

John Hummel District Attorney

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March 28, 2018

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

Don Barber
upper_deschutes@yahoo.com
SENT VIA EMAIL ONLY

Mr. Barber and Ms. Winters:

Pursuant to ORS 192.470, Don Barber (Barber) filed an appeal requesting that I review the City of Bend's (Bend) denial of his three recent public records requests. I received Barber's appeal on March 22, 2018.

Barber's description of the three public records requests in question follows this order (Exhibit 1). In summary:

- The first request (hereinafter: Lots of Emails) was for all emails sent to him or from him from November 1st, 2017 - January 25th, 2018. Barber says Bend provided him some of the emails but he was not provided with a crucial one.
- The second request (hereinafter: K9 Records) was for K9 records for the other three department K9's to include, training records, deployment records, and K9 record audit results. Barber says this request was made around the second week of February and he has not been provided the records nor has Bend cited an exemption to justify withholding them.
- The third request (hereinafter: Targeted Emails) was for all emails to and from Capt. Paul Kansky from the following people: Chief Jim Porter, Sgt. Eric Hagan, and Sgt. Scott Vincent.

On March 26, 2018, I notified Bend of this appeal via email, as follows:

Pursuant to ORS 192.470, Bend Police Officer Don Barber filed an appeal with me requesting that I review what he claims to be the City of Bend's denial of his recent public records request. The details of the request are contained in the below email dated March 22, 2018.

* * *

Please let me know if you agree that the City of Bend withheld responsive documents from Mr. Barber.

If the City of Bend did withhold responsive records, please let me know if the City of Bend intends to provide the records in question to Mr. Barber. If the City of Bend did withhold responsive records and intends to continue to withhold them, pursuant to ORS 192.470(2), please: “[T]ransmit the public record disclosure of which is sought, or a copy, to [me], together with a statement of [the City of Bend’s] reasons for believing that the public records should not be disclosed.”

Pursuant to ORS 192.465 and 174.120 I will issue my decision by 5:00 PM on March 29, 2018 so please provide your response as soon as possible.

On March 27, 2018, Bend submitted their response (Exhibit 2). Bend argues they are still processing the Lots of Emails and K9 Records requests, thus it is improper to characterize those two requests as having been denied. In regard to the Targeted Emails request, Bend argues they provided all responsive documents with the exception of three emails that they properly withheld pursuant to ORS 192.501(12) (personnel discipline actions).

This letter constitutes my Order in this case.

LEGAL ANALYSIS

Burden of Persuasion:

Bend has the burden of persuasion to convince me that their decision in this matter was proper. *ORS 192.450(1)*.

Standard of Proof:

In order for Bend to carry their burden of persuasion I must affirmatively conclude that the records request was not denied, or, that the request was denied but the requested records are exempt from disclosure. If I do not so conclude, I must order them to be disclosed. *Attorney General’s Public Records and Meetings Manual 2014, section I.G.1.b. (citing Oregon Attorney General Public Records Order, March 4, 2008, Brent Walth)*.

Application of Law:

There are two issues to address in this appeal:

- Did Bend deny Barber’s Lots of Emails and K9 Records requests?
- Did Bend correctly assert the personnel discipline action exemption to Oregon’s public records law (192.450(1)) in regard to Barber’s Targeted Emails request?

1. Did Bend Deny Barber’s Lots of Emails and K9 Records Requests?

Bend argues they did not deny these requests because they are still processing them. Barber, by virtue of filing this appeal, argues to the contrary.

a. Actual Denial?

A District Attorney does not have jurisdiction to rule on a public records appeal until a public body has denied a request for disclosure. *Oregon Attorney General Public Records Order, August 13, 1987, Bennett Hall and Chris Bristol, Attorney General's Public Records and Meetings Manual 2014, Appendix F p.9.*

Bend asserts in their response that they have not denied the two requests at issue. They argue they are actively processing these requests, that they have engaged in regular communication with Barber about the status of his requests, and that the total time that has transpired since his original request is not unreasonable.

The email correspondence Bend included in support of this argument supports their case (Exhibit 2) and I find it persuasive. The most relevant portion of the email exchanges between Bend and Barber is listed below and shows clear communication between the parties regarding the status of the request.

