maintain those records, we are asking you to produce them. As I am unfamiliar with your protocols for storing the records you are obligated to maintain, or your protocols for retrieving and producing them, I don't know how to assist you in searching for them.

If it is a record produced by the City of Bend or the Bend Police department and it meets the criteria of my request (which was quite detailed) then I am requesting it. Asking me to narrow either the time frame or the employees is asking me to consult a crystal ball. Only the City knows when or by whom these records were created. If I were to arbitrarily provide you with an exclusive timeline or list of employees, then the City may then end up excluding records the public needs.

Please provide ALL documents that meet the criteria described, from the time the City started creating them until the City concluded creating them, and by all employees and officers who created them.

Request 2:

See above. Only the City knows the timeframe in which they created these records. If they meet the criteria described, then it is the City's responsibility to produce them. If the City's record management protocols are making retrieving these records difficult, then I hope you aren't arguing that it is the responsibility of unpaid volunteers to invent new protocols or serve the City in an advisory capacity in telling you how to proceed.

Please provide ALL documents that meet the criteria described, from the time the City started creating them until the City concluded creating them, and by all employees and officers who created them.

Request 3:

Producing these documents is primarily in the Public Interest. As stated in our initial request for records submitted on January 19, we believe that we qualify for the Public Interest Fee Waiver as described in ORS 192.324 (5) and in the Attorney General's Public Records and Meetings Manual, 2019.

Your letter indicates that for this portion of the request, at least, you have protocols in place that allow you to begin the process of producing them. We would ask you to do so without delay.

Request 4:

We contest your assertion that you are not the custodian of this section of the requested records. First, as mentioned above, the time for you to make this assertion was within five days of receiving the request. Second, on January 21 I wrote to you reminding you of your obligation and indicating that I interpreted your acknowledgement as being one of custodianship. That would have been the time to say you did not believe you were the custodian. By not doing so, even after I reminded you, you tacitly confirmed that you are the custodian.

Furthermore, the City has produced records of exactly this type to our organization in the past. When we have made requests of the Bend Police Department to let us know which Officers were involved in particular incidents, the Bend Police Department has not objected on the grounds they are not the custodians and have produced a list. Denial of records of this sort now is arbitrary and capricious.

Lastly, the assertion that County 911 services are the custodians of these records defies credulity. Many (and perhaps all, though only the City knows for sure) of the officers involved that day were already staged nearby. They were not dispatched by County 911. They were dispatched by the command staff of the Bend Police Department.

The City either has records pertaining to those decisions (in which case they are obligated to produce them) or it does not (in which case there is a very serious failure on the part of the City to maintain records it is legally obligated to maintain.)

Request 5:

We contest your assertion that you are not the custodian of this section of the requested records. First, as mentioned above, the time for you to make this assertion was within five days of receiving the request. Second, on January 21 I wrote to you reminding you of your obligation and indicating that I interpreted your acknowledgement as being one of custodianship. That would have been the time to say you did not believe you were the custodian.

Furthermore, the records we are requesting here are records produced by employees/officers of the City of Bend and Bend Police Department while acting in their official capacity. If they were on duty and producing records, then those examples of "handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings" are public records. If the officers or employees were "on the clock" then they were not creating records in their "individual capacity." They were creating records in their official capacity and while being paid with taxpayer money. Are you asserting that City of Bend and Bend Police Department employees and officers are being paid to create writings that are unsearchable? If so, that is an outrageous claim.

We also contest your assertion that the City of Bend did not produce records using the social media app "Parler." The Bend Police Department DID have an account, and they did use it. Let me be clear on this. This is not a question in dispute. BPD used that app. That is knowledge already inside the public domain. The fact that the app has since been deplatformed is irrelevant to our request. It is and was the City's responsibility to maintain those records.

For all of the reasons listed above, we are asking that you proceed with ALL of our requests for documents, and that you provide us an estimate for when you will complete the request. By Oregon statute, you are required to produce that estimate by Monday, February 8, 2021.

Thank you for your time,

Mike Satcher
Central Oregon Peacekeepers

On Wed, Feb 3, 2021 at 12:29 PM Robyn Christie <rchristie@bendoregon.gov> wrote:

Hello Mr. Satcher, Please see the attached response to your requests.

Regards,

Robyn



Robyn Christie | City Recorder

City of Bend 541-388-5517



From: Central Oregon Peacekeepers <centraloregonpeacekeepers@gmail.com>
Sent: Tuesday, January 19, 2021 8:48 AM
To: Robyn Christie <rchristie@bendoregon.gov>
Cc: Barbara Campbell <bcampbell@bendoregon.gov>
Subject: Public Records Request

CAUTION: External Email. Use caution when opening attachments, clicking links, or responding to this email.

City Recorder Robyn Christie,

This email is to serve as notification that the Central Oregon Peacekeepers as a "partnership, firm or association" (as described by the Oregon Department of Justice), and Michael Satcher as an individual, are requesting the public records described below.

Given the limited utility of the City's online request portal, and the delays we have experienced in the past with public records requests when using it, we are sending this request to you in this form instead. We've taken care to ensure that we have satisfied all requirements for a public records request in accordance with ORS 192.324, and with Bend City Policy ADM 2019-12. All information required by law and asked for on the portal are provided below:

Name: Michael Satcher

Phone Number: (512) 909 -6483

Email Address: mikesatcher@gmail.com centraloregonpeacekeepers@gmail.com

Street Address: 16962 Buck Horn Drive

City: Sisters

State: Oregon

Zip Code: 97759

The request is as follows:

....

1.

2. In the context described

3. below, and in accordance with ORS 192.324 (1) I am requesting the following records on my own behalf and on behalf of the Central Oregon Peacekeepers. We are requesting ALL records (as described below and in accordance with the definition of "record" described

4. by the Oregon Dept. of Justice) that:

5.

a.

b. Discuss or pertain to events

c. at Pilot Butte Neighborhood Park on October 3rd, 2020. These records shall include (but not be limited to):

d.

i.

ii. All records (as described

iii. below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) related to the planning and organization by Bend Police ahead of the October 3rd racial justice event at Pilot Butte Neighborhood Park.

iv.

ii.

iii. All records (as described

iv. below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) related to the planning and organization by Bend Police ahead of the October 3rd "Pro-Trump" rally originally planned by Nicholas Dieringer to take place at Drake

v. park.

vi.

iii.

iv. All records (as described

v. below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) pertaining to Surveillance conducted by Bend Police of ANY organizations or persons Bend Police believed to be involved in the planning or execution of those

vi. events on October 3rd.

vii.

