

John Hummel District Attorney

1164 NW Bond Street • Bend, Oregon 97701
(541) 388-6520 • Fax: (541) 330-4691
Grand Jury Fax: (541) 330-4698
www.dcca.us

June 29, 2021

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

Eric Garrity
etg2@case.edu

Dear Ms. Winters and Mr. Garrity:

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

Background

- On June 4, 2021, Mr. Garrity submitted a public records request to the City. In summary, Mr. Garrity's request covered four primary topics:
 - Any records from City employees containing any of the racial, ethnic, or religious slurs on a list of terms provided by Mr. Garrity;
 - All Bend Police Department records relevant to unhoused people;
 - All records related to the CDC Interim Guidance on Unsheltered Homelessness and Coronavirus Disease 2019 (COVID-19) for Homeless Service Providers and Local Officials; the Les Schwab Tire Center location at 105 NE Franklin Avenue in Bend and the encampment for houseless people at Emerson Road in Bend;
 - All records pertaining to the inception, development, discussion, creation, and implementation of City of Bend Administrative Policy 2021-1, relating to the City's assessment and management of houseless camps in City right-of-way.
- The City promptly acknowledged Mr. Garrity's request, and the parties engaged in correspondence that resulted in Mr. Garrity narrowing and focusing his request.
- The City did not provide a final time and cost estimate to Mr. Garrity, apparently due to the fact that the number of responsive documents that would ultimately need to be reviewed was difficult

to estimate. The City did however provide hourly rates and time estimates to search for documents.

- In response to Mr. Garrity’s request for a public interest fee waiver, the City denied his request, stating: “In this case, after considering factors including but not limited to the information you provided and the nature and scope of the request, we do not believe that is a sufficient public interest justifying or requiring a complete fee waiver. However, we have already conducted several hours of work to determine what responsive records may be available, including some analysis of those records, and will not charge for that time……” June 18, 2021 letter from City to Garrity.
- On June 22, 2021, Mr. Garrity filed with me his appeal of the City’s cost quote and their decision to deny the fee waiver he requested. (Exhibit A)
- On June 25, 2021, the City of Bend filed with me their legal argument. (Exhibit B)
- On June 28, 2021 Mr. Garrity filed with me his legal argument. (Exhibit C)

Legal Standards

Reasonableness of Fees:

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)

Fee Waiver:

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 three main arguments:

1. The time estimate and hourly rates quoted by the City to Mr. Garrity were authorized by Oregon law and thus reasonable.
2. 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 not charge Mr. Garrity for their preliminary work, and deny in full his fee request for the remainder of the work required to process his request, was reasonable.
3. 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. Garrity argues:

1. The time and cost estimate quoted to Mr. Garrity is unreasonable because the City’s technology infrastructure requires individual employees to search their own electronic records, as opposed to the City Recorder and/or a City IT employee being able to review all City electronic records.
2. His request is in the public interest because it relates to issues of public interest (houselessness and the possibility of racism in policing) that are currently hotly debated in Bend. Additionally, Mr. Garrity argues that in response to suggestions from the City, he narrowed the focus of his request (most notably, by reducing the time span of records that he sought).

Legal Analysis

I. Reasonableness of Fees

The City has an adopted fee schedule for the processing of public records. This fee schedule provides that the actual cost of service to respond to a public records request will be the basis for the fee, calculated as an hourly rate based on an employee's salary and benefit costs. Such a cost structure is authorized by Oregon law. ORS192.324(4)(a). While the City is not required to charge a requestor the actual cost of service to process a public records request, and many government agencies do not¹, the Oregon Legislature authorized this practice. Charging an hourly rate that is in compliance with Oregon law is not unreasonable.

In the legal argument he presented to me, Mr. Garrity expressed concern with the fact that many City employees would have to search their own devices for the records he seeks (as opposed to, for example, the City Recorder or a City IT employee conducting the search). Mr. Garrity included this argument in the "unreasonable fee" section of his written argument, then went on to argue that this reality is concerning to him because City employees who search their own devices have motivation to be less than candid about whether they found located responsive documents.

Whether City employees searching their own records for responsive documents is appropriate, and/or concerning, is a question outside the scope of my jurisdiction (because, who does the work is not relevant to whether the fee is reasonable). However, because Mr. Garrity is *pro se*, and because he included this argument in the "unreasonable fee" section of his appeal, I'll consider the natural extension of his written argument: whether having dozens of individual employees conducting their own searches on their devices, as opposed to the City creating the IT infrastructure that would allow for centralized searches, results in an unreasonable amount of time for the City to process public records requests? The

¹ For example, the Deschutes County District Attorney's Office charges a flat rate of \$50 per hour to process public records requests, regardless of the fact that attorney salaries exceed this hourly rate.

answers are: 1. I don't know. 2. Regardless, the answer would have no impact on my decision. Even if it is true that if the City beefed up their IT infrastructure, they would be able to process public records requests more efficiently than they do now (and thus, charge the public less money to fulfill their requests), this would not change the fact that how they do it now is in compliance with Oregon law. Whether the City should enhance their public records/IT infrastructure is a policy question that is left by Oregon law to the policy makers and/or voters.

I find the time and hourly quotes provided by the City to Mr. Garrity to be authorized by Oregon law and reasonable.

II. Public Interest

The parties disagree on the threshold question of whether Mr. Garrity's request was in the public interest: Mr. Garrity says it was, the City told Mr. Garrity it was not (although in their legal briefing to me, the City does not address the fact they told Mr. Garrity his request was not in the public interest).

If a public records request is in the public interest, 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)). In such situations, a district attorney who reviews whether a fee waiver request was reasonable must consider the following three factors: The character of the public interest in the particular disclosure; the extent to which the fee impedes that public interest; and the extent to which a waiver would burden the public body. *Id. at 25*.

The City focused their legal arguments to me on the factors I am required to consider when a government denies a fee waiver request for documents that are in the public interest; but this is not such a case. When the City denied Mr. Garrity's fee waiver request, their stated basis was that there was not a sufficient public interest to waive his fees in full. "In this case, after considering factors including but

not limited to the information you provided and the nature and scope of the request, we do not believe that is a sufficient public interest justifying or requiring a complete fee waiver.²” June 18, 2021 letter from City to Garrity.