*From: Don Barber [mailto:upper_deschutes@yahoo.com]
Sent: Friday, March 23, 2018 4:38 PM
To: Robyn Christie <rchristie@bendoregon.gov>;
dgarner@salememploymentlawyer.com
Subject: Re: Update on Records Requests*

Hi Robyn,

Thank you :). I, too, will be out of town for the week. I'll be available after the 31st. Let me know when I can pick them up. Thank you.

Sent from Yahoo Mail for iPhone

*On Friday, March 23, 2018, 4:35 PM, Robyn Christie
<rchristie@bendoregon.gov> wrote:*

Hello Don, I'm writing to notify you that I have not yet received records for your two outstanding requests. I will be out of the office next week but keeping in contact by email. I will contact you as soon as the records are available.

*Thank you,
Robyn*

Bend did not explicitly deny Barber's Lots of Emails or K9 Records requests.

b. Constructive Denial?

A determination that Bend did not explicitly deny Barber's Lots of Emails and K9 Records requests is not the end of the analysis. At some point, in spite of the lack of an explicit denial by a public body, and even considering the fact a public body continues to work on processing a request, a failure to complete processing of a request can constitute a constructive denial. (*For the proposition that public records request denials can be actual or constructive, See: Oregon Attorney General's Public Records Order, May 9, 1989, Paul R. Hribernick, Attorney General's Public Records and Meetings Manual 2014, Appendix F p.19.*)

Has Bend constructively denied Barber's request?

The relevant law is ORS 192.430(1) which says that custodians of public records: "shall furnish proper and reasonable opportunities for inspection and examination."

Bend has the burden of persuasion to convince me that the length of time that has transpired in this matter is authorized by Oregon law. In order to carry this burden they must cause me to affirmatively conclude that their response to date has been "proper and reasonable." ORS 192.430(1)

Barber submitted the public records requests at issue in this appeal to Bend on February 5, 2018. The requests were for tens of thousands of emails. In light of the relatively short length of time that has transpired between Barber's request and his appeal (six weeks), the large amount of emails Barber requested, and the fact Bend has been in regular communication with Barber about the status of his requests, I find Bend carried their burden of persuasion on this issue: The timeliness of their response to date has been "proper and reasonable," thus they have not constructively denied Barber's Lots of Emails and K9 Records requests.

2. Did Bend Correctly assert the personnel discipline action exemption to Oregon's public records law (192.450(1)) in regard to Barber's Targeted Emails request?

The third public records request that Barber appeals is his Targeted Emails request. In this request Barber asked Bend to provide him with all emails to and from Capt. Paul Kansky from the following people: Chief Jim Porter, Sgt. Eric Hagan, and Sgt. Scott Vincent. Bend provided responsive documents to Barber and informed him that: "Three messages were withheld pursuant to ORS 192.501(12) for personnel discipline actions." (Exhibit 3).

ORS 192.501(12) conditionally exempts: "A personnel discipline action, or materials or documents supporting that action." The policy underlying this narrowly construed exemption is to "protect[] the public employee from ridicule for having been disciplined but does not shield the government from public efforts to obtain knowledge about its processes. 141 City of Portland v. Rice, 308 Or 118, 124, n.5 (1989).

The discipline action that Bend relied upon when citing 192.501(12) was a discipline action against Barber. So, at first blush, it seems like this exemption does not apply to the case-at-bar since Barber, the requestor, is the target of the discipline action. Because of this the policy of protecting public employees from public ridicule is inapposite in this case. However, this fails to consider the fact that the discipline proceeding involving Barber is pending. Oregon's Attorney General addressed this issue in her Public Records and Meetings Manual:

Neither ORS 192.501(12) nor the relevant court decisions specify how the statute applies when a person seeks records in a file in a pending personnel disciplinary matter. Unless the public interest at the time of the request requires disclosure, we believe that the public body's inability to determine the application of the exemption during the pendency of the matter excuses delaying response while the public body diligently pursues the underlying issue. In determining whether the public interest at the time of the request requires disclosure, one relevant factor is the extent to which the disciplinary proceedings might be adversely affected by public disclosure while the matter is pending. Requiring disclosure of disciplinary records when requested while disciplinary actions are pending, regardless of the

public interest, could effectively eviscerate the exemption of ORS 192.501(12) by compelling the disclosure of records that may turn out to be exempt.

Attorney General's Public Records and Meetings Manual 2014, section I.E.4.d.(12) p.52 (internal citations omitted).

