

# Brown delays releasing public records, defies early promises of transparency

By HILLARY BORRUD  
The Oregonian

Nearly five years have passed since then-Gov. John Kitzhaber left office amid an influence peddling scandal and a backlog of public records requests from journalists seeking information about the governor and first lady's dealings.

In response to the records pileup, lawmakers in 2017 passed Oregon's first public records deadline, giving governments 15 days to hand over documents or cite a legal reason to withhold them.

But the governor's well-staffed office is now relying on exceptions intended for small rural school districts or tiny cities with scant staffing to justify withholding public records for nine weeks or longer.

The new law, spearheaded by Attorney General Ellen Rosenblum, contains broad exceptions to the 15-day deadline that lawmakers granted at the request of school districts, small cities and other local governments. Those small public bodies worried about being held to strict deadlines they lacked the staffing to meet.

Two years in, however, Oregon's highest elected official — Gov. Kate Brown — is also relying on those exemptions to justify taking months to turn over public records. And there are signs a high-profile agency under her direction, the Department of Human Services, might also employ them.

The Oregonian learned of the situation as two requests filed in mid-August languished for more than six weeks. In recent days, Brown's Government Accountability Attorney Emily Mataras said it could take her at least nine weeks total to fulfill those

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Rachel Alexander | vice president of the Society of Professional Journalists Oregon Territory board

requests. Other journalists are still waiting to receive responses to public records requests they filed with the governor's office in mid-July.

When asked about her office's public records backlog in a Sept. 17 interview, Brown asked her senior adviser and communications director Chris Pair to respond instead.

"We're under an unusually high volume because of three significant events, right?" Pair said. He pointed to requests related to the Oregon Senate Republicans' walkout over a climate change bill in June and the Brown administration's role responding to protests in Portland this summer. "We had several requests and many of those were large," Pair said.

Lastly, he cited public records requests related to the September resignation of Oregon's public records advocate, who attributed her decision to pressure from Brown's staff to secretly work to advance the governor's public records policy goals.

Under the 2017 public records deadline law, Oregon governments can take longer than the 15-day deadline if the timeline would be "impracticable" because "of the volume of public records requests being simultaneously processed by the public body." They can also take longer if the employee who would handle the public records request is out of the office.

But according to the most current attorney general's public records manual, issued by Rosenblum this year, to invoke the "this agency is overwhelmed and running behind" or "everyone is on leave" exceptions, "the public body carries the burden to demonstrate that one of these exemptions applies and the exemptions are intended to apply — either to very small bodies or in unusual circumstances. Public bodies with the resources to adequately staff its public records requests are expected to do so."

Brown has chosen to have just one person, Mataras, handle virtually all of her public records responses. The governor's nearly 70-person staff includes a communications team of six, but those employees almost never handle public records requests, deputy communications director Kate Kondayen wrote in an email Friday. Instead, they write press releases, answer journalists' questions, draft talking points and media strategies, arrange some of the governor's public appearances and create material for the governor's social media accounts such as upbeat Tweets and videos of Brown and First Gentleman Dan Little's recent meeting with endurance athlete Colin O'Brady.

Rachel Alexander, vice president of the Society of Professional Journalists Oregon Territory board, said government officials

often tell reporters they are swamped by massive public records requests.

"If you're consistently having a backlog of requests, the answer to that is not to delay responses for months," Alexander said in an interview on Friday. "The answer is to hire more staff ... It's really a political choice not to staff your office to meet your obligations to the public and to get public records out to the people who are paying for them."

Journalists knew of the weaknesses in the 2017 records deadline law and as a result, they lobbied the Legislature to pass a law this year to allow district attorneys and the attorney general to impose penalties on governments that fail to comply, Alexander said.

However, the public cannot appeal to district attorneys or the attorney general when elected officials such as the governor or a state lawmaker assert a right to records delays or denials.

"As you're finding with the governor, there's kind of a loophole for elected officials," Alexander said. "It's really easy for elected officials to flout the law because there's no mechanism to hold them account-

able other than to hire a lawyer and sue them, and that's not an affordable option for a lot of people."

There is no requirement that lawyers handle public records requests and Oregon governments routinely rely on non-attorney staff to get the work done. But Kondayen said the legal input is critical for the governor's office.

"Our public records requests have to be reviewed by an attorney to ensure that we are meeting the requirements under Oregon law to release all records to the public," Kondayen wrote on Friday. "We need to get it right the first time and be completely forthcoming in release of public records, and Emily is the person that makes that happen."

Public records previously obtained by The Oregonian revealed the governor's communications team does have some involvement in public records requests: In 2018, Kondayen strategized with Department of Human Services officials regarding the potential to strategically delay a response to The Bulletin newspaper in Bend.

Before McCall's resignation on Sept. 9, journalists and other members of the public had submitted 146 public records requests to Brown's office. That's the same number of requests Brown's office received in 2018. The number of requests has since reached the total number of requests Brown received in 2017, 166.

Of the 18 requests this year predating McCall's resignation that had yet to be fulfilled as of Friday, five were filed in early to mid-July. All were filed by journalists and with one exception, they seek correspondence and other documentation of Brown's work on the controversial climate change bill at the center of a state Senate Republican walkout this year, as well as any earlier work her administration did to develop a carbon emissions pricing policy.

The fifth and earlier request — filed July 9 — is from a small newspaper in Eastern Oregon regarding a high-profile local railroad project. That county rail project received state funding over the summer, after state transportation officials abruptly changed course from their previous reticence toward the project, the Malheur Enterprise reported.

As for the Department of Human Services, where Brown has pledged to improve public records responses, it recently began including a caveat in form emails acknowledging requests.

This week, the agency told a reporter for The Oregonian it would stick to the 15-day deadline. That is, unless "DHS asks you for more information," "the staff needed to finish the request are unavailable" or "the number of other requests being worked by DHS makes the deadline unrealistic."

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