I find Mr. Garrity’s request to be in the public interest. Houselessness in Bend, and potential racism in the Bend Police Department³, have been hot button topics in our community in the last year. Thousands of people have been in the streets calling for changes to policing. A police officer is under investigation for allegations related to white supremacy⁴. Tent communities have sprouted up around town that led to hundreds of emails, phone calls, letters, and public testimony to local elected officials (both in favor of enhanced services for our houseless neighbors, and expressing umbrage that houseless people live in view of housed people). The Bend City Council has held numerous public sessions in which the topic of policing and houseless have been discussed. The Bend City Council recently adopted an ordinance that authorizes, under certain conditions, the removal of houseless communities, this ordinance was hotly debated in our community, and shortly after adoption, this ordinance served as the justification for the City’s clearing out of a houseless campsite in the City. And the Oregon Legislature passed a law (HB3115) last week that restricts cities’ ability to regulate houseless campsites.

This is not a case that involves a government agency finding a request to be in the public interest, and granting only a partial fee waiver request because the request is particularly burdensome, the request is unfocused, of the requestor is able to pay the fee, for example. This is a request that the City found to be not in the public interest.

² In their response to Mr. Garrity, the City said they would not charge him for the “several hours of work” they had already completed. However, this does not constitute a partial fee waiver because the City was prohibited from charging Mr. Garrity for any work they did prior to providing him a price quote that he approved. ORS 192.324(4)(c)

³ The potential racism is the subject matter of the request. Addressing this topic in this decision is not an endorsement that Bend Police are racist – it is an acknowledgment that Mr. Garrity is seeking records to help him assess whether he concludes they are.

⁴ I take no position on the allegations that are the subject matter of this investigation.

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. Because the basis for the City's denial of Mr. Garrity's fee waiver request was that they found his request to be not in the public interest, when in fact his request was for records that are of utmost public interest, I find the City's denial to be unreasonable.

CONCLUSION

I commend the City and Mr. Garrity for working together to focus the scope of Mr. Garrity's public records request. Because the parties were working well together, this would have been an appropriate case for the parties to take to Oregon's Public Records Advocate, Todd Albert, for a facilitated dispute resolution process, as set forth in ORS 192.464. Unfortunately, this did not happen.

The City of Bend shall waive the fee to process this request and provide nonexempt material response to Mr. Garrity's request. The default length of time to comply per ORS 192.407(3)(a) is seven days, but the statute grants me authority to extend this deadline 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 July 29, 2021, the City must either provide Mr. Garrity 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 30-day deadline (contact me if you want to pursue this option).

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

Sincerely,



John Hummel
District Attorney

From: Eric Garrity [<mailto:etg2@case.edu>]
Sent: Tuesday, June 22, 2021 10:51 AM
To: John Hummel <John.Hummel@dcda.us>
Subject: Fwd: Public Records Request

Hello District Attorney Hummel,

I am forwarding this email thread from my exchanges with the Bend City Recorder regarding a record request that was originally submitted on June 4th. I believe the fees outlined in the response from the City are unreasonable and meet the public interest criteria for a fee reduction or waiver. This is the first time I am submitting a record request and I apologize in advance for my lack of familiarity with the process. Please let me know what additional actions are necessary. I have CC'ed Robyn on this email for transparency.

Thank you,
Eric Garrity

----- Forwarded message -----

From: Robyn Christie <rchristie@bendoregon.gov>
Date: Fri, Jun 18, 2021 at 3:23 PM
Subject: RE: Public Records Request
To: Eric Garrity <etg2@case.edu>

Hi Eric, I've attached our response.

Best,

Robyn

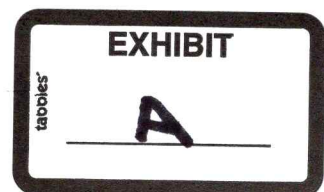
From: Eric Garrity <etg2@case.edu>
Sent: Friday, June 18, 2021 10:43 AM
To: Robyn Christie <rchristie@bendoregon.gov>
Subject: Re: Public Records Request

Good morning Robyn,

Given that I am still waiting on the fee quotes after my clarifying response, I expect that today the City will be providing a statement that the City is still processing the request and a reasonable estimated date. Thank you for your help with this!

Best,
Eric

On Mon, Jun 14, 2021 at 8:04 AM Eric Garrity <etg2@case.edu> wrote:



Good morning Robyn,

Please see attached for my response to the City's request for clarification surrounding my request. Hopefully my taking the weekend to respond didn't impede the City's ability to meet the required timelines.

Best,
Eric

On Fri, Jun 11, 2021 at 4:50 PM Eric Garrity <etg2@case.edu> wrote:

Robyn,

Thank you for the response and I will respond as soon as I am able to provide a thorough clarification. I appreciate your patience with me as this is my first time with a public records request.

Best,
Eric

on Fri, Jun 11, 2021 at 2:54 PM Robyn Christie <rchristie@bendoregon.gov> wrote:

Hello Eric, In accordance with ORS 192.324, this is to acknowledge our receipt of your request for records. Please review the attached letter requesting clarification and suggesting some approaches to the requests.

I look forward to hearing from you.

Best,

Robyn



CITY OF BEND

Robyn Christie | City Recorder

City of Bend 541-388-5517



From: Eric Garrity <etg2@case.edu>

Sent: Friday, June 4, 2021 12:05 PM

To: Robyn Christie <rchristie@bendoregon.gov>
Cc: Barbara Campbell <bcampbell@bendoregon.gov>; Megan Perkins <mperkins@bendoregon.gov>;
Melanie Kebler <mkebler@bendoregon.gov>; Rita Schenkelberg <rschenkelberg@bendoregon.gov>;
Eric King <eking@bendoregon.gov>; Sally Russell <srussell@bendoregon.gov>; Anthony Broadman
<abroadman@bendoregon.gov>; Gena Goodman-Campbell <ggoodman-campbell@bendoregon.gov>
Subject: Public Records Request

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

Good afternoon Robyn,

My name is Eric Garrity and I am submitting the attached record request. Please note, the file labeled "Attachment 1" includes examples of speech that is prohibited under the City of Bend Employee Handbook. Thank you and I look forward to your response no later than the 11th of June, 2021.