The Attorney General's position on records requested in pending personnel disciplinary matters is persuasive. Because Bend is not in a position to fully analyze the potential applicability of this exemption during the pendency of this disciplinary proceeding, and because the disciplinary proceeding might be adversely affected by public disclosure of documents about the proceeding while the matter is pending, I find Bend carried their burden of persuasion.

The withheld emails (that Bend provided me to review) relate to the pending disciplinary proceedings and are within the scope of 192.501(12), thus Bend's decision to withhold these emails is legally authorized at this time¹. At the end of the disciplinary proceeding my legal conclusion might be different.

CONCLUSION

Bend did not deny Barber's Lots of Emails and K9 Records requests – they are still reviewing them and have communicated this to Barber. Bend correctly cited ORS 192.501(12) when they withheld three emails in response to Barber's Targeted Emails request.

Sincerely,



John Hummel
District Attorney

¹ This opinion does not address the issue of whether due process, labor laws, and/or terms of collective bargaining agreements entered into between City and the Bend Police Department police officer association might require these emails to be provided to Barber.

From: Don Barber [mailto:upper_deschutes@yahoo.com]
Sent: Thursday, March 22, 2018 11:45 AM
To: John Hummel; Don Barber
Subject: Public Information Appeal

Mr. Hummel,

I am writing this email as an appeal to you to have public information released that I have previously requested through the City of Bend City Recorder's Office. My name is Don Barber. I am a police officer for the Bend Police Department and have presented with you at the Deschutes County Victim Impact Panel. I am currently under internal investigation for 'K9 record keeping' in regards to a year end stats email I sent Sgt. Eric Hagan on December 30th, 2017. I made errors in the composition and content for which I already took full responsibility for. None of the errors I made were on purpose. None of the facts I included were known to be in error by me at the time I sent the email to Sgt. Hagan. I am embarrassed by the errors I made because I have a very professional reputation as a police officer; in patrol, previously as a Drug Recognition Evaluator, and current as the first single-purpose drug detection K9 handler. I have had nothing but good evaluations for the past 13 years of my employment. The only discipline I have received in my entire tenure of 13 years have been two letters of verbal counseling for two things I self reported. The first was for a lost training aid in 2012. The second for an at fault 2-3 mph crash where I backed into a pole in front of Elk Meadow Elementary School in November of 2017 where my vehicle was not damaged but I leaned a post over at a 45 degree angle. The Crash Review Board stated they found me to be "highly credible" at the hearing for that crash in the letter of verbal counseling I received.

In September of 2017, I witnessed an off-duty ethics violation by a supervisor at the Bend Police Department. I also was told of another ethics violation that occurred just three days prior at the Oregon Police Canine Association conference. I confronted that supervisor via text message and told them to self-report. After that confrontation, I began becoming subject to harassment by that supervisor. In late October 2017, I reported both ethics violations and the harassment to the Human Resources Director Rob Duvall. We spoke on the phone for almost an hour and I outlined the ongoing ethics issues I have witnessed through my department. Beginning in November of 2017, I began noticed an increase in scrutiny towards myself by members of my administration. This included requests for K9 training records and statistical information. These were the first of these requests of this nature I have ever received in my entire 5.5 year tenure as a K9 handler at Bend Police Department. Essentially, I have gone unsupervised and every piece of paperwork or record keeping tool I have developed myself. I have never received any training or infrastructure from the department in support of the program even after multiple documented requests by myself. I essentially have developed the program beginning in 2012.

During early December, I received an e-vite from Sgt. Eric Hagan for a "K9 training meeting". Also included in the e-vite was Lt. Ken Mannix. This was unusual because I had never received a request for a K9 training meeting and the other handlers were not invited. I emailed Sgt. Hagan asking about the content of the meeting and what I needed to bring with me and did not receive a response. On January 9th, 2018, I attended the K9 training meeting. The meeting was conducted by Sgt. Eric Hagan and Lt. Ken Mannix was also in attendance. The meeting was very punitive in feel in that I was being told things I was doing wrong as a handler (some of which were completely false and when I asked for examples they were unable to provide any). The tone of the meeting was so bad I asked them if I needed a union member in the room with me, if I was being disciplined for something, or if they were taking my K9 away which they answered "no" too.

Lt. Mannix then confronted me about going to the City of Bend Legal Department in October and violating "chain of command." I told Lt. Mannix that I went to Rob Duvall in Human Resources about an "HR issue" and asked him if he was telling me I could not do that. Lt. Mannix disregarded my explanation and again accused me of going to legal. It was obvious at this point why the scrutiny was occurring and why I was in the meeting.