1.

2. This shall include all surveillance

3. of those organizations and persons conducted both BEFORE, ON and AFTER October 3rd, 2020.

4.

iv.

v. Any record (as described

vi. below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) of any kind created by any officer or employee of the City of Bend and/or Bend Police Department in any way related to the events at Pilot Butte Neighborhood

vii. Park on October 3rd.

viii.

v.

vi. These records shall include

vii. (but not be limited to) ALL records (as described below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) created by Corporal Jeff Frickey on that date or about that day (October 3rd, 2020).

viii.

b.

c. Discuss or pertain to the

d. following organizations or persons, at any time on or before the filing of this request (1/18/2021):

e.

f.

i.

ii. Organizations: Central Oregon

iii. Peacekeepers, the Central Oregon Diversity Project, The Central Oregon Black Leaders Assembly, Bend for BLM, the Verbal Judo Institute, the Proud Boys, Patriot Prayer, the Three Percent Militia, Oregon Zone Five, The People's Rights Network,

iv.

ii.

iii. Persons: Luke Richter, Joslyn

iv. "Josie" Stanfield, Kerstin Arias, Adrianna Aquarius, Mylea Parker, Riccardo Waits, Nutasha Duran, Mike Satcher, Stephanie VanKlootwyk, John "Jay" Wells, Nicholas Dieringer, Jake Strayer, Michael Green, Kalan Roberts, Alan Stout, BJ Soper,

Jerrad Robison, Adam

v. Sutterfield, Laura Jones, Matt Heagy,
Scott Martin, Stewart Poths, Greg Walker, Kyle Wayne
Zollman, Bart Lewis.

vi.

2.

3. We are also requesting:

4.

a.

b. The names of all Bend Police

c. officers and/or employees on scene at Pilot Butte
Neighborhood park on October 3rd, 2020,

d.

i.

ii.the times they were present,

iii.

ii.

iii. the capacity in which they

iv. were present.

v.

iii.

iv. And all records (as described

v. above and in accordance with the
definition of "record" described by the Oregon Dept. of

Justice) that were created by those officers and/or employees on October 3rd, .

vi.

b.

c. Any communications made

d. by any officer, employee, or elected official of the City of Bend and/or Bend Police Department made on the social media platform "Parler", at any time on or before the filing of this request (1/18/2021):

e.

i.

ii. This shall include all communications
iii. from or to the official Bend Police Department Parler account.

iv.

ii.

iii. All communications from

iv. or to any officer or employee of the Bend Police Department on the social media platform "Parler" sent or received while on Bend Police Department property, and/or inside a Bend Police Department vehicle, and/or while that employee or officer was or could

v. be reasonably expected to be performing in an official capacity. This shall include all posts sent or received from personal accounts on the social media platform "Parler", if they were sent or received while the employee or officer was on duty and acting

vi. in an official capacity.

vii.

iii.

iv. All communications from

v. or to any employee or elected official of the City of Bend on the social media platform "Parler" sent or received while on City of Bend property, and/or inside a City of Bend vehicle, and/or while that employee or elected official was or could be reasonably

vi. expected to be performing in an official capacity. This shall include all posts sent or received from personal accounts on the social media platform "Parler", if they were sent or received while the employee or elected official was on duty and acting in an

vii. official capacity.

viii.

3.

4. The requested records described

5. above shall include all those in the possession of or rightfully maintained by:

6.

a.

b. The City of Bend, any employee

c. of the City of Bend, or any elected official of the City of Bend, including (but not limited to): the City Manager, the Mayor, and all City Councilors (past and present).

d.

b.

c. The Bend Police Department,

d. any officer of the Bend Police Department, or any employee of the Bend Police Department, including (but not limited to): the Chief of Police Mike Krantz, The Captain of the Patrol Division Nick Parker, and Corporal Jeff Frickey.

e.

c.

d. These shall include any

e. record in the possession of the City of Bend and/or Bend Police Department that may not have been originally prepared by the City of Bend and/or the Bend Police Department, but that are owned, used, or retained by the City of Bend and/or Bend Police Department.

f.

4.

5. We are requesting ALL records

6. rightfully maintained by the City of Bend and/or the Bend Police Department, as described by Oregon law as a "public record", in accordance with the definition of "record" described by the Oregon Dept. of Justice. These records shall include:

7.

a.

b. All "writings" relevant

c. to the matters, organizations, and persons described above. Writings shall include handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers,

d. maps, files, facsimiles or electronic recordings.

e.

b.

c. These writings shall include

d. those on ANY medium, including (but not limited to) information maintained in "machine readable or electronic form."

e.

c.

d. Examples of the sorts of

e. writings we are requesting shall include (but not be limited to) all paper documents, e-mails, electronic documents (e.g., Word, Excel, and PDF formats or equivalent), photographs, and audio or video recordings.

f.

5.

6. In accordance with ORS 192.324

7. (2), the City of Bend and/or Bend Police Department shall, within 5 business days:

8.

a.

b. Confirm that the City of

c. Bend and/or the Bend Police Department are the custodians of the requested records. Or,

d.

b.

c. Inform us that the the City

d. of Bend and/or the Bend Police Department are not the custodians of the requested records.Or,

e.

c.

d. Notify us that the City

e. of Bend and/or the Bend Police Department is uncertain

whether the City of Bend and/or the Bend Police Department are the custodians of the requested records.

f.

d.

e. The date of this request

f. is 1/19/2021. According to ORS 192.324 (2), the City of Bend and/or the Bend Police Department shall respond in the manner described above no later than 1/26/2021.

g.

6.

7. Upon receipt of this request

8. (1/19/2021), the City of Bend and/or Bend Police Department shall (as soon as reasonably possible but not longer than 10 business days):

9.

a.

b. Complete the public records

c. request, or,

d.

b.

c. Provide a written statement

d. that the City of Bend and/or the Bend Police Department are still processing the request, and a reasonable estimated date by which the City of Bend and/or the Bend Police Department expects to complete it's response.

e.

c.

d. The date of this request

e. is 1/19/2021. According to ORS 192.324 (2), the City of Bend and/or the Bend Police Department shall respond in the manner described above no later than 2/02/2021.

f.

