

## PUBLIC RECORDS CASE POINTS OUT INCONSISTENCIES

While former commissioner Rob Handy might have lost a battle in the fight for better public records disclosure from Lane County government, he feels that he made some headway in the war. He said in a press statement that the goal of his suit “was to shine a light on the arbitrary nature in which Lane County” responds to public records requests, and with this goal in mind, Handy says the suit was a success.

Coos County Circuit Judge Richard Barron ruled the county did not violate the state public records law by refusing to turn over documents Handy had requested. The county had asked for more than \$2 million in fees and said Handy’s request was too broad — it asked for any records or communications relating to Handy and any internal communications about him over a five-month period — and Handy did not narrow the request, the judge wrote.

### ‘Judge Barron seems to be establishing a single-factor test’

- ATTORNEY DAVE BAHR

Barron ruled that the \$2 million to provide all the records Handy was looking for was not excessive and that the county’s refusal to waive the fee was legitimate. He also pointed to

exchanges between Handy and the county over an emergency meeting and he wrote, “It is clear to the court that is all this lawsuit is about,” pointing to motive, as opposed to facts of the case.

Different government bodies handle and store email and internal communications differently. While Handy says that Lane County told him it would need to have a contractor paid \$70 an hour to fulfill the request, an April 2010 public records request from the R-G to the city of Springfield resulted in a reporter being given access to more than 5,000 emails within 48 hours at no charge.

The Handy case involved a somewhat peculiar legal process in which the county counsel, Alex Gardner, was also the district attorney who heard appeals on public records issues; the attorneys making the arguments, Stephen Dingle and Marianne Dugan, were both involved in the email exchanges introduced to the court as exhibits; and some of the reporters covering the trial had public records requests and emails also introduced as exhibits.

Evaluating public records public interest fee waiver requests is a three-step process: First the government body must determine if there is a legal basis that prohibits the granting of a fee waiver. Next the agency objectively evaluates the fee waiver request — how will the public benefit from the information? Gardner at the Handy trial testified that he did not feel the public was interested. The question, however, is if it is in the public’s interest, not if it interests the public. Finally, if an agency does find the request to be in the public interest, it can still argue it cannot grant the fee waiver because it is time consuming or expensive.

Attorney Dave Bahr recently won a public records case for the Sierra Club against the Port of Coos Bay, which was charging \$20,000 for records in regard to a coal export terminal. Bahr says, “Judge Barron seems to be establishing a single-factor test, holding that whenever a public body feels it has budgetary constraints it need not grant a fee waiver, and that is not supported by prior court decisions.”

In another departure from the norm, Barron writes at the end of his decision letter that attorney Dingle “may also submit statement for costs and attorney fees pursuant to defendant’s prayer.” Normally in public records cases, attorney fees are not charged, unless the case is deemed “frivolous.” — *Camilla Mortensen*

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