On January 16th, 2018 I emailed Rob Duvall and asked to meet him again to report the incident. We set a meeting for January 26th, 2017 at 3 pm. On or about January 19th, I went to a union e-board member who is also ranked as a corporal and asked to file a grievance regarding the incident. The member stated he did not believe I could because I had not been disciplined and my pay was not affected. He stated he would contact the Union President and get back to me. The next day I received an email explaining that he had violated my rights as a union member and reported my conversation to Lt. Mannix, the same person who had confronted me about going to the city.

On January 24th, 2018, Lt. Brian Beekman contacted me after I arrived for my night shift and asked to speak to me about a "harassment" issue. I met with Lt. Beekman and explained the entire sequence of events beginning in May of 2017 and culminating with the meeting on January 9th, 2018. Lt. Beekman asked me if I wanted to be the complainant on a IA against Lt. Mannix. I answered "no" because my reasoning is Lt. Mannix was ordered to confront me and that the only way he would of learned of my



going to the city is through chain of command. Therefore my complaint would of probably gone from HR Director to City Manager, City Manager to Chief of Police, Chief of Police to Captain, Captain to Lieutenant. I explained to Lt. Beekman I had another meeting set for January 26th, 2018 at 3 pm with Rob Duvall to discuss the issue. I explained after my meeting I would get back to him.

The next day on January 24th, 2018, I was summoned into Lt. Mannix' office and served a notice of IA for "K9 Record Keeping." There was no policy number listed I was in violation of because no such policy exists. My gun, badge, K9 and K9 vehicle were taken and I was given a ride home by Sgt. Todd Guthrie (a great sgt. by the way). This was in regards to the previously referred to email sent December 30, 2017,

On January 26th, 2018, I met with Rob Duvall at City Hall and explained what had occurred. Duvall told me that shortly before our meeting, Capt. Paul Kinsky came to his office to tell him I was under IA. I explained to Duvall I believed this was in retaliation for my going to the city in October regarding ethics and again for telling them I was going to the city for another ethics violation on this date.

On January 31st, 2018, I received my official 'Notice of IA' that stated the IA was not opened until January 25th, 2018, two days after my meeting with Lt. Beekman, one day before my meeting with Duvall. They cited my "knowingly submitting false facts to a supervisor." This is completely false and I can prove that. I also would never do that and have nothing in my history as a police officer that lends to me being anything but credible. There were no K9 policies cited because I do not have any. One thing of interest is Duvall stated if there is no policy regarding K9 record keeping and you have no training supplied by the department for K9 record keeping, you cannot be disciplined for anything regarding K9 record keeping. I am under investigation for K9 record keeping.

On or about February 12th, 2018, I emailed Rob Duvall requesting an investigation into retaliation by the administration of the Bend Police Department. I also invited Rob Duvall to attend my IA interview on February 15th, 2018 as I have nothing to hide. He declined to attend but acknowledged my request. I have yet to be formally interviewed by the City of Bend.

On February 15th, 2018, I had my IA interview. In attendance were Lt.'s Jason Maniscalco and Brian Beekman as well as Officer Lisa Nelson, my union representative. I was shown quite a few errors in the email I sent to Sgt. Hagan. I took full responsibility for any and all errors. I reiterated they were not on purpose. I was also advised that the investigation into the data I provided took 2 weeks, from January 25th to approximately February 7th, 2018. This troubling because it did not even begin until after I was placed on leave, 25 days after I sent the email stats to Sgt. Hagan. I think this lends an obvious direction to retaliation especially after being openly confronted about going to the city on January 9th, 2018..

This brings me to the public records request appeal. I have made three requests for public information. The first was for all my emails; to and from me, from November 1st, 2017 until January 25th, 2018. I have been provided partial information and am missing a crucial email. The second was for the K9 records for the other 3 department K9's to include, training records, deployment records, and K9 record audit results. This request was made around the second week of February. I still have not been provided these records. I believe they did not exist at the time of my request and lends to one asking why were my records requested and scrutinized by BPD and not the other handlers. The third was for all emails to and from Capt. Paul Kinsky from the following people; Chief Jim Porter, Sgt. Eric Hagan, and Sgt. Scott Vincent (the training sergeant). I requested these because I believe there will be evidence of retaliation which falls under Federal Employment Law I believe. I have been told by the City that some emails have been withheld and the others are under review by the City Attorney and I am responsible for paying \$80 for that review and any redaction.