7.

8. If there exist any records

9. (as described above and in accordance with the definition of "record" described by the Oregon Dept. of Justice) fitting the descriptions above, but that the City of Bend and/or the Bend Police Department believe are exempt from disclosure, then:

10.

a.

b. The City of Bend and/or

c. Bend Police Department must describe their number, and the reason for the withholding of them, each and separately.

d.

b.

c. These exemptions must be

d. described (each and separately), citing the specific language within ORS 192.355 that qualifies them for exemption.

e.

8.

9. In accordance with ORS 192.324

10. (5), the records requested are "in the public interest because making the records available primarily benefits the general public."

11.

- a.
- b. Release of the records requested
- c. will benefit the general public by answering outstanding questions about the Bend Police Department and City of Bend handling of the October 3rd violence at Pilot Butte Neighborhood Park.
- d.
 - i.
 - ii. This information is not
 - iii. currently in the public domain.
 - iv.
 - ii.
 - iii. Fees will inhibit our ability
 - iv. to obtain these records and report on
 - them.
 - v.
- b.
- c. Neither myself nor the Central
- d. Oregon Peacekeepers will derive a personal benefit (financial or otherwise) from the disclosure of these records. It is our intention to deliver these documents to the general public, in their entirety and free of charge.
- e.
- c.
- d. The Central Oregon Peacekeepers
- e. have the capacity to deliver these records to the public. Our various platforms regularly reach thousands or tens of thousands of readers in Central Oregon and beyond.
- f.

d.

e. For these reasons, we argue

f. that our request for records satisfies every requirement of the “public interest test” described in the Oregon Attorney General’s “Public Records and Meetings Manual”.

g.

i.

ii. Therefore, we believe we

iii. qualify for a fee waiver in accordance with ORS 192.324 (5).

iv.

PUBLIC RECORDS LAW DISCLOSURE: Emails are generally public records and therefore subject to public disclosure unless exempt from disclosure under Oregon Public Records Law. Emails can be sent inadvertently to unintended recipients and contain confidential or privileged information. If you are not the intended recipient (or authorized to receive for the recipient), please advise by return email and delete immediately without reading or forwarding to others. Thank you.

PUBLIC RECORDS LAW DISCLOSURE: Emails are generally public records and therefore subject to public disclosure unless exempt from disclosure under Oregon Public Records Law. Emails can be sent inadvertently to unintended recipients and contain confidential or privileged information. If you are not the intended recipient (or authorized to receive for the recipient), please advise by return email and delete immediately without reading or forwarding to others. Thank you.

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From: [Central Oregon Peacekeepers](#)
To: [Robyn Christie](#)
Subject: Re: Public Records Request
Date: Thursday, February 25, 2021 1:00:24 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image001.png](#)

I see the City has chosen more delay tactics. I will of course appeal.

This is a near textbook example of why the public interest fee waiver exists. The City has made it clear that it will do whatever it can to slow walk this process. You were negligent in fulfilling your obligation to give a completion estimate in a timely manner, and your denial of the fee waiver is an arbitrary and capricious attempt to prevent the release of these records. The lengths to which the City is going to keep these records from the public only serves to demonstrate how important it is that the public receives them.

I'll be making the appeal today.

- Mike Satcher

On Thu, Feb 25, 2021, 11:03 AM Robyn Christie <rchristie@bendoregon.gov> wrote:

Mr. Satcher,

The City is allowed some discretion in deciding whether to reduce or waive fees for public records requests. In this case, considering things like the time to complete the request, the volume of records requested, the likely need to review and separate exempt and non-exempt material, and the fact that you have not been willing to narrow the scope of the request to reduce the time and expense involved, we have offered to reduce the fee by 25%. We are not required to waive the fee in every request where there is a public interest involved. This is not about delay. We have already informed you of the fee.

Please let me know if you agree to the fee. If you do, we will continue the work on this request.

Robyn Christie | City Recorder

City of Bend 541-388-5517



From: Central Oregon Peacekeepers <centraloregonpeacekeepers@gmail.com>
Sent: Wednesday, February 24, 2021 4:00 PM
To: Robyn Christie <rchristie@bendoregon.gov>; CouncilAll <councilall@bendoregon.gov>
Subject: Re: Public Records Request

City Recorder Christie,

Thank you for acknowledging that the City's failure to fulfill it's legal obligation to provide a completion estimate has been frustrating.

First, it is important that we immediately and finally dispense with the idea that the City does not understand the "scope of work." Our request for records was and has been very detailed and we clearly expressed what records we are asking for. No part of the unacceptable delay we've experienced thus far has been a result of a lack of clarity on my part or the part of the Peacekeepers. You understood the scope well enough to quote a figure and to have stalled your legal obligation to provide a completion estimate while you kept asking for up front payment. The City understood the scope well enough to decide how much it would cost, so it defies credulity that you didn't understand how long it would take to compile those records or that you don't understand the scope of what is being asked for. This continued narrative that your delays are the result of some failure of clarity on my part is frankly insulting.

Next, now that you've provided the completion estimate you were required to provide no later than February 8, we can finally discuss this matter of fees. The City has already acknowledged that the fulfillment of this records request is in the public interest. If necessary, I will walk through the steps of the public interest test (as described in the Oregon DOJ manual), but I think that we both know those steps. This request fully satisfies every step to that test. The fee that you are asking us to pay is an amount that does not constitute a burden on the City of Bend, but it is a burden and an obstacle to our

organization. If the City absolutely insists on delaying this process even further, and on denying the public access to this information even longer than you already have, then we're certainly willing to go through the tedious and time consuming process of appeal.

All of these delays from the City have constituted an arbitrary and capricious violation of the public's right to these records. I am asking you to stop the delay tactics, and immediately begin the process of fulfilling your legal obligation to provide these records. In your next email, please be clear in whether you will be providing the waiver now or if the City plans to delay further by making us go through the motions of the appeal process.