Name: Eric Garrity

Phone Number: 412-706-2160

Email Address: etg2@case.edu

Street Address: 20730 Empire Avenue Apartment 120

City: Bend
State: OR

Zip Code: 97701

Pursuant to the Oregon open records law, ORS 192.001 to 192.607, I'm requesting a copy of: The documents outlined in the attached file "Public Records Request Submitted by Eric Garrity 04 Jun 2021".

I agree to pay any reasonable copying and postage fees associated with this request.

Solidarity,

Eric Garrity

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

June 25, 2021

710 NW WALL STREET
PO Box 431
BEND, OR 97709
541-693-2128 Tel
541-385-6676 Fax
www.bendoregon.gov

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

Via email only

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

Re: Eric Garrity appeal of fee waiver denial

Dear John:

This letter responds to your request for information and legal argument regarding Mr. Garrity's appeal of the City's decision to not offer a waiver of the fee for a public records request Mr. Garrity submitted on June 4, 2021. An explanation of the background and the City's response follows.

Background

Mr. Garrity's June 4, 2021 request sought an array of records. The request covered four primary subjects:

1. Any records from all City of Bend employees containing any of the racial, ethnic, or religious slurs on a list of terms provided by Mr. Garrity;
2. All Bend Police Department records relevant to unhoused people;
3. All records pertaining to the CDC Interim Guidance on Unsheltered Homelessness and Coronavirus Disease 2019 (COVID-19) for Homeless Service Providers and Local Officials, the Les Schwab location at 105 NE Franklin Avenue in Bend, or the encampment for houseless people at Emerson Road in Bend; and



4. All records pertaining to the inception the inception, development, discussion, creation and implementation of City of Bend Administrative Policy 2021-1, relating to the City's assessment and management of camps in the right-of-way.

City Recorder Robyn Christie acknowledged the request by letter on June 11. In the letter, Ms. Christie sought clarification of the requests and explained some limitations in the City's ability to search records in the way the request was presented by Mr. Garrity. Where there were limitations, Ms. Christie offered suggestions on how the request could be focused or prioritized to meet Mr. Garrity's objectives. She also asked Mr. Garrity for more information about the request for a fee waiver. Specifically, Ms. Christie noted that Mr. Garrity submitted the request as an individual, but used the term "we" in the request. She asked Mr. Garrity to clarify how the records would primarily benefit the general public.

Mr. Garrity responded on June 14 and continued the dialogue about the substantive aspects of the request, indicating some willingness to take Ms. Christie's suggestions about focusing the request. In response to Ms. Christie's questions about the public interest, Mr. Garrity said he drafted the request with the intent that the Homeless Leadership Coalition (HLC) or one of its members would file the request, but decided instead to submit the request himself and share the results. Mr. Garrity did not indicate he was a member of the HLC. He said a better understanding of the context around the City's right-of-way policy would help the HLC and its constituent organizations carry out their work, and cited "widespread confusion about the planned actions at Emerson and the timeline."

Mr. Garrity also cited the CDC guidance around houseless encampments, referenced "multiple eviction notices" in past weeks and the expectation of more in the future, and indicated his awareness that the Bend City Council would be revisiting the administrative right-of-way policy in the near future. He noted the immense and varied costs of mitigating environmental and public safety hazards that can be associated with encampments, the benefit of allowing the HLC and other organizations to better understand how the City implements policy, and supporting the activism Mr. Garrity participates in as a member, volunteer, or participant of several organizations. Finally, Mr. Garrity asserted that the Bend Police Department Records would determine compliance with the City of Bend Employee Handbook policies around prohibited speech, conduct, and ethics. He cited the absence of a City auditor to ensure compliance, and offered that his personal experience made him well-equipped to assess compliance and disseminate the records to the general public.

On June 18, Ms. Christie responded to Mr. Garrity. She continued to work proactively and productively with Mr. Garrity on the substance of the request, providing a response that demonstrated the work she had already done to begin fulfilling the request, and partial estimates of costs where she could. The estimates were based on the rate of the employee that would need to do the work to respond to the particular aspect of the request. Where that was Ms. Christie, she quoted her hourly rate.

Ms. Christie denied the requested fee waiver, but told Mr. Garrity the City would not charge him for the several hours of work that had already been done to begin fulfilling the request. She also told Mr. Garrity that her initial review of approximately 1,880 responsive records

that included Mr. Garrity's specified terms did not appear to show any inappropriate uses of those terms.

Mr. Garrity filed this appeal on June 22. In his email to you presenting the appeal, he said the fees outlined in the City's response were unreasonable, and asserted the request met the public interest criteria for a fee waiver.

Response

A. The City's fees for the request are reasonable

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 Fee Resolution, which provides that the actual cost of service to respond to a public records request will be the basis for the fee, calculated as an hourly rate based on the employee's salary and benefit costs. See City of Bend Fees Resolution, Section 6.8.08.¹ This is supported by the City's Public Records Administrative Policy, which provides that after the first 15 minutes of staff time, the City will charge for the work based on the cost for the City staff time of researching, locating, compiling, editing, or otherwise processing the information and records.²

To the extent there are two issues to this appeal – the reasonableness of the City's fees, and the reasonableness of the City's denial of the fee waiver request – the first issue should be especially easy to resolve. Ms. Christie informed Mr. Garrity that the City would follow its legal, authorized, and adopted policy of charging for the actual cost of service to fulfill the request. Where she could, Ms. Christie provided relatively modest estimates of the time it would take to complete different aspects of the request. While the request was not clarified to the point where Ms. Christie could provide a total estimate amount, she provided information to make the process more efficient and less costly, even suggesting individuals who might have been involved with the subjects of the request in order to assist Mr. Garrity. Ms. Christie informed Mr. Garrity that other staff were investigating the most efficient ways to search police reports to meet Mr. Garrity's objectives.

The City's approach and assistance to Mr. Garrity will result in a lower fee, and demonstrates that the fee charged is reasonable. There can be no serious dispute that the City's fees are reasonable when they are authorized by and consistent with state law and the City's stated policy. The remainder of this response will address the question of the reasonableness of the fee waiver denial.

