Practical Public Records Law for City Attorneys

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General Principles

“if there is a plausible construction of a statute favoring disclosure of public records, that is the construction that prevails”

Colby v. Gunson, 224 Or App 666, 676 (2008)

Responding to Request – Public Interest

You may not deny a request just because there is no public interest in the records, even if true.
Things that aren't exempt
(even though you really want them to be…)

- Drafts
- Meeting notes
- Training materials
- Voicemail

**If you don’t want to turn it over, then don’t write it down in the first place.**

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Cell Phones

Work-related call logs, voicemail, and text messages on your personal device ARE PUBLIC RECORDS.

Do not delete work-related communications unless you are certain they are not subject to retention.

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Common Issues / Scenarios

- Personnel Discipline (192.345(12))
  - Union issues
  - Pending investigations
- Personal Information (192.355(2))
- Agency has ignored request (192.329 & .407)
Personal Privacy Exemption

• ORS 192.355(2)(a) exempts “information of a personal nature the disclosure of which would constitute an unreasonable invasion of privacy.”
• This has been interpreted to be a very high bar.

Process

✓ Receive, acknowledge/provide estimate, track, respond
✓ Template for response
✓ Establish point of contact for each department
✓ How to analyze public interest

Importance of Relationships

➢ Build trust with public, media, staff, elected officials
➢ Understand the request
➢ Identify and review records
District Attorney Appeals

Does the DA have jurisdiction?
- Elected official records ORS 192.427
  - Claims the right to withhold
  - In the custody of

Formal vs. Informal involvement

Fee Issues

- Challenge to calculation of fee
  - no authority to review
  - Petition of Mayes, Att’y Gen. PRO (3/29/2000)

- Appropriateness of waiver decision
  - abuse of discretion review
  - Petition of Sarich, MCDA PRO 19-40 (2019)

Fee Issues, continued

- How good is your fee policy?
  - Are the right people doing the work?
  - Are the costs clear to requestors?
  - Will your local DA or a court understand it?

- Where does your policy live and how are the fees authorized?
  - Does your fee policy square with how your entity charges for fees generally?
Litigation considerations

Who are you really suing?
- “City sues [fill in the blank] over records.”

It’s your case to make, regardless of who initiates in circuit court: the public body has the burden of sustaining its action (ORS 192.431)

Litigation considerations, continued

Are you ready, and is it worth it?
- expedited trial de novo (ORS 192.431)
- exposure to costs and attorney fees at trial and on appeal (also ORS 192.431)
- other considerations: staff time, impact on operations

Litigation considerations, continued

Who is your client?
- City Recorder or City Clerk?
- A City department?
- Elected officials?
Further Questions

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