- Mike Satcher
Central Oregon Peacekeepers

On Wed, Feb 24, 2021 at 2:29 PM Robyn Christie <rchristie@bendoregon.gov> wrote:

Mr. Satcher,

I acknowledge your frustration with not receiving a completion date estimate. Without fully understanding the scope of work you are requesting and agreeing to pay for it is difficult to provide an accurate date. For the complete request of conducting 34 searches and reviewing over 6,500 email messages, we've estimated over 65 hours of staff time (assuming review of 100 messages per hour which is optimistic). Due to the potential need for review and redaction, this will require staff with specific training to complete. The work will need to be scheduled in with existing workload. At 2.5 to 5 hours per week, this will take 13 to 26 weeks from the time you approve the estimate (if that were to happen today, 13 weeks is May 26 to 26 weeks is July 14). This is a long time, and the reason I suggested a rolling response so we can provide the records as they become available.



Robyn Christie | City Recorder

City of Bend 541-388-5517



From: Central Oregon Peacekeepers <centraloregonpeacekeepers@gmail.com>
Sent: Tuesday, February 23, 2021 5:19 PM
To: Robyn Christie <rchristie@bendoregon.gov>
Cc: CouncilAll <councilall@bendoregon.gov>
Subject: Re: Public Records Request

City Recorder Christie,

I am truly at a loss for how to say this more clearly.

We are not at the fee stage of this request yet. I'll say that again. We are not at the fee stage yet. A third (and hopefully final) time. We are not at the fee stage yet.

ORS 192.329 (5) is unambiguous. Due to the willful disregard for the law being demonstrated by the City, we are stuck on the stage where you were supposed to provide an estimate for how long it will take you to complete the request. Your duty to provide that estimate is entirely separate from the question of the fee. In fact, your refusal to provide the legally required completion estimate calls the figure you have cited as the fee into question. How could you possibly know how much the request will cost if you don't even know how long it will take to complete?

We will discuss the fee once you have provided the completion estimate that you were required by law to have given me on February 8.

The City is willfully slow walking this request, and in doing so are violating my civil rights.

Please send the completion estimate. Please do so immediately.

I've copied the City Council on this email, because we are long past the point that any of this is acceptable.

- Mike Satcher

On Tue, Feb 23, 2021 at 4:31 PM Robyn Christie <rchristie@bendoregon.gov> wrote:

Mr. Satcher,

The case you cited is referenced in the Oregon Attorney General's Public Records and Meetings Manual for the question of whether there is a public interest. To be clear: the existence of a public interest is a prerequisite for the

public body to consider waiving or reducing its fee. However, the existence of a public interest does not mean the public body is required to waive or reduce its fee in every instance. The law is clear on that subject.

We have indicated we are willing to reduce the fee by 25%, and provided you some options on how to move forward. As explained in my February 9 letter, you have chosen not to narrow your request, and completing it as presented will take many hours of staff time that will take myself and other staff away from other important work. The City is allowed to charge for the costs of that time, subject to exercising its discretion to waive or reduce fees.

We are not required to do further work until you agree to pay the estimate. If you would like to refine the request, or consider proceeding with payment for a smaller sub-set of the request, or would like to discuss other options, please let me know.



Robyn Christie | City Recorder

City of Bend 541-388-5517



From: Central Oregon Peacekeepers <centraloregonpeacekeepers@gmail.com>

Sent: Friday, February 19, 2021 6:00 PM

To: Robyn Christie <rchristie@bendoregon.gov>

Subject: Re: Public Records Request

City Recorder Christie,

I could not have been more clear about the fact that I would like you to proceed with all of the record requests. I've said so many times.

In my last letter to you, I cited for you the case law relevant to your stated reason for denying my fee waiver request. Your stated rationale for denying the waiver is one that has been explicitly found to be invalid.

Once again, and I'm perplexed by the fact we have to keep going over this, you are now long past the point by which you were required by Oregon statute to have given me an estimate for completion. The question of the fee is entirely separate from your duty to either complete the request or provide an estimate for completion within the timeframe allowed by ORS 192.329 (5). There is absolutely no language in the statute that allows you to avoid providing that estimate until the requester gives in and agrees to the arbitrary and capricious fee you are demanding. You were required to have given me that estimate 11 days ago. The continuing failure to meet that obligation is entirely the City's failure, and has absolutely nothing to do with this separate debate about fees.

Let me be clear. At this point, the willful slow walking by the City in fulfilling its duty to provide these records constitutes a violation of the law, and of my civil rights. You have already acknowledged that this request is in the public interest. Your reason for continuing to demand a fee is a reason that the courts have settled, and found to be invalid.

Please proceed with the entirety of the request. Please do so with haste and with seriousness of purpose. Please immediately provide an estimate for when you expect to have compiled ALL of the records I have requested.

- Mike Satcher
Central Oregon Peacekeepers

On Fri, Feb 19, 2021 at 2:28 PM Robyn Christie <rchristie@bendoregon.gov> wrote:

Hello Mr. Satcher, In my last letter to you, I suggested a rolling response where we would provide the records as they are compiled and reviewed. I would suggest we could do this on a weekly basis until complete. It's difficult to know what the final completion date may be without your direction to proceed with all or portions of the request. We maintain our fee estimate with the 25% waiver. This request continues to be on hold pending your approval to pay the fees.

Regards,

Robyn

From: Central Oregon Peacekeepers <centraloregonpeacekeepers@gmail.com>
Sent: Tuesday, February 9, 2021 6:33 PM
To: Robyn Christie <rchristie@bendoregon.gov>
Subject: Re: Public Records Request

City Recorder Christie,

This was a quite detailed response, and there are a great many problematic pieces of it. In the interests of time, I'm not going to go into all of them now but will focus instead on the two that are most immediately relevant.

1) Completion estimate:

Notably missing from your response is the timeframe for completion that Oregon statute required you to provide yesterday. We can (and no doubt will) continue to debate many of the other things you said in your response. What isn't up for debate is the fact that Oregon law gives you ten days to either complete the request or tell us when you expect to be done with it. I appreciate you giving estimates for the staff hours it will take you to complete portions of the request, but you still haven't actually told me when I should reasonably expect to receive the responsive records.

In your opening paragraph you assert that you can only determine how many records there will be and how long it will take to complete my lawful request AFTER I pay your fee. That is precisely opposite of how this process works. You are obligated to keep the records. You are obligated to have processes for retrieving the records. Oregon statute obligates you to either complete the request or provide me with a reasonable estimate for how long it will take to complete the request, and to do so within ten days. That's the stage of this process we're in now, and you've still not completed that step.