¹ The current version of the City's fee resolution can be found here:

<https://www.bendoregon.gov/government/departments/finance/fees-and-charges>

The relevant section, 6.8.08, is unchanged from what was in effect at the time the request was made.

² <https://www.bendoregon.gov/home/showpublisheddocument?id=43857>

B. The City's denial of the fee waiver was reasonable

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.

As Ms. Christie explained to Mr. Garrity in her June 18 letter, the existence of a public interest does not on its own require the public body to waive fees in every instance. The public body has discretion whether to reduce or waive fees so long as 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).

This more nuanced approach taking in the totality of the circumstances requires the public body to make several considerations: 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; they may not substitute their 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 request at issue concerns subjects that, on their face, are matters of concern for many people in Bend and, presumably, in nearly every other community. However, we strongly reject any proposition that identifying a subject of public concern is all that is necessary to require a fee waiver in a public records request. Because the reasonableness question is evaluated by the totality of the circumstances, it is not productive or particularly helpful to argue the public interest question in a reductive yes/no, present/not present fashion. The analysis has to be more nuanced, considering the character of the public interest within the context around the particular disclosure sought by the requestor. To understand that context and its relevance, our analysis will include discussion about the information already in the public sphere, what we believe may be some misconceptions on Mr. Garrity's part, facts

about the City's ongoing response to the crisis affecting unhoused people, and the breadth and basis of this particular request.

Here, the lack of a narrowly tailored request is highly important to the analysis and informs the character of the public interest in this particular disclosure. Of equal importance is analyzing the degree to which the fee would impede the public interest by considering whether and to what extent the particular disclosures would benefit the general public. In this particular scenario, both considerations point to the reasonableness of the City's decision.

To be sure, some of the concerns Mr. Garrity raised could be matters of public concern. For example, if public employees were using public resources to transmit messages with derogatory slurs, it would be a matter of public interest. Here, though, there has been no allegation much less any evidence that any of the terms identified by Mr. Garrity have been used by City employees inappropriately in any content created or sent on City-owned devices. Indeed, as Ms. Christie indicated to Mr. Garrity in her July 18 letter, her initial review (without charge) of potentially responsive records failed to unearth any inappropriate uses of those terms. The request was simply not narrowly tailored to matter of public interest.

The request is not narrowly tailored in that it sought records on a variety of subjects: use of racial epithets, police reports relating to houseless people and related issues, records relating to CDC guidance, and records related to a City administrative policy. While some of the records sought by Mr. Garrity are connected in that they relate to unhoused people, the request cannot be said to be narrowly tailored to a particular matter or concern. General concerns about how local government is doing things are legitimate. The relevant factor, though, is whether the request is narrowly tailored. It is not.

The request is not narrowly tailored to a matter of public interest for other reasons, as well. For example, Mr. Garrity sought all documents related to the City's administrative policy on management and removal of established campsites in City rights-of-way, contending that a better understanding of the context around the policy would help the HLC and other organizations provide services and support several of the City's goals. The policy is and has been publicly available for quite some time, and was discussed extensively by City staff and the City Council at the June 2, 2021 City Council meeting. The policy was posted to the meeting agenda in advance, and the meeting video including the discussion is readily available for anyone to view who could not or did not view the meeting in real time.³ The material posted to the agenda included the impact analysis specific to the Emerson camp; the analysis included data for each of the administrative policy criteria used to assess the impact of a camp location.

It may be that there are responsive documents related to the policy that are subject to disclosure, but the ultimate and meaningful context for the policy is in two places: the document itself, and the discussion involving City staff and the City Council during a public

³ The June 2 Council meeting video, as well as the agenda and the administrative policy documents, are available here:

<https://www.bendoregon.gov/government/city-council/city-council-meeting-agendas-video>

meeting explaining the legal and policy foundation for the policy. The discussion included the Council's decision to approve the final version of the policy, and Council direction on the policy's application and implementation. Mr. Garrity's interest in additional records is not unreasonable, but in evaluating whether the request is narrowly tailored to a matter of public interest, it is important to understand that the *meaningful* context is already available. It is not clear what additional benefit the public would gain from additional records. To the extent Mr. Garrity is interested in additional records containing legal advice or opinions, they are subject to the attorney-client privilege and exempt from disclosure pursuant to ORS 192.355(9) and should not be considered part of any relevant context.

The narrowly tailored analysis also cuts against Mr. Garrity's appeal when considering his expressed concern about general compliance with policy. Mr. Garrity told Ms. Christie that he wanted the records because he was equipped to determine compliance with the City's employee policies around prohibited speech, conduct, and ethics. Again, while use of those terms in the manner envisioned by Mr. Garrity would be absolute anathema and beyond the pale, a general fishing expedition amongst all City employees, or even all employees of the Bend Police Department, cannot be said to be narrowly tailored, at least not in the absence of some additional basis for the request.⁴

Despite Mr. Garrity's implication that his assistance is needed or would be helpful to the City or the public in ensuring the City is applying its own policies, it must be said that the City does enforce its own policies, has mechanisms to receive and investigate complaints from both internal and external complainants, and takes its policies seriously.⁵ The City understands and welcomes scrutiny, but it is not accurate to presume that there is a compliance and accountability vacuum that needs filling by Mr. Garrity. The City Attorney's Office, the Human Resources Department, managers and supervisors throughout the organization, and others are on a daily basis seeking to ensure that the City's standards and obligations are met. This should not be taken as discomfort with the request or its substance, but only as a factual response to Mr. Garrity's suggestion that his personal oversight is somehow required because there are no other accountability tools.

The volume of records at issue also weighs against a finding that Mr. Garrity's request is narrowly tailored. Ms. Christie has already identified (and at least cursorily reviewed) 1,880 potentially responsive records for just the first portion of the request. She has worked with Mr. Garrity to identify over a dozen individuals who may be connected to or have records potentially responsive to the remainder of the request, in addition to approximately 140 employees of the Bend Police Department. Put simply, the volume of potentially responsive

⁴ At the risk of conflating issues, it is possible Mr. Garrity will cite an ongoing personnel investigation of Bend Police Department employee as a reason for the request. That still-pending investigation does not include any allegations that any of the terms Mr. Garrity identified or any similar terms were used by the employee. For that reason and others, not least among them basic due process principles, we believe it would be inappropriate for that ongoing investigation to be a factor in your decision in this appeal.

