

‘YOU ELECT ME TO DO A JOB, AND I DON’T THINK YOU’RE ELECTING ME TO DO THAT JOB IN SECRET.’

-ATTORNEY GENERAL ELLEN ROSENBLUM

getting the records any faster for that person; the appeal process will take probably the same amount of time to get the records,” she says, and pauses before continuing, “although sometimes having us call has an impact on turnaround time.”

A ‘REASONABLE’ DEADLINE

“The main thing is getting some damn deadlines that have teeth,” Bahr says, adding that “there is no deadline. This is one of the great failings of the Oregon Public Records Act.”

EW made its initial public records request for emails to the city of Eugene Jan. 27, 2016. After requests failed to get the fee waived, EW submitted a check for \$447.20 to the city on Feb. 25.

It is now the last week of May 2016 and the request for emails has yet to be fulfilled completely — three months after the paper paid for it.

Crockett instructed us to check back with the city in a week for the status of the request. After a week, Crockett responded via email: “We are still processing this.”

At the two-week mark, March 11, EW checked in again and received this response: “We are at about the halfway point at this time.”

At the four-week mark, March 28, we asked for an estimated time of arrival, and Crockett wrote back on March 30: “It’s a large request and we are still plugging away at it.”

The first part of EW’s public records request was not available until April 29. The city has *technically* done nothing wrong here, because Oregon allows public officials to complete requests in what they deem a “reasonable” amount of time.

As identified in the Kroger Report, 33 states, as well as D.C., have established deadlines; Vermont has the shortest deadline with two days and Pennsylvania has the longest with 35 calendar days.

It took the city of Eugene 64 days to make the first portion of the EW’s public records request available. As of May 26, 96 days have passed and the request is not complete.

“Oral and written testimony indicates that Oregonians believe the lack of firm deadlines allow government officials to intentionally delay releasing embarrassing documents,” the Kroger Report says.

“I think most journalists would agree that a reasonable deadline is a good idea,” Walth says. “It’s an important incentive that the law now lacks.”

While the AG’s office is examining deadlines, Rosenblum counters that deadlines may impose unrealistic standards and have inadvertent effects.

“There’s different viewpoints about that,” she says. “Having a deadline would mean that the agency could wait longer than they otherwise would.”

In other words, an agency with a deadline of 35 calendar days could wait until the 35th day to produce public records, instead of producing them as soon as they are ready.

Bahr shrugs off this argument, adding that he’d be satisfied with any deadline that is a month or less.

“If Washington and California and Idaho can manage to do it, are we that much less competent?” he asks. “Are we dragging our knuckles that badly that we can’t get our act together?”

STILL WAITING

The first part of EW’s public records request was made available April 29 on a burned CD, but there was something odd about it. According to the city, this CD included the “majority” of the request, yet the emails on the CD were already accessible for free on the public computer (which allows members of the public to read the public emails of the mayor, City Council and city manager) in the city manager’s office.

EW knows this because we had already accessed the majority of these emails.

When asked about this — that the city had charged a fee for emails that were freely available — neither Crockett or senior City Recorder Beth Forrest responded.

On May 10, Crockett alerted the *Weekly* that the remainder of the request was ready for pickup, but then another strange thing happened: It was brought to EW’s attention that the city had changed the nature of EW’s request.

Councilor George Brown forwarded EW an email from Crockett that he’d originally sent to city councilors and the mayor in relation to our request. Everything described in Crockett’s email was verbatim to EW’s request, except one aspect had been tweaked: Crockett had changed the search term, “Rowell Brokaw Architects,” to “Rowell Brokaw Architects as it pertains to Kesey.”

This may not seem like a red flag, but consider this example: Trying Googling “Richard Nixon.” Now try “Richard Nixon Watergate.” The first search offers 55-million-plus hits; the second only half a million.

While Bahr says cases like this usually stem from incompetence rather than malfeasance, public agencies cannot narrow the parameters of a public records request without consent from the requester.

The city has yet to respond as to why it narrowed the parameters of EW’s public record request without permission or notification. Until the search is done with the correct terms, the request remains incomplete.

MAY THE TASK FORCE BE WITH YOU

Walth, Bahr and Harbaugh attended the task force’s May 9 public hearing hosted by Rosenblum and Kron in one of the shiny new rooms at the UO’s renovated School of Journalism and Communication.

Also in attendance were former Lincoln County District Attorney Rob Bovett (he now sits on the task force), long-time UO journalism instructor Rebecca Force; former dean of the SOJC-turned “Faculty Athletic Representative” Tim Gleason (who has been a frequent subject of Harbaugh’s ire on UO Matters for lacking transparency); and a handful of lawyers and students.

One speaker said it was more appropriate to call OPRA the “Oregon Official Secrets Act.”

Walth sat quietly taking notes. As did Gleason. Bahr and Harbaugh both gave testimony to Rosenblum, Kron and Bovett.

Bahr took the podium twice. He spoke of

the need for enforceable deadlines, comparing Oregon to Washington state, which has a deadline of five days. He explained how, in his professional experience, he sees that local media rarely get fee waivers granted in places like Lane County, the city of Eugene and University of Oregon.

“That system is broken. It’s just broken,” Bahr said.

Harbaugh challenged Rosenblum, asking why the AG office hasn’t written stronger opinions in favor of disclosure of public records in disputes, as Frohnmayer was known for doing.

“That would be a simple change,” Harbaugh said to Rosenblum. “It would not take an act of the Legislature, which we all know is just as likely to lead to changes that will decrease the amount of transparency.”

He added: “That’s within your power to do right now.”

Rosenblum responded: “I wouldn’t be doing this — inviting you all here, spending all the time and the resources, and taking up others’ time on the task force — if I didn’t generally want to take a deep dive into this subject matter.”

To conclude the meeting, Rosenblum stated: “The focus and the approach we’re taking has a very good chance of excellent results when we get to the point to where we have some legislative concepts, which we are going to be developing, and there’s even a deadline on that.”

Rosenblum will take the information gathered from the task force and create a legislative concept, or a framework for a bill, which will eventually be introduced to Legislature in 2017. The concept is due in June.

After the task force, Walth said he was optimistic about the potential for reform under Rosenblum.

Dave Bahr said he’s hopeful, but uncertain about change.

“I thought that particularly Michael [Kron] was attentive. I thought the attorney general was much more interactive than I expected,” Bahr said. “I get the sense that they’re trying to do something.”

He adds, however, that he expects there will be strong pushback from the legislature and public agencies.

Harbaugh remains cynical. He calls Rosenblum’s efforts a redo. “It’s so disillusioning to see a new attorney general falling back on the same old stunt,” Harbaugh says.

THE HEAT IS ON

In an earlier discussion with Walth, EW asked what an average citizen searching for public information could do in the face of this OPRA juggernaut.

“My advice is to ask lots and lots of questions before you make your request; try to find out what’s available and how it is kept,” he said. “Keep your request as narrow and specific as possible.”

Walth added: “You have to keep the heat on. You have to absolutely remind them day after day that they have a duty to respond.”

And as for EW’s request, we’ll keep the heat on. Tune in next time to see what one public records request reveals about Kesey Square. ■