In your next response, please give me a date range in which you expect to complete this lawful request.

2) Fees:

In your response, you offered to waive 25% of the fees. Thank you for acknowledging that this request is primarily in the public interest. You then go on to assert that you have a responsibility to "recover the costs" associated with fulfilling your obligation. I know that you are aware of the precedent set in *Diamond v. FBI* in which it was clearly established that "An agency may not decline to waive fees because of a perceived obligation to the public to collect them." I know that you know this, because the Oregon Department of Justice uses this precedent explicitly in its guidance on Public Interest fee waivers as described in the "Public Records and Meetings Manual." Simply put, this is not a valid basis for declining a fee waiver. Therefore (because this request is primarily

in the public interest, because the fee impedes that public interest by placing an undue burden on myself and on our organization, because the fee amounts you have quoted are not a burden upon a public body like the City of Bend, and because your cited reason for denial is one explicitly disallowed) I am asking once again that you grant the fee waiver in full.

Please note that none of the above are reasons to delay the process of starting to retrieve those records. There is quite a lot more to say about your response, but for now we really need these two issues addressed as soon as possible.

-Mike Satcher
Central Oregon Peacekeepers

On Tue, Feb 9, 2021 at 4:10 PM Robyn Christie <rchristie@bendoregon.gov> wrote:

The City's response is attached.

Regards,

Robyn

From: Central Oregon Peacekeepers <centraloregonpeacekeepers@gmail.com>

Sent: Thursday, February 4, 2021 3:24 PM

To: Robyn Christie <rchristie@bendoregon.gov>

Subject: Re: Public Records Request

City Recorder Christie,

I have read your response and will try to be as helpful as possible in assisting the City of Bend in fulfilling its legal obligation to produce these records. I do have to say up front, however, that your response is troubling on a number of levels, which I will detail below.

First, at two points your letter asserts that you are not the custodian of certain categories of record that I requested. ORS 192.324 (2) gives you five days from the receipt of the request to identify whether you are, are not, or are unsure whether or not you are the custodian of record. My request was made on January 19, 2021. You acknowledged receipt on January 21, 2021 and did not fulfill your obligation then to identify your custodianship. On that same day, I wrote you back reminding you of that obligation, and indicated that I took your omission to mean that you were the custodian of the records requested. Had you responded then that you did not believe yourself to be the custodian, you would have been within the legal window allowing you to do so. Furthermore, had you met your legal obligation at that time, it would have expedited this

process significantly. I would have had the opportunity then to either submit a request to the County for some of the records you are now denying custodianship of, and/or would have had the opportunity (inside the window allowed by State statute) to argue for why I believe you are in fact the custodian. Instead, fifteen days have passed since I submitted my request and we're just now having this conversation. By failing in your legal obligation to respond regarding your custodianship, you've denied me and my organization the time we could have used pursuing these records. As the pursuit of this information is primarily in the Public Interest, this failure to meet your obligation has delayed and continues to delay the public receiving answers to these questions.

However, the damage is done and there's no getting back the time you cost us by failing to meet that obligation. Below, I will detail the reasons why I believe you are, in fact, the custodian of records that can answer my request. You'll see those arguments under sections 4 and 5.

Second, you are fast approaching the deadline by which you are obligated under ORS 192.329 (5) to provide an estimate for completion of the request. I understand from your letter that you would like some clarification on what I'm requesting. Once again, had you made this request for clarification sooner, it would have saved us both time and effort. I'll do my best to clarify for you what I'm asking for (though I think any reasonable person could read my request and conclude that it was quite detailed as to exactly what I'm asking for.) Either way, the ten days afforded to you by Oregon statute to provide me an estimate will expire on Monday, February 8, 2021.

Request 1:

It is impossible for me or our organization to know precisely when the City of Bend started or concluded creating records related to what you've identified as request 1. Likewise, it is impossible for us to know which City employees produced records of that sort. As it is your responsibility to maintain those records, we are asking you to produce them. As I am unfamiliar with your protocols for storing the records you are obligated to maintain, or your protocols for retrieving and producing them, I don't know how to assist you in searching for them.

If it is a record produced by the City of Bend or the Bend Police department and it meets the criteria of my request (which was quite detailed) then I am requesting it. Asking me to narrow either the time frame or the employees is asking me to consult a crystal ball. Only the City knows when or by whom these records were created. If I were to arbitrarily provide you with an exclusive timeline or list of employees, then the City may then end up excluding records the public needs.

Please provide ALL documents that meet the criteria described, from the time

the City started creating them until the City concluded creating them, and by all employees and officers who created them.

Request 2:

See above. Only the City knows the timeframe in which they created these records. If they meet the criteria described, then it is the City's responsibility to produce them. If the City's record management protocols are making retrieving these records difficult, then I hope you aren't arguing that it is the responsibility of unpaid volunteers to invent new protocols or serve the City in an advisory capacity in telling you how to proceed.

Please provide ALL documents that meet the criteria described, from the time the City started creating them until the City concluded creating them, and by all employees and officers who created them.

Request 3:

Producing these documents is primarily in the Public Interest. As stated in our initial request for records submitted on January 19, we believe that we qualify for the Public Interest Fee Waiver as described in ORS 192.324 (5) and in the Attorney General's Public Records and Meetings Manual, 2019.

Your letter indicates that for this portion of the request, at least, you have protocols in place that allow you to begin the process of producing them. We would ask you to do so without delay.

Request 4:

We contest your assertion that you are not the custodian of this section of the requested records. First, as mentioned above, the time for you to make this assertion was within five days of receiving the request. Second, on January 21 I wrote to you reminding you of your obligation and indicating that I interpreted your acknowledgement as being one of custodianship. That would have been the time to say you did not believe you were the custodian. By not doing so, even after I reminded you, you tacitly confirmed that you are the custodian.

Furthermore, the City has produced records of exactly this type to our organization in the past. When we have made requests of the Bend Police Department to let us know which Officers were involved in particular incidents, the Bend Police Department has not objected on the grounds they are not the

custodians and have produced a list. Denial of records of this sort now is arbitrary and capricious.

Lastly, the assertion that County 911 services are the custodians of these records defies credulity. Many (and perhaps all, though only the City knows for sure) of the officers involved that day were already staged nearby. They were not dispatched by County 911. They were dispatched by the command staff of the Bend Police Department.