⁵ For but one example, in April Mr. Garrity himself reported to the City his concern over the use of a particular meme ("Pepe the Frog") by a City employee in records obtained through a previous request. Although the Anti-Defamation League cites that meme as one where "the majority of uses... have been, and continue to be, non-bigoted" the City conducted a thorough investigation. Without waiving any privileges or exemptions that may apply to that matter, we can represent that no bigoted or other ill intent was found.

records is already extensive and will only increase, which weighs against the granting of a complete fee waiver.

These facts around whether the request is narrowly tailored should inform your assessment of the character of the public interest. It would be overly simplistic to base your decision on the uncontested fact that homelessness is a matter of public concern. Such is the case in Bend and other cities, particularly, at this moment, many other cities in the west. The critical situation around housing and unsheltered people is made evident by the effort and investment the City is making in finding solutions.⁶ Your analysis of the fee waiver issue in this appeal should not rest solely on the nature of the subject, but on a more complex analysis of the character of the public interest as informed by factors such as the narrowly tailored nature of the request, the information already publicly available, and, in considering the extent to which the fee would impede the public interest, what the public may gain from waiver of the fee. Due to the nature of the issues and the information already available in this particular case, the benefit to the public from additional records is not overwhelmingly compelling.

In this case, much of what the public would be interested in is already in the public domain. For example, the City Recorder has already done sufficient work, without charge, to inform Mr. Garrity she did not come across any inappropriate uses of Mr. Garrity's terms in 1,880 records she has thus far reviewed. The City has had public discussions of the administrative policy and made the policy and site-specific information available to the public. Further, the City is planning on publicly discussing the experience of applying the policy to the Emerson location at the next City Council meeting on July 21.

The fact that some of Mr. Garrity's information appears to be inaccurate is also relevant in assessing the potential public benefit from this particular request. The impression that the City has no accountability mechanisms is one example. In addition, although Mr. Garrity apparently believes that "multiple eviction notices" have been issued and more are on the way, Mr. Garrity is incorrect if he is referring to camp removals at sites other than the Emerson location. The City has not issued any recent removal notices under ORS 203.077 or ORS 203.079, or its administrative policy, other than for the Emerson location. Pursuant to Council direction at the June 2 meeting, the City will not be issuing any notices under the policy until and unless the Council has further discussion and input.

It is possible Mr. Garrity is making the not-uncommon mistake of confusing enforcement of the City's generally-applicable *parking regulations* with what he calls eviction notices. This could be because when enforcing its parking regulations, the City posts a notice to a vehicle

⁶ For example, at the June 16 City Council meeting, the City announced: 1) the purchase of the Opportunity Foundation site on NE 2nd street with \$2 million of American Rescue Plan Act funds to secure a permanent shelter location; 2) progress on its plan to use Project Turnkey funding for a \$2.5 million purchase and conversion of a motel to a shelter; and 3) its commitment to establish a managed camp location within 90 days. The City also recently amended its code to establish a safe parking program, is working on additional code changes, and is leading multi-entity efforts to create more options. More information here:

<https://www.bendoregon.gov/Home/Components/News/News/4562/29?backlist=%2fcity-projects%2fcommunity-priorities%2fhomelessness>

requiring that the vehicle be moved before taking further action.⁷ However, it is not accurate to relate that separate and longstanding enforcement practice with campsite removal under state law or City administrative policy. They are distinct and different legally, practically, and in their policy foundations. Mr. Garrity's reference to other eviction notices should not be considered persuasive in assessing the benefit to the public from the request, or to the overall character of the public interest.

Last but not least among the facts to consider, although Mr. Garrity referenced several organizations in addressing the fee waiver question, it appears he is nevertheless making the request on his own behalf. We have no reason to doubt that Mr. Garrity volunteers for or works with local organizations doing work to benefit the public. Nor does the City contend Mr. Garrity is seeking personal gain from the requested records. However, it must be noted that Mr. Garrity did not make the request under the auspices of an organization. In fact he explicitly admitted he did not do that, in spite of what he says was his initial intent. While this does not necessarily make his interest exclusively personal, it certainly must carry less weight for the public interest question than had a recognized advocacy organization submitted the request.

Conclusion

In this case, the general matters of public concern reflected in the request should not be substituted for analyzing the totality of the circumstances, most of which support the City's exercise of its discretion to deny the fee waiver request. In light of those circumstances, the City's decision was not unreasonable.

Mr. Garrity has been gracious and cooperative in working with Ms. Christie, even including the manner in which he presented this appeal to your office and later sought clarification on a question about potential partial payment of the fee. We are of course willing to continue working with Mr. Garrity, either through continued dialogue with Ms. Christie and/or by mutually seeking assistance from the State of Oregon Public Records Advocate.

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

Sincerely,

Ian M. Leitheiser
Assistant City Attorney
ileitheiser@bendoregon.gov

Cc: Eric Garrity (email only)
Robyn Christie

⁷ Information about the City's parking enforcement can be found here:

<https://www.bendoregon.gov/government/departments/police/community-information/online-tools/parking-complaint-form>



CITY OF BEND

June 18, 2021

Eric Garrity
20730 Empire Avenue, Apt.120
Bend, OR 97701

Via email: etg2@case.edu

Thank you for clarifying your requests. There are several different searches included and each will require a significant amount of time to fulfill. I will continue to work with you to help you get the information you are requesting. I am unable to provide a completion date estimate until initial searches are completed.

Regarding your request for a fee waiver, we asked for more information in order to assess the request. You responded by confirming you submitted the request as an individual and said you would share the results with non-profit organizations. You mentioned, among other things, your personal qualifications to assess the records to determine if the City was complying with its own policies, and said you were well-equipped to disseminate the records to benefit the public.

A public body may waive or reduce fees if it determines that a waiver or reduction is in the public interest because making the records available primarily benefits the general public. ORS 192.324(5). There is therefore not a statutory requirement to reduce or waive fees, but a public interest must be present for the public body to consider a waiver or reduction. Even if a public interest is involved, a public body still has discretion whether to waive or reduce fees, and may make any decision that is reasonable, to be determined on a case-by-case basis.