Around the first week of this month, I took the unusual step to retain an employment attorney. A notice of tort has been sent to the City of Bend. I did this not because I am trying to bilk the city out of money, I did this because I wanted this to go outside the walls of BPD and have things scrutinized by the City of Bend. I also owe it to my co-workers to prevent this from happening again. I am appealing to you to have the three public information items released. My integrity was attacked after filing an ethics complaint and attempting to file a second. I believe these items will shed light on the actual purpose of the IA.

Respectively Submitted,

Don Barber

John Hummel

From: Mary Winters <mwinters@bendoregon.gov>
Sent: Tuesday, March 27, 2018 1:45 PM
To: John Hummel
Cc: upper_deschutes@yahoo.com; Robyn Christie
Subject: RE: Public Records Appeal time sensitive notice
Attachments: Barber request.pdf; Fw_ K9 and Year End Evals.pdf; Re_ Upcoming dope K9 class.pdf; K9 Meeting.pdf; Fwd_ An officer's kindness on Christmas Eve.pdf; Re_ Sheriff's Posse Formal Memo.pdf; RE_ Follow-up.pdf

Hi John: I will do my best to respond in order to meet your timeline. The public records requests went through our City Recorder, Robyn Christie, who is on vacation for spring break without internet access, but has been trying to send me the relevant communication via cellphone. Associate City Attorney Ian Leitheiser has been working with the City Recorder to review documents as necessary, and he is on vacation for spring break as well.

As I understand it, the first request in early February was quite broad, and she had somewhat extensive back and forth in order to clarify the request(s) and be responsive. Additional communications exist, but the below emails capture the City's position that we have not withheld any responsive documents.

The original February 5 records request resulted in the City providing all the messages between the requestor and the four employees (91), without withholding any documents. Based on follow-up communication, she informed Mr. Barber that a search result for all messages between the four employees was 21,240 messages and would take longer to review, and require the normal time estimate/deposit. On March 15, the requestor submitted a request for emails between Captain Kansky and Chief Porter, Sgt. Hagen, and Sgt. Vincent, which the City responded to the following day. (See the bottom of this chain of emails, and the follow-up on March 20, with some documents provided as attached).

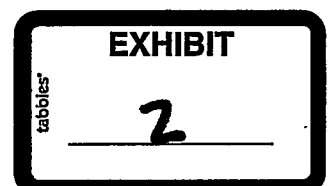
Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Robyn Christie <rchristie@bendoregon.gov>
Date: 3/20/18 10:46 AM (GMT-08:00)
To: Don Barber <upper_deschutes@yahoo.com>
Cc: Ian Leitheiser <ileitheiser@bendoregon.gov>
Subject: RE: Resubmitted Records Request

Hi Don, This initial request only included Kansky, Mannix, Vincent, Hagan and you. (Your February 5 email confirmed "November 1st through January 25th. And yes, to and from all four of us either to each other or to me".) I've attached the message from Eric Hagan and a couple you sent to him that may be what you're looking for.

Your attached request did not include messages to or from you with Chief Porter or Rob DuValle. I've located those messages and attached them.



Please submit a new request for any additional records. There's a quick on-line form available: <https://www.bendoregon.gov/government/departments/city-recorder/public-records-request>

Thank you,

Robyn

From: Don Barber [mailto:upper_deschutes@yahoo.com]
Sent: Tuesday, March 20, 2018 9:10 AM
To: Robyn Christie <rchristie@bendoregon.gov>
Subject: Re: Resubmitted Records Request

Hi Robyn,

Just checking on some missing emails from my first request? That request was for all of my emails to and from me from November 1st, 2017 through January 25th, 2018.

I am missing emails from Sgt. Eric Hagan, one was a second request from him for K9 training records in December 2017. Another was an email from me requesting information on the content of a scheduled K9 training meeting.

I am missing two emails from Chief Jim Porter. One was an email received that went out to all employees and it was kudos for helping an elderly lady around Christmas. The second was an email received from him around the end of December stating my request from November 21st, 2017 to become a volunteer with Deschutes County Sheriff's Posse was being sent to "legal" for review. It was received around 4-5 weeks after an email containing a memo was sent to him at his request on November 21st, 2017 I believe.

I am also missing all the emails Rob DuValle and I sent to one another requesting and setting up our meeting on January 26th, 2018 at 3 pm. Thank you for all your help so far.