The City either has records pertaining to those decisions (in which case they are obligated to produce them) or it does not (in which case there is a very serious failure on the part of the City to maintain records it is legally obligated to maintain.)

Request 5:

We contest your assertion that you are not the custodian of this section of the requested records. First, as mentioned above, the time for you to make this assertion was within five days of receiving the request. Second, on January 21 I wrote to you reminding you of your obligation and indicating that I interpreted your acknowledgement as being one of custodianship. That would have been the time to say you did not believe you were the custodian.

Furthermore, the records we are requesting here are records produced by employees/officers of the City of Bend and Bend Police Department while acting in their official capacity. If they were on duty and producing records, then those examples of "handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings" are public records. If the officers or employees were "on the clock" then they were not creating records in their "individual capacity." They were creating records in their official capacity and while being paid with taxpayer money. Are you asserting that City of Bend and Bend Police Department employees and officers are being paid to create writings that are unsearchable? If so, that is an outrageous claim.

We also contest your assertion that the City of Bend did not produce records using the social media app "Parler." The Bend Police Department DID have an account, and they did use it. Let me be clear on this. This is not a question in dispute. BPD used that app. That is knowledge already inside the public domain. The fact that the app has since been deplatformed is irrelevant to our request. It is and was the City's responsibility to maintain those records.

For all of the reasons listed above, we are asking that you proceed with ALL of our requests for documents, and that you provide us an estimate for when you

will complete the request. By Oregon statute, you are required to produce that estimate by Monday, February 8, 2021.

Thank you for your time,

Mike Satcher
Central Oregon Peacekeepers

On Wed, Feb 3, 2021 at 12:29 PM Robyn Christie <rchristie@bendoregon.gov> wrote:

Hello Mr. Satcher, Please see the attached response to your requests.

Regards,

Robyn



Robyn Christie | City Recorder

City of Bend 541-388-5517



From: Central Oregon Peacekeepers <centraloregonpeacekeepers@gmail.com>

Sent: Tuesday, January 19, 2021 8:48 AM

To: Robyn Christie <rchristie@bendoregon.gov>

Cc: Barbara Campbell <bcampbell@bendoregon.gov>

Subject: Public Records Request

CAUTION: External Email. Use caution when opening attachments, clicking links, or responding to this email.

City Recorder Robyn Christie,

This email is to serve as notification that the Central Oregon Peacekeepers as a "partnership, firm or association" (as described by the Oregon Department of Justice), and Michael Satcher as an individual, are requesting the public records described below.

Given the limited utility of the City's online request portal, and the delays we have experienced in the past with public records requests when using it, we are sending this request to you in this form instead. We've taken care to ensure that we have satisfied all requirements for a public records request in accordance with ORS 192.324, and with Bend City Policy ADM 2019-12. All information required by law and asked for on the portal are provided below:

Name: Michael Satcher

Phone Number: (512) 909 -6483

Email Address: mikesatcher@gmail.com
centraloregonpeacekeepers@gmail.com

Street Address: 16962 Buck Horn Drive

City: Sisters

State: Oregon

Zip Code: 97759

The request is as follows:

....

- 1.
2. In the context described
3. below, and in accordance with ORS 192.324 (1) I am requesting the following records on my own behalf and on behalf of the Central Oregon Peacekeepers. We are requesting ALL records (as described below and in accordance with the definition of "record" described
4. by the Oregon Dept. of Justice) that:
- 5.

- a.
- b. Discuss or pertain to events
- c. at Pilot Butte Neighborhood Park on October 3rd, 2020. These records shall include (but not be limited to):

d.

i.

ii. All records (as described

iii. below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) related to the planning and organization by Bend Police ahead of the October 3rd racial justice event at Pilot Butte Neighborhood Park.

iv.

ii.

iii. All records (as described

iv. below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) related to the planning and organization by Bend Police ahead of the October 3rd "Pro-Trump" rally originally planned by Nicholas Dieringer to take place at Drake

v. park.

vi.

iii.

iv. All records (as described

v. below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) pertaining to Surveillance conducted by Bend Police of ANY organizations or persons Bend Police believed to be involved in the planning or execution of

those

vi. events on October 3rd.

vii.

1.

2. This shall include all surveillance

3. of those organizations and persons conducted both BEFORE, ON and AFTER October 3rd, 2020.

4.

iv.

v. Any record (as described

vi. below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) of any kind created by any officer or employee of the City of Bend and/or Bend Police Department in any way related to the events at Pilot Butte Neighborhood

vii. Park on October 3rd.

viii.

v.

vi. These records shall include

vii. (but not be limited to) ALL records (as described below and in accordance with the definition of "record" described by the Oregon Dept. of Justice) created by Corporal Jeff Frickey on that date or about that day (October 3rd, 2020).

viii.

b.

c. Discuss or pertain to the

d. following organizations or persons, at any time on or before the filing of this request (1/18/2021):

e.

f.

i.

ii. Organizations: Central Oregon

iii. Peacekeepers, the Central Oregon Diversity Project, The Central Oregon Black Leaders Assembly, Bend for BLM, the Verbal Judo Institute, the Proud Boys, Patriot Prayer, the Three Percent Militia, Oregon Zone Five, The People's Rights Network,

iv.

ii.

iii. Persons: Luke Richter, Joslyn

iv. "Josie" Stanfield, Kerstin Arias, Adrianna Aquarius, Mylea Parker, Riccardo Waits, Nutasha Duran, Mike Satcher, Stephanie VanKlootwyk, John "Jay" Wells, Nicholas Dieringer, Jake Strayer, Michael Green, Kalan Roberts, Alan Stout, BJ Soper, Jerrad Robison, Adam

v. Sutterfield, Laura Jones, Matt Heagy, Scott Martin, Stewart Poths, Greg Walker, Kyle Wayne Zollman, Bart Lewis.

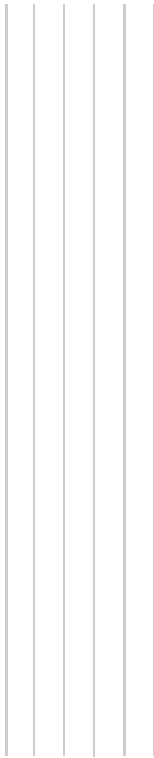
vi.