In this case, after considering factors including but not limited to the information you provided and the nature and scope of the request, we do not believe there is a sufficient public interest justifying or requiring a complete fee waiver. However, we have already conducted several hours of work to determine what responsive records may be available, including some analysis of those records, and will not charge for that time since we believe it is reasonable to work with you on clarifying the

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

request. We are willing to continue to do so and will do everything we can to offer options intended to reduce the cost of the request.

Below I've responded to each request with an estimate or identified additional information necessary to proceed.

Request 1

1A Approx. 1880 messages – will require review at \$73.70/hr. On an initial skim, no terms are used inappropriately (for example, last name VanDyke or Coon).

1B While you correctly identify the city's right described in the Employee Handbook to access communications, the city does not have the ability to search for social media posts from city-owned devices.

1C This request is for a review of Police Department staff text messages. The city does not have the ability to search text messages. Each employee would have to search each keyword on their own device. We estimate that that would take approximately one hour per person (140 employees). The fee estimate will be calculated based on each employee's rate.

Request 2

2A Staff is investigating whether we can search based on streets (reports usually include a specific address). If we can do that, it will only include police reports, 911 notes need to be requested from Deschutes County Dispatch. The fee estimate will be calculated based on the time to conduct the review and redaction at the rate of the employee doing the work.

2B Report 21-012671, is an open criminal case that is exempt from disclosure for that reason.

2C Email keyword search of communications between **city employees** and ODOT employees including but not limited to **Joel McCarroll, Peter Murphy, and Gary Farnsworth**. These keywords should include **CDC, homeless, houseless, unhoused, transient, vagrant, encampment, camp, camper**. Estimate 2 hours of City Recorder's time at \$73.70/hr. to conduct search, review at 1 hr per 100 messages.

2D Please specify which officer's reports you are seeking. The fee estimate will be calculated based on the time to conduct the review and redaction at the rate of the employee doing the work.

Request 3

Email keyword search **City Council, Mayor Russell, and City Manager King, Anne Aurand, Jon Skidmore, Shelly Smith and Mary Winters** (suggest adding Carolyn Eagan, Lynne McConnell) for **CDC, homeless, houseless, unhoused, transient, vagrant, encampments, camp, camper**. Estimate 2 hours City Recorder's time at

\$73.70/hr. to conduct search, review at 1 hr per 100 messages. Note – many will be withheld for attorney-client privilege.

Request 4

Email keyword search for related to **ADM-2021-1 (need list of keywords)**. Search of email accounts for **City Council, Mayor Russell, and City Manager King, Anne Aurand, Jon Skidmore, Shelly Smith and Mary Winters** (suggest adding Carolyn Eagan, Lynne McConnell) and with **Colleen Thomas, Stacey Witte, Donna Burklo, James Cook and any other employees or members of the Homeless Leadership Coalition**. Estimate 2 hours City Recorder's time at \$73.70/hr. to conduct search, review at 1 hr per 100 messages. Note – many will be withheld for attorney-client privilege.

Please let me know if you have questions about my responses and if you would like us to proceed with any or all of these requests.

Regards,

Robyn Christie,
City Recorder

Dear D.A. Hummel,

I want to start by thanking you and the members of city staff, especially Robyn, Ian, and Mary for their assistance with this records request. It is necessary to mention that we have lost at least two of our neighbors to the current heatwave. I believe that these lives could have been saved by public policy decisions made by the city to allocate the necessary resources. Joe and Lonney were people that my fellow mutual aid organizers knew after building relationships based on dignity and respect. As the community grieves, we, the public and service providers, need access to records and information that can help us prevent the loss of life.

I will be mimicking the structure of the City's response to facilitate the review of both documents during the decision making process.

Background

The city has responded with a multitude of reasons not to grant the fee waiver, primarily focused on my records request not being narrowly focused. This argument does not hold merit considering that I have gone to great lengths to narrow my request, even when the City did not initially request that I to do so. The City fails to mention that I narrowed my initial request to a time period of less than 3 months, from March 7th to June 4th.

The other argument, that this is a "fishing expedition", ignores the context in which I have requested these records. The context is my experience as a community organizer and service provider, my ongoing engagement with the current City Council, the open investigation that Mr. Leitheiser references, the reports indicating that white supremacist groups have infiltrated [US law enforcement](#), the [disparate treatment](#) of far right groups and left leaning activists by Bend Police Department (BPD), and my own anecdotal experiences and information. This anecdotal information includes a family friend and spouse of a former BPD officer who stated the reason their spouse left the force was the white supremacists serving at BPD, multiple conversations with City Councilors expressing concerns about white supremacists serving at BPD, records released by the City and the Peacekeepers demonstrating familiarity and casualness between BPD and alleged members of the Proud Boys, and this recent private exchange with a Bend City official on social media.



 **E. Garrity** @Bing8778 · May 2

Replying to @LintEric

Attn: @john_hummel - decent officers have left the force @BendCityPolice because of white nationalists like officer Spano here.

Hey Eric - I had heard it's the opposite (could certainly be both), that a handful of troubling officers have left BPD to work at the Sheriff's Dept. I don't have names though. Totally agree that Spano is troubling, but if others like him just go to the Sheriff's Dept I guess that's marginal progress?

[twitter.com/bing8778/statu...](https://twitter.com/bing8778/status/1541441111111111111)

While this matter is not resolved and my allegations are unconfirmed at the moment, the fact is that the ongoing investigation and public discourse lend credence to my argument for the necessity for disclosure of these records.

As the City states, the general matters of public concern should not be substituted for analyzing the totality of circumstances. My analysis and experience indicates that this is a matter of extreme concern for the public, yet this information is not currently available to the public. As the City knows, I have viewed every Council meeting, submitted public comments, and engaged routinely with City officials and employees since the current Council was sworn in. The City suggested that this information is already public domain, however, this is untrue. If I can't find this information as a highly-engaged and knowledgeable individual, then the information is inaccessible to the public. Whether the City intended it or not, the [lawsuit against Mr. Satcher](#) has a chilling effect on community members like myself. This lawsuit will be resolved independent of this request, but it is relevant context for my reluctance to submit the request and my demonstrated willingness to narrow the request above and beyond what has been requested by the City. After news broke of that lawsuit, I reached out to several City Council members to state my opinion that the City would be better off restructuring their arbitrary fee structure than suing local activists. The City has not adjusted its fee structure, despite requests and the time and opportunity to do so. The City has provided [similar records](#) to journalists free of charge, highlighting the arbitrary nature of their decision making around these record request fees.

