

TRANSPARENCY COMMITTEE TAKES ON UO RECORDS POLICY

Student reporter denied paid-for public records

A student reporter at the University of Oregon was charged more than \$100 to obtain UO public records before being told the university would not release them to him.

The reporter didn't get a refund, and now the university's Senate Transparency Committee (STC) is asking whether the UO is violating its own policy and abusing public records fees in order to discourage the public and news media from trying to shine light on the university's operation.

Michael Tobin, a senior news reporter for the *Daily Emerald*, paid the UO Office of Public Records \$113.64 for records before he was told they were exempt from release. He has not received a refund. Tobin submitted a complaint to the STC to find out why he can't get his money back.

"I'm concerned about a fee for records I was not given," Tobin told the STC during a Thursday, April 5, meeting. "And if they claim to know Oregon public records law, they should know that if there's a pending federal investigation that this record would be exempt from disclosure from the start. So I don't know why they would take my money and then go through the process of pulling the document, attempting to redact it and then say, 'We can't give this to you because we talked to the [Department of Justice] about it.'"

TRANSPARENCY

The STC was founded in 2009 by Bill Harbaugh, vice president of the University Senate and avid requester of records for his blog uomatters.com, which constantly presses the UO on access to public records. According to the UO Senate website, the STC is responsible for reviewing the effectiveness of UO's public records access, as well as financial information related to public records procedures. Part of the committee's job is to receive complaints from faculty, staff and students regarding public records.

Tobin filed his records request on Feb. 1 for any "federal subpoenas the University of Oregon has received over the past year." Tobin told the committee he was requesting records he thought might be connected to the 2021 IAAF Track and Field World Championships; IAAF's selection of Eugene to hold the event has spurred criminal investigations in the US and in Europe into possible corruption around the decision.

After a series of clarifying emails, Tobin was told the cost of procuring and preparing the information would be \$113.64 — after a 20 percent discount for being a member

of the media. The next day Tobin mailed a money order to the public records office.

On Feb. 19 the office emailed him saying the single record pertaining to his request was exempt because it involved a "pending federal investigation." UO public records refused to refund Tobin's payment, writing that "... The charges incurred are not for documents, but rather for the entirety of the process for gathering, processing and providing responsive documents," emails show.

Government agencies are allowed by state law to charge for records. According to the Attorney General's Public Records and Meetings Manual, fees can still be assessed if no responsive records are found or "even if the records located are subsequently determined to be exempt for disclosure."

UO's policy, though, says nothing about exempt records and fees, only that "The Office of Public Records charges for the actual cost of making available public records."

"They have to follow their policies. They have to follow both Oregon law and their policies," Chris Sinclair, chair of the STC, says. "So if their policies are more restrictive than Oregon law then their policy is the one they have to follow. That's my understanding."

'This is symptomatic of the university's contempt for public records law and the principle that people should have access to the records of their government.'

— BILL HARBAUGH, UNIVERSITY SENATE VICE PRESIDENT

General counsel for the university Kevin Reed, a member of the transparency committee, refused to attend Thursday's meeting and resigned from the committee before the meeting, telling Harbaugh that his office's participation in the committee would "present a conflict of interest."

Reed appointed Bryan Dearineger, associate general counsel, to his place on the committee before telling him not to attend Thursday's meeting. Dearing immediately replaces Reed on the committee as an ex-officio, non-voting member.

In addition to stepping down from the committee, Reed expressed concern that Harbaugh's participation presented a conflict of interest as well. Transcripts of emails between Reed and Harbaugh were posted to the University Senate blog.

"You have been assessed over \$45,000 in fees on your public records requests over the course of the last five or so years," Reed wrote to Harbaugh in an email. "You have

paid a few hundred dollars for documents, but mostly you have protested the fees and argued for a change in fee policy that would reduce or eliminate fees. A private citizen is, of course, free to engage in such advocacy, but when a public official does so in his official capacity, he does so at his own risk. I have told you this before, and you have ignored my advice thus far. And, as I said the risk is on you, not the university, so I can't tell you what to do."