2.

3. We are also requesting:

4.

a.



b. The names of all Bend Police

c. officers and/or employees on scene at Pilot Butte
Neighborhood park on October 3rd, 2020,

d.

i.

ii. the times they were present,

iii.

ii.

iii. the capacity in which they

iv.

EXHIBIT C

District Attorney Hummel,

Thank you for your timely handling of this matter. I have read the City's response, and am prepared to argue for why this request is a textbook example of why the public interest fee waiver exists, and for why the City's fee is unreasonable. Further, the denial of the waiver is arbitrary and capricious.

The Public Interest Test:

In the City's response, several times they made bold assertions about what the District Attorney's Office may and may not consider in their decision. I will make no such assertions, and simply discuss the law itself. Fortunately for us, the law on this is quite clear. As the City itself concedes, the question of whether or not to waive fees for a public records request is addressed in a three part test:

- 1) The character of the public interest in the particular disclosure.
- 2) The extent to which the fee impedes that public interest.
- 3) The extent to which a waiver would burden the public body.

In the context of this three part test, the question becomes whether or not the City's denial of the waiver is "reasonable". I will demonstrate that not only is the denial unreasonable, but that the figure itself was unreasonable. As I will show, the quoted fee was arrived at in a manner that is explicitly arbitrary and capricious. Moreover, the purpose for imposing the fee is transparently (and by the City's own admission) an attempt to withhold some portion of the records requested, deny the public access to them, and to discourage future requests from other requestors.

1) The Character of the public interest in the particular disclosure:

The City made it clear that they do not dispute the clear public interest in the disclosure of the records myself and my organization are requesting. Even so, it's worthwhile to discuss exactly what is being asked for, why it is being asked for, and why the disclosure is in the public interest.

There are several points of fact not in dispute.

It is a fact that on October 3rd, 2020 several attendees of a racial justice event held at Pilot Butte Neighborhood Park contacted law enforcement (including calls to both 911 and non-emergency lines) believing that violence from counter protesters was imminent. It is a fact that Bend Police did not respond to these calls for help, that the predicted violence did ensue, and several people were injured.

It is a fact that there were no citations or arrests that day, even though Bend Police interviewed the perpetrators. In fact, Bend Police were present when one man pulled a loaded gun and pointed it into a crowd that included children. Neither the gunman nor anybody else were

arrested, or even cited.

It is a fact that Bend Police conducted surveillance on racial justice activists and organizers on and/or around the October 3rd event. Bend Chief of Police Mike Krantz has made public statements to this effect.

I and we have made this request in order to answer questions around the police response to the violence that day, whether a different response may have prevented injury, why Bend Police did not make arrests even when they were physically present to witness the commission of crimes, and whether or not the Bend Police surveillance program was inappropriate or potentially unlawful. It may very well be that the Bend Police Department acted in violation of ORS 181A.250 by unlawfully collecting and/or and maintaining “information about the political, religious or social views, associations or activities of any individual, group, association, organization, corporation, business or partnership” and that they did so when that information did not directly relate “to an investigation of criminal activities” and there were no “reasonable grounds to suspect the subject of the information is or may be involved in criminal conduct.”

In this context, it is clear that the disclosure of these records is clearly in the public interest. As I said in the beginning, the City does not dispute this fact.

So does our request satisfy the first step of the public interest test?

Yes it does. The particular disclosure is in the public interest.

2) The extent to which the fee impedes that public interest.

The City quoted us a fee total of \$4,777.62 to complete 65 hours of work. This figure was arrived at after the City asserted that searching police records costs \$71.06 an hour and searching emails costs \$66.21 an hour.

After a 25% fee “reduction” that would come out to \$3,583.22. I will discuss in a moment why this figure impedes the public interest, but there is a more important matter that has to be addressed first.

These hourly rates (even at the 25% “discount”) are wildly different from search fee rates the City has quoted others in the past. I have permission to share the fact that my colleague Jasmine Barnett was quoted a figure of \$30.00 an hour to search similar City records. The City has the audacity to more than double the hourly search rate, inflating the cost and then offering a “reduction” that still leaves that rate higher than what they are quoting to other members of the public.

I’m going to linger on this point, because it is so important. Of the two hourly rates the City quotes, let’s focus on the lower. After the 25% “reduction” offered for the \$66.21/hr email search rate, the fee would be \$49.66/hr. Far from being a “reduction”, this fee is a 165% INCREASE

from the fee schedule they are offering other requestors.

In the City's response, they applaud themselves for benevolently "reducing" the fee, when in fact they have objectively inflated the fee schedule. Not only is the fee unreasonable, it appears to be explicitly punitive.

The City hasn't even attempted to conceal the fact that its fee is arbitrary, and inflated well beyond the norm. Even if our organization had the means to pay this fee, it would be completely unreasonable for the City to ask it. The 25% "reduction" isn't a reduction at all. It's a significant inflation that makes the records unattainable.

Our organization is staffed entirely by working class volunteers who are not financially compensated for our time in any way. What resources we do have as an organization are dedicated entirely to our other efforts (namely providing food and essential supplies to the street kitchens serving houseless Oregonians, and other outreach programs.) We simply do not have the resources to pay the City their \$4,777.62 total fee, the \$3,583.22 "reduced" fee, or even the \$1,950.00 this would cost if the City were not arbitrarily inflating the cost for this request.

So does our request satisfy the second step of the public interest test?

Yes it does. The fee is unreasonable, and its imposition impedes the public interest.

3) The extent to which a waiver would burden the public body.

Does the cost of this request constitute a burden on the City of Bend? That question is almost too difficult to answer, because the City cannot get its story straight on what the cost actually is. As demonstrated above, the cost they have quoted is more than twice that which they have quoted others for similar requests.

Setting the arbitrary fee increase aside for just a moment, we could ask whether or not the \$4,777.62 total would be a burden if it were real.

In its response, the City argued that it lacks the staff and infrastructure it would need to process a request like this without imposing fees. They unapologetically asserted that they need revenue from request fees in order to pay their staff to process public record requests. This failure on the part of the City to have processes in place to fulfill their legal obligation to maintain and disclose public records has been presented as a burden the public must remedy. They have explicitly stated that their lack of preparation and failures of due diligence are the public's responsibility to correct. This is frankly appalling.