While I have been happy to cooperate with the City in narrowing my request, I am concerned that the City lacks the ability to provide some of the records requested and is instead relying

upon City employees to search their own messages for hate speech and report their own responsive records for this request.

Response

A.

The City's fees for the request are unreasonable. The City's lack of ability to search for text messages and social media posts from employees means that employees must 'self report' their own hate speech for this request. The fee suggested is unreasonable because City employees have motivation not to provide responsive records and the provided records would be unverifiable information. The City stated in its appeal response that Ms. Christie was 'suggesting individuals who might have been involved with the subjects of the requests'. If the two names mentioned are the relevant employees, I am happy to narrow my request in accordance with the City's suggestion.

B.

The City has the discretion whether to reduce or waive fees. I agree with the City that the totality of circumstances should be taken into consideration, but arrive at a different conclusion. The City refers to a 'lack of a narrowly tailored request' in their appeal response. Given that I have narrowed the request beyond what was requested by the City, this statement does not pass the smell test.

- Given the anecdotal information I have and the public discourse surrounding BPD and their treatment and potential ties to far right and white nationalist groups like the Proud Boys, there is reason to know whether City owned devices have been used to transmit hate speech. The City correctly states that there is no allegation or evidence that any of these terms have been used, but the City will benefit whether or not the concern is confirmed. If true, the request might reveal something the public needs to know. If false, I will disperse this information and the community will know that such hate speech doesn't exist among BPD employees.
- The City states that my request is 'not narrowly tailored in that it sought records on a variety of subjects'. There are two subjects. White supremacy and the unhoused population are my two concerns and the foci of my community organizing labor. My request is narrowly tailored to focus on those subjects and how to benefit the public interest in these matters. The records pertaining to the development of the "right of way" policy are necessary for my community organizing as well as the work of the Homeless Leadership Coalition. The "right of way" policy has been publicly available for 'quite some time' as the City states, but the rationale behind the policy remains unclear. One of the primary motivations for submitting this request was to understand why the City would relocate people experiencing homelessness when the [CDC guidance](#) remains in effect and unequivocally states not to clear encampments in order to minimize potential for infectious disease spread. It is my opinion that the City's actions at Emerson are in flagrant violation of the non-binding CDC guidance and this request is an attempt to

understand why the City has chosen this course of action. I have engaged City Council members in every conceivable manner (public comment, text messages, email, phone calls, etc.) with little success in understanding why the Emerson evictions are justifiable in light of the CDC guidance.

Considerations for encampments

- If individual housing options are not available, allow people who are living unsheltered or in encampments to remain where they are.
 - Clearing encampments can cause people to disperse throughout the community and break connections with service providers. This increases the potential for infectious disease spread.
- The City states that they believe I have some misconceptions about the facts regarding the City's ongoing response to the crisis affecting unhoused people. The City's argument is self defeating. I am an extremely engaged community member with the privilege of participating in discussions with service providers in the community, the HLC, the Democratic Party of Deschutes County, and several City Council members, yet remain unclear as to why the City performed the evictions at Emerson beyond the vague 'number of complaints'. The volume of complaints is a separate matter from the public health and safety of forced relocations during a pandemic.
- The City argues that they enforce their own policies and my services are not required. Given the City's lack of ability to archive, locate, and provide responsive text messages or social media posts from City owned devices that are pertinent to the City's business, this argument is self defeating as well.

Request 1

1A Approx. 1880 messages – will require review at \$73.70/hr. On an initial skim, no terms are used inappropriately (for example, last name VanDyke or Coon).

1B While you correctly identify the city's right described in the Employee Handbook to access communications, the city does not have the ability to search for social media posts from city-owned devices.

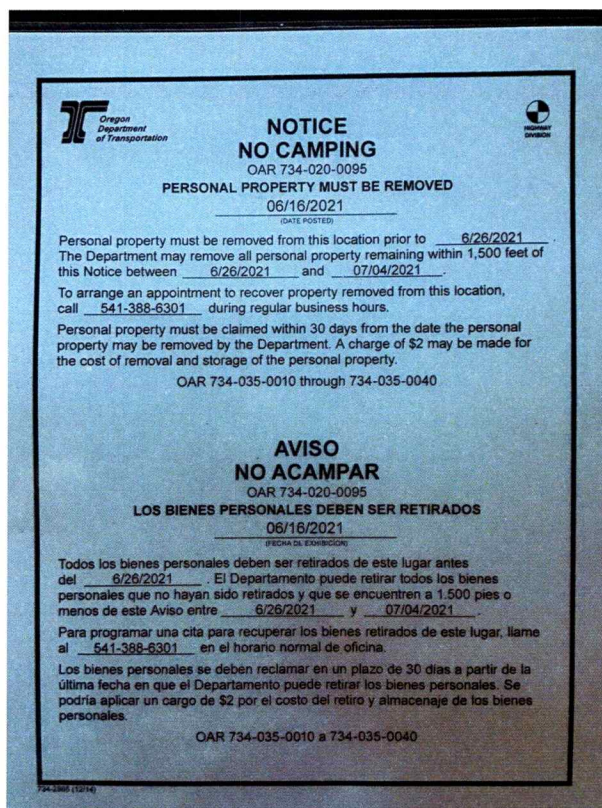
1C This request is for a review of Police Department staff text messages. The city does not have the ability to search text messages. Each employee would have to search each keyword on their own device. We estimate that that would take approximately one hour per person (140 employees). The fee estimate will be calculated based on each employee's rate.

If the City cannot easily retrieve these records there is no ability to enforce the [City's policies](#) around prohibited speech, conduct, or ethics.

- The City also states the Ms. Christie has 'already identified (and at least cursorily reviewed) 1,880 potentially responsive records'. Per 'Response Letter 2' from the city, Ms. Christie performed an 'initial skim'. If Ms. Christie has actually reviewed the records

and found them to not contain inappropriate use of any of the terms in the request, then I am willing to omit those from my request. If this was only an 'initial skim' of the records, then I can complete the work begun by Ms. Christie.