Don Barber

Sent from Yahoo Mail for iPhone

On Monday, March 19, 2018, 4:42 PM, Robyn Christie <rchristie@bendoregon.gov> wrote:

Hello Don, I will have to charge one hour of our associate attorney's staff time to complete this request. The rate (+benefits) is \$82.77. The search resulted in 378 messages and requires review and redaction. Please let me know if you would like to proceed.

Robyn

From: Robyn Christie
Sent: Friday, March 16, 2018 4:23 PM
To: 'Don Barber' <upper_deschutes@yahoo.com>
Cc: Ian Leitheiser <ileitheiser@bendoregon.gov>
Subject: Resubmitted Records Request

Hello Don, In accordance with ORS 192.440(2), this is to acknowledge our receipt on March 15, 2018 of your request for records (request attached).

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

Regarding additional records that have been provided, the following correspondence show that documents have been provided as the request became clearer, that the few withheld were specified as exempt from disclosure, and that the City Recorder worked diligently with the requestor to identify and locate responsive documents. The requests were somewhat overlapping and took time and attention to narrow and identify the requestor's desire, both for responsiveness and cost.

On Monday, February 26, 2018, 9:01 AM, Robyn Christie <rchristie@bendoregon.gov> wrote:

Hi Don, this estimate is in response to your request for K-9 deployment and training records. The records have not been compiled so none have been withheld. None were withheld from your previous request, however, the search program is not perfect so it's possible that some did not show up in the search.

Let me know.

Robyn

On Mar 9, 2018, at 2:52 PM, Robyn Christie <rchristie@bendoregon.gov> wrote:

Hello Don, I directed staff to proceed with the K9 training records early this week. I just received an update that the soonest this may be ready is Wednesday next week.

Responsive records to the email request are attached (Kansky/Hagan). Three messages were withheld pursuant to ORS 192.501(12) for personnel discipline actions.

I'll be in touch regarding payment when the other records are available.

Best,
Robyn

On Friday, March 2, 2018, 5:15 PM, Robyn Christie <rchristie@bendoregon.gov> wrote:

Maybe I'm mixing up requests. This is whether you agree to pay the fee for staff to conduct the research to pull together the K-9 training records. Our estimate for this request is 5 hours of staff time (\$55.30/hour) to gather the records and one hour of supervisor time (\$92/hour). The charge will be approximately \$313.20. I need your approval to proceed.

The email request (for supervisor's email) is pending with the City Attorney's Office and Police Department.

Thank you,

Robyn

Records have been provided and the City Recorder, who has been consistently responsive. Mr. Barber knew that Robyn would be on vacation this week and was attempting to respond to his requests and would stay in contact. He agreed to that timeline. See below. The City cannot have denied a request for records when the requestor accepted the timeline for providing the records.

Sent from my Verizon, Samsung Galaxy smartphone

From: Don Barber [mailto:upper_deschutes@yahoo.com]
Sent: Friday, March 23, 2018 4:38 PM
To: Robyn Christie <rchristie@bendoregon.gov>; dgarner@salememploymentlawyer.com
Subject: Re: Update on Records Requests

Hi Robyn,

Thank you :). I, too, will be out of town for the week. I'll be available after the 31st. Let me know when I can pick them up. Thank you.

Sent from Yahoo Mail for iPhone

On Friday, March 23, 2018, 4:35 PM, Robyn Christie <rchristie@bendoregon.gov> wrote:

Hello Don, I'm writing to notify you that I have not yet received records for your two outstanding requests. I will be out of the office next week but keeping in contact by email. I will contact you as soon as the records are available.


Thank you,

Robyn

Robyn Christie | City Recorder

City of Bend [541-388-5517](tel:541-388-5517)

The City intends to provide responsive documents to the outstanding requests, to the extent they exist, by the end of next week. If any are withheld after legal review, the reason for withholding will be given. Regards, Mary


Has Bend constructively denied Barber's request? 

The relevant law is ORS 192.430(1) which says that custodians of public records: "shall furnish proper and reasonable opportunities for inspection and examination."

Bend has the burden of persuasion to convince me that the length of time that has transpired in this matter is authorized by Oregon law. In order to carry this burden they must cause me to affirmatively conclude that their response to date has been "proper and reasonable." ORS 192.430(1)

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2. Did Bend Correctly assert the personnel discipline action exemption to Oregon's public records law (192.450(1)) in regard to Barber's Targeted Emails request?

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