Even if the \$4,777.62 cost of this request were real (which we know it is not), then the notion that this would constitute a burden the City of Bend cannot endure would be absurd. Just recently, the City proudly announced that it had spent \$15,000.00 to produce a single public service announcement video that was 60 seconds long. It did not consider a \$15K a minute fee

scale to be a burden. At the end of the last City Council term, the City voted to increase the pay of the City Manager by \$3,000.00 a month. The City of Bend does not find these expenses to be a “burden”, but is asserting that the cost of providing records it is legally obligated to maintain and produce on request is an insurmountable obstacle without the assistance of private dollars.

What the City is doing is explicitly asserting that this fee is meant to be punitive, and is meant to serve as a deterrent to other future requests. This “duty to collect” argument has been soundly defeated in court. “Diamond vs. FBI” in 1982 found decisively that “a public body may not decline to waive fees because of a perceived obligation to the public to collect them.”

This “duty to collect” position is the City’s only actual argument for why their denial is reasonable, and it is one the courts have soundly rejected. Moreover, the fee they are asserting it is their duty to collect is one arrived at arbitrarily, and that is significantly and unapologetically inflated.

Does this request satisfy the third step of the public interest test?

Yes it does. The cost of this request cannot possibly be construed as an undue burden on the City.

“Is the fee reasonable?”

We have already demonstrated that the fee waiver request fully satisfies every step of the public interest test, but in the name of diligence we’d like to go into detail on this question of the “reasonableness” of the fee.

In the past, District Attorney Hummel has provided a great deal of transparency on the issues he must consider when deciding on fee waiver appeals, so we would like to spend some time addressing each one of those points specifically.

- “The requestor’s identity”:

I am a volunteer on the staff of the Central Oregon Peacekeepers. The Peacekeepers are well known in Central Oregon. We consistently reach thousands or tens of thousands of readers across our various platforms. Those thousands of readers have spent months demonstrating an interest in the truth of what happened on October 3rd, on the surveillance program by Bend Police of racial justice activists, and on the question of what appears to be a disparity in how Bend Police choose to make arrests. Regardless of the outcome of our investigation, we will be publishing the results.

The City is well aware of our reach, and we’ve communicated to them many times our eagerness to conclude this project and finally publish. If the facts demonstrate that the City acted in an ethical manner and/or that their actions did not violate Oregon law, then they know we intend to say so. The only obstacle to publishing those results is the City’s recalcitrance in

producing the records.

In its response, the City asserted that our investigation is not “official.” We’re not sure what the word “official” actually means in this context. We are independent, volunteer journalists attempting to answer questions being asked by thousands of fellow citizens. When elected City officials meet with the Central Oregon Peacekeepers or invite our President to speak at City Council meetings, they recognize our “official” capacity. When the City Manager consults us as part of community engagement, they recognize our “official” capacity. When our live streamers respond to the use of the Central Oregon Emergency Response Team and command staff from Bend Police approach them to ask if our viewers have questions, they are certainly acknowledging our “official” capacity.

The City of Bend’s official Facebook page “follows” the Central Oregon Peacekeepers page. So does Mayor Sally Russel, who has used our platform in the past to communicate with the public. City Councilors make phone calls to our staff members asking for information and updates on social justice activism. Local, state, and even national news media correspond with our staff to receive up to date news on Bend events.

It may have been useful for the City to define the word “official” in this context, but they chose not to. That is unfortunate, but it is our fervent belief that the work we do satisfies the most important definition applicable.

We are citizens.

We are asking for records that the City is legally obligated to maintain and produce.

That should be sufficiently “official”.

- “The purpose for which the requestor intends to use the records”:

As stated above, we are requesting this information as part of an ongoing investigation we are conducting (as described above.) Once the City fulfills its obligation to produce the records, we will publish our findings. The City (having asked us to communicate with the public on their behalf in the past) clearly trusts us to communicate effectively.

We’re simply asking for the opportunity to complete this pursuit of information, and to communicate the results with our readership.

- “The character of the information.”

People were injured. No arrests were made. The City conducted surveillance on racial justice activists.

That’s what we know. What we don’t know is why. The character of the information we are

requesting has the potential to answer that question of “why?” The public wants to know, and only the City has the information that is necessary to answer.

These sorts of questions, and these sorts of records, are precisely why the public interest test exists.

- “Whether the requested information is already in the public domain.”

It is not.

It should be.

- “Whether the requester can demonstrate the ability to disseminate the information to the public.”

This isn’t in dispute. The City knows we can put this information out. The Central Oregon Peacekeepers have demonstrated that capacity many times.

“Limitation of scope.”

Finally, in conclusion we would like to address a recurring theme in the City’s response. That theme is that of “limitation of scope.”

Over the several weeks so far that we have been requesting these records, the City has repeatedly insisted that we “limit the scope” of the request. They have insisted that their ability to comply with their legal obligation to produce records that it is their duty to maintain and produce is limited by the breadth of our request.

Let us be clear. Our request is already limited to the scope required by law.

In our initial request, we acknowledged that there may well be records we are requesting that may be exempted from disclosure by Oregon Revised Statute. We simply requested those records which the City is the legal custodian of, and that the law requires them to produce. That’s all.

What the City would like us to do is limit the request even further so that fulfilling their legal obligation to maintain and produce records is more convenient for them. This is not a duty that private citizens carry. The duty to have infrastructure in place to maintain and produce records is on the public body.

Only the City knows what records it produced that pertain to our request. We cannot “limit” that request, because we have no way of knowing what they are in possession of. By “limiting” our scope, we may very well be denying ourselves access to the key information that proves (for example) that the City acted completely appropriately. There is simply no way for us to know,

because we are not the custodians of these records. The City of Bend is the custodian, and only they know what they possess and the nature of those records. We are simply asking that they produce those records they created, are legally obligated to maintain, and that they must disclose when asked for. It is unreasonable of the City to insist we "limit" a data set we have no way of knowing the size of.

By the City's own admission, that data set appears to be rather large. In the context of what we are asking for and why we're asking for it, the size of the data set does not argue for limitation. Quite the contrary, the fact that the City acknowledges possession of a great many records satisfying the criteria of our request argues for how important it is that those records be made public.

Thank you for your time, and we look forward to your timely and reasonable decision.

- Mike Satcher,
Central Oregon Peacekeepers