- The City states that they will be 'publicly discussing the experience of applying the policy to the Emerson location at the next City Council meeting on July 21'. I look forward to and will be submitting public comment during those discussions, but in the meantime additional notices have been issued in contradiction to the City Council's instructions to only apply the right of way policy to Emerson until this topic is able to be revisited. The City Council's instructions have not been followed, as demonstrated by the eviction notices below. They represent just a few of the eviction notices issued by BPD officers in recent days. Although the 'No Camping' notice is on ODOT letterhead, it was BPD Officer Kecia Weaver issuing the notices to approximately 7-10 individuals that had left Emerson after eviction notices were issued there. Whether it is in the name of ODOT or the City, BPD officers have issued numerous notices to the unhoused population in Bend in addition to Emerson encampments since the policy was discussed at City Council and the instructions were issued by City Council to only perform the removal at Emerson before revisiting the policy.



The notice below is just one of several notices (at least four to my knowledge) that were issued at Clausen Rd. by Bend PD the very day after Bend City Council instructed City Manager King not to perform relocations beyond Emerson.

CITY OF BEND POLICE DEPARTMENT
 555 NE 15TH ST. BEND, OR 97701
 541-322-2960 / 541-693-6911

DATE 6/24 TIME 11:32a

Vehicle eligible to be towed after three business days
 Derelict, Wrecked, Neglected, or Obviously Inoperable Vehicle (24 hours)

* Date of tow 6/8/24
 Photos Taken

-Bend City Ordinance 6.30.005 requires that vehicles found in violation of City Ordinance 6.20.005 by being left on City streets or right of ways longer than three business days be impounded within three business days of this notice. The registered owner will be responsible for towing and storage charges, a lien will be attached to the vehicle. If towing and storage charges are not paid within 30 days, the vehicle will be sold to pay for such costs.

-You have the opportunity to contest the proposed tow and challenge the reasonableness of any towing and storage charges by making an in person request for a hearing within five business days with Bend Municipal Court. Municipal Court is located at 555 NE 15th St., Bend, OR 97701. 541-388-5572

-The vehicle will be towed by Consolidated Towing - 541-389-8080, 1000 SE 9th St, Bend, OR 97702

VEHICLE MUST BE MOVED FROM STREET OR PUBLIC RIGHT OF WAY TO AVOID BEING TOWED

Clauser/Grandview
 LOCATION OF VEHICLE

H802885
 LICENSE NUMBER

Isuzu RV Wh/Red OR 3410
 VEHICLE MAKE MODEL YEAR COLOR STATE OFFICER

- The City states that some of my information appears to be inaccurate without stating what information they are referring to. While there is a level of nuance to the notices issued by BPD on behalf of the City and ODOT and whether they are enforcing the right of way policy, parking ordinances, or removing fire hazards, the end result is that unhoused people are being forced by the City to relocate in violation of the CDC guidance. I welcome the City to correct any inaccuracies I may have, but the responsive records will address any potential misconceptions.
- The City states they have 'not issued any recent removal notices', but BPD employee Officer Weaver has issued such notices on behalf of ODOT. As relayed to me by ODOT employees on numerous occasions, ODOT policy does not allow for them to engage with the unhoused population and relies on law enforcement to issue eviction notices and relocate individuals. BPD has performed that function and continues to issue notices on their behalf. The City is free to call this parking regulation enforcement, eviction notices, or anything else. Again, the end result is forced relocations in violation of the CDC guidance.
- The City states that it is not accurate to relate parking regulation enforcement and campsite removal. This is another contention from the City that does not pass the smell test. The unhoused population lives in tents, wooden structures, vehicles, and other conditions. To pretend that these situations are not related or interconnected is to deny the reality and experience that myself or any other established service provider in the HLC see on a daily basis.
- The City notes that I submitted this request as an individual and not under the auspices of an organization. As the City is currently engaged in a lawsuit in a comparable records request case, they should be aware that organizations like the HLC, that rely on cooperation with local government, are unlikely to pursue this type of request. As I mentioned, the City's actions have had a chilling effect.

Conclusion

I have provided a response to what I consider unreasonable arguments on behalf of the City and won't repeat them here. The fact is that in every possible way I have tried to narrowly tailor my request in accordance with the City's expectations or requests. I will include a few examples, but I believe I have adjusted for every single request from the City and even narrowed my request on items that weren't requested by the City.

Request 1

- Any records from Bend City Staff and Bend Police Department employees including but not limited to text messages, emails, social media posts from city owned devices, and records that contain any commonly used racial, ethnic, or religious slurs as contained in Attachment 1.

We have the ability do a key word search of City email and City social media pages. This will require multiple citywide searches because the number of keywords exceeds 20.

After Robyn mentioned the keywords exceeding 20, I reduced the list of hate speech without being asked to do so. I also proposed narrowing the scope to Bend PD employees, based on my anecdotal information and public interest in racial bias by law enforcement.

Request 2

- All Bend Police Department records, reports, or complaints relevant to unhoused (homeless) people, campsites where unhoused people reside or have resided in the past, relocations, evictions, clean-ups, or any other event involving Bend Police Department employees and unhoused persons, transients, vagrants, etc.

We do not have the ability to search police reports or Police Department records by keywords or topics. We can search by case number or address. If you can provide case numbers or addresses to search, we can conduct a search. We can provide an estimate for this request after that is determined.

After Robyn stated the City's inability to search BPD records by topics, I narrowed the scope to reflect the locations of the largest camps. As Robyn states in 'Response letter 2' staff are investigating whether they can search based on streets. The City has not clarified whether this is feasible and raises the questions of how police reports may be retrievable if they pertain to a location without a specific address. In response, I offered keywords and employees that may be in scope to help narrowly tailor the request. The City helpfully offered adding Carolyn Eagan and Lynne McConnell, which is greatly appreciated.

To conclude, I appreciate the City's assistance and your time in considering this request. I wish there was something better to say, but after I send this I will be returning to Hunnel Road where I expect there to be more deaths today. It is my belief that the City

of Bend has the resources and opportunity to save lives. So far, I have been disappointed.

Solidarity,

Eric Garrity

412-706-2160