Following Reed's prompting to consult with the Oregon Government Ethics Commission, Harbaugh says, an investigator from OGE — via a phone conversation — determined Harbaugh's interest in public records makes him part of a class or group of people with shared interests, saying, "Your participation would not even be a potential conflict of interest."

STATE ISSUE

Oregon public records laws are some of the weakest in the nation, according to the Center for Public Integrity, a Pulitzer Prize-winning non-profit investigative news organization. Its 2015 investigation ranked Oregon 42nd among the 50 states for access to public information.

That year Oregon was embroiled in the Gov. John Kitzhaber scandal, prompting CPI also to rank it No. 42 for integrity.

"The Kitzhaber debacle underscored the consequences when public information doesn't flow freely or in a timely way; substantive deadlines might have allowed voters a closer look at Kitzhaber's issues before he was re-elected, only to resign a month after his swearing-in," authors of the report wrote.

The Oregon Legislature is working to improve its poor

record for giving the public access to information. After writing more than 550 exemptions to release records since 1973, lawmakers passed four new bills in 2015 to make Oregon more open. The bills, pushed by the Oregon Territory Society of Professional Journalists, directly addressed the issues CPI noted — open data laws, an independent agency to oversee access and firmer deadlines.

While the state begins to move forward, the STC is concerned that UO is stuck in the past and that using fees and denying refunds and records will prevent future requests.

"This is symptomatic of the university's contempt for public records law and the principle that people should have access to the records of their government," Harbaugh says. "This seems to me a case where the university is using its powers under that law not to promote transparency but to try to hide things." ■

ACTIVIST ALERT

• City Club of Eugene hosts the debate, **"Eugene City Auditor — Independent & Elected by the People or Appointed by the City Council?"** noon Friday, April 13, at the UO Academic Extension at the Baker Center, 975 High Street. Speakers are former City Councilor Bonny Bettman McCornack of Elected Auditor 4 City Accountability, and former City Council candidate Joshua Skov of Citizens for Sensible Oversight. The following Friday, April 20, also at noon at the Baker Center, City Club hosts the East Lane County Commissioner District 5 Candidate Forum with candidates James Barber, Heather Buch, Frank King, Tim Laue, Kevin Mat-

thews and Gary Williams.

• **Join Project Living Hope (PLH)** to enjoy some dessert with good company 7 pm Saturday, April 14, at the Holiday Inn (919 Kruse Way, Springfield) for a PLH fundraiser. Haitian-born PLH founder and president Dr. Guesly Dessieux and his wife Sara, a Eugene native, will be joined by members Project Living Hope as they describe their vision for a multi-field sports complex in Camp Marie, Haiti. Admission is free. RSVP at PLHope.org or 503-714-1477.

• The Training Spot is holding an **open house and dog adoption event** 10 am to 2 pm Saturday, April 14, at its 90 Lawrence Street location. The adoption

features Greenhill Humane Society, Lovable Dog Rescue and Northwest Dog Project. The Training Spot says, "Win fun prizes including \$10 gift certificates for training services, toys and treats, take-home prizes from Healthy Pet and Wags! Dog Emporium and try your luck at our infamous treat toss competition!"

• Sunday, April 15, CALC and allies will have a **Tax Justice Rally and March** at EWEB River Edge Plaza, 500 East 4th Avenue, starting at 1 pm. There will be speakers and music, followed by a march downtown to the old and new Federal buildings, with a return to EWEB Plaza. Speakers will call on Congress

to redirect war dollars to fund education, job creation, universal health care, environmental protection and other vital services, and will also demand that Congress create a more equitable tax structure that ensures the top 1 percent pay their fair share of taxes. CALC: 541-485-1755, peace@calclane.org, or the Eugene Tax Justice March 2018 Facebook event page.

• The **13th Annual DisOrient Asian American Film Festival of Oregon** runs April 19-22. The four-day festival spans across multiple venues in town. For information about film screenings, panel discussions and purchasing tickets, visit disorientfilm.org.