

New Secrecy Tactic: Suing People Who Seek Public Records

By RYAN J. FOLEY
Associated Press

IOWA CITY, Iowa — 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



Kim Sordyl poses for a photo at home as her family eats breakfast in the kitchen in Portland, Ore., on Friday, July 7, 2017. In April 2017, the Portland, Ore., school district filed a lawsuit against 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.

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 in-

sist 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.

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 Deshotels, 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 re-

formers.

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 Rep. Klint 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.

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