

# New secrecy tactic: suing people who seek public records

## Government turns the tables

By RYAN J. FOLEY  
Associated Press

An Oregon parent wanted details about school employees getting paid to stay home. A retired educator sought data about student performance in Louisiana. And college journalists in Kentucky requested documents about the investigations of employees accused of sexual misconduct.

Instead, they got something else: sued by the agencies they had asked for public records.

Government bodies are increasingly turning the tables on citizens who seek public records that might be embarrassing or legally sensitive. Instead of granting or denying their requests, a growing number of school districts, municipalities and state agencies have filed lawsuits against people making the requests — taxpayers, government watchdogs and journalists who must then pursue the records in court at their own expense.

The lawsuits generally ask judges to rule that the records being sought do not have to be divulged. They name the requesters as defendants but do not seek damage awards. Still, the recent trend has alarmed freedom-of-information advocates, who say it's becoming a new way for governments to hide information, delay disclosure

and intimidate critics.

"This practice essentially says to a records requester, 'File a request at your peril,'" said University of Kansas journalism professor Jonathan Peters, who wrote about the issue for the Columbia Journalism Review in 2015, before several more cases were filed. "These lawsuits are an absurd practice and noxious to open government."

Government officials who have employed the tactic insist they are acting in good faith. They say it's best to have courts determine whether records should be released when legal obligations are unclear — for instance, when the documents may be shielded by an exemption or privacy laws.

### Flipping the script

At least two recent cases have succeeded in blocking information while many others have only delayed the release.

State freedom-of-information laws generally allow requesters who believe they are wrongly denied records to file lawsuits seeking to force their release. If they succeed, government agencies can be ordered to pay their legal fees and court costs.

Suing the requesters flips the script: Even if agencies are ultimately required to make the records public, they typically will not have to pay the other side's legal bills.

"You can lose even when you win," said Mike Desho-



AP Photo/Don Ryan

Kim Sordyl poses for a photo at home as her family eats breakfast in the kitchen in Portland in July.

tels, an education watchdog who was sued by the Louisiana Department of Education after filing requests for school district enrollment data last year. "I'm stuck with my legal fees just for defending my right to try to get these records."

The lawsuit argued that the data could not be released under state and federal privacy laws and initially asked the court to order Deshotels and another citizen requester to pay the department's legal fees and court costs. The department released the data months later after a judge ruled it should be made public.

Deshotels, a 72-year-old retired teachers' union official who authors the Louisiana Educator blog, had spent \$3,000 fighting the lawsuit by then. He said the data ultimately helped show a widening achievement gap among the

state's poorest students, undercutting claims of progress by education reformers.

The lawsuits have been denounced by some courts and policymakers. A New Jersey judge in 2015 said they were the "antithesis" of open-records policies and dismissed a case filed by a township against a person who requested police department surveillance video footage.

In Michigan, the state House voted 108-0 earlier this year in favor of a bill that would make it illegal for agencies to sue public records requesters. The proposal came in response to a county's lawsuit against a local newspaper that had sought the personnel files of two employees running for sheriff. A judge dismissed the lawsuit, saying the county had to approve or deny the request.

The documents, ultimately

released days before the election, showed that one of the candidates had been disciplined for carrying on an affair while on-duty in 2011. That candidate lost.

The Michigan bill's sponsor, Republican state Rep. Clint Kesto, called the tactic "a backdoor channel to delay and put pressure on the requester" that circumvents the state's Freedom of Information Act.

"Government shouldn't file a lawsuit and go on offense. Either approve the request or deny it," he said. "This shouldn't be happening anywhere in the country."

As his bill remains pending in a state Senate committee, Michigan State University filed a lawsuit in May against ESPN after the network requested police reports related to a sexual assault investigation involving football players. That and a number of other cases are currently unfolding.

### Parent sued

In April, the Portland school district filed a lawsuit against parent Kim Sordyl, who is seeking records about employees on leave for alleged misconduct after the disclosure that one psychologist had been off for three years. Sordyl said she believes the information will expose costly missteps by district human resources officials and lawyers, and the district attorney has already ordered the records to be released.

"They are going to great lengths to protect themselves and their own mismanagement. This is retaliation," said Sordyl, who has hired an attorney. "Most people would give up."

A district spokesman said the lawsuit, which also names a journalist who requested similar information, amounts to an appeal "in an area of public records law that we believe lacks clarity."

"When this information is released prematurely, the district's position is that the employees' right to due process is jeopardized," spokesman Dave Northfield said.

The University of Kentucky prevailed in January when a judge blocked the release of records sought by its student newspaper detailing the investigation of a professor who resigned after being accused of groping students.

The judge agreed with the university that the records would violate the privacy rights of students who were victims even if their names were redacted.

While that ruling is on appeal, Western Kentucky University filed a similar lawsuit against its paper, the College Heights Herald, which sought records related to allegations of sexual harassment and assault involving employees. Several other state universities released similar documents to the newspaper, and the state attorney general has ruled that they are public records.

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**Published: September 6th, 13th, 20th and 27th, 2017.**

**101 Legal Notices**

**AB6475 IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF CLATSOP**

**WELLS FARGO BANK, NA, Plaintiff,**

**v.**

**THE UNKNOWN HEIRS AND DEVISEES OF NEIL S. MCCARTNEY; UNKNOWN SUCCESSOR TRUSTEE OF THE NEIL S. MCCARTNEY REVOCABLE LIVING TRUST OF 2013; KRISTI ROSSELL; OCCUPANTS OF THE PROPERTY, Defendants.**

**Case No.: 17CV21701**

**SUMMONS BY PUBLICATION**

**To: THE UNKNOWN HEIRS AND DEVISEES OF NEIL S. MCCARTNEY and UNKNOWN SUCCESSOR TRUSTEE OF THE NEIL S. MCCARTNEY REVOCABLE LIVING TRUST OF 2013**

**You are hereby required to appear and defend the Complaint filed against you in the above entitled cause within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, Plaintiff will apply to the court for the relief demanded in the Complaint.**

**NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY!**

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" (or "reply") must be given to the court clerk or administrator within 30 days of the date of first publication specified herein along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff. If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

The relief sought in the Complaint is the foreclosure of the property located at 82378 Vinemapple Road, Seaside, OR 97138.

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