PORTLAND CENSORED

What They Won't Tell You

CITY HALL IS HIDING POLICE TACTICS BEHIND HUGE PUBLIC RECORDS FEES.

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Despite a legislative session marked by reforms to Oregon's public records law, a troubling trend is emerging among Portland's city agencies. They are in effect censoring local media by refusing to comply with the spirit of the public records law.

Legislators passed the law in 1973. Their goal was transparency. "The public is entitled to know how the public's business is conducted," says the Oregon Attorney General's Public Records and Meetings Manual.

But when handling requests for public documents—already paid for by taxpayers—several city agencies engage in price gouging as a deliberate delay tactic.

On Aug. 30, for example, *WW* requested emails that would shed light on the city of Portland's response to street protests. The protests preoccupied the city this summer: They regularly degenerated into politically charged brawls and damaged property. Portland police were criticized for their tactics, which included firing pepper balls and rubber bullets into crowds and pepper-spraying protesters.

Mayor Ted Wheeler's office asked for $3,189 for a set of emails between six staffers discussing the protests.

The public records law permits agencies to charge requesters the cost of producing records but also allows for fee waivers if "making the record available primarily benefits the general public."

Wheeler's office acknowledged a clear public interest in producing the documents.

"The city agrees its constituents deserve the fullest picture relating to the protests," Wheeler's office responded to a petition for a fee waiver. "Public officials' policy decisions are of public interest due to the use of city resources and safety, transparency, and First Amendment concerns."

But the mayor's office did not agree to the fee waiver. Instead, it offered *WW* a 25 percent discount.

In other words, it determined that the public had an interest in seeing the records in the newspaper only if the paper first paid $2,287. That's a steep price for a small newspaper, and *WW* hasn't paid it.

Some transparency advocates believe high fees are intended to keep the public in the dark.

"It's apparent to me and to others that doing that is intended to discourage people from going after public records," says Judson Randall, co-founder of public-records nonprofit Open Oregon. "It's simply a technique to keep the records from being released. It's a crummy technique, to say the least."

The mayor's office defends its practices.

"We believe transparency is an essential element of good governance, and make every effort to achieve that value under our public records laws," says Michael Cox, spokesman for Wheeler's office. "Collecting and reviewing records can be a time-consuming, and therefore costly, process."

It's not just the mayor's office. In late 2016, the Portland Police Bureau asked *Oregonian* reporter Carli Brosseau to pay $1,170 for just 39 pages of public records related to a database of alleged gang members.

The bureau initially denied her request for a fee waiver, but Brosseau appealed to the Multnomah County district attorney, who considers appeals when a city or county agency denies a records request or fee waiver. The DA cannot, however, make a ruling on whether a cost estimate is reasonable or not.

The DA noted that "where fees in excess of a thousand dollars have been found reasonable, they usually involve requests for thousands or tens of thousands of pages of records." He ordered the Police Bureau to reconsider, but did not say whether the bureau had to waive or reduce the fee.

Those 39 pages would reveal details of how police officers justified designating suspects in the agency's controversial gang database. As Brosseau recently detailed on Twitter, the bureau eventually gave Brosseau the records nearly one year after her initial request—one day before the city announced it was disposing of the gang list.

When Oregon's public records law first went into effect, it established a presumption of openness—the burden lay with the government agency to demonstrate that a record was exempt from disclosure.

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"When I first started as a reporter, it worked as it was intended to work," says Brent Walth, assistant professor at the University of Oregon and former *WW* news editor. "It was a law of disclosure. It took clear evidence that a record was exempt from disclosure [to justify a denial]."

But over the years, legislators passed hundreds of exemptions, making it more difficult to access records created during the course of government business and funded by taxpayers. In 2015, the Center for Public Integrity gave Oregon an F grade for ease of access to public information—due in part to a lack of timeliness and high costs.

After the 2017 reforms—which set deadlines for response times, established a Sunshine Commission to review exemptions, and created a public records advocate position—it is more difficult to sneak a new exemption through the Legislature. But the reforms didn't tackle the recurring problem of blocking requests by charging exorbitant fees.

"It was a lot of work to accomplish what we did during the attorney general's task force," says state Rep. John Huffman (R-The Dalles), who worked on the Attorney General's Public Records Law Reform Task Force. "Costs and response times definitely came up in the conversations, but it was challenging to come to a reasonable conclusion."

Members of the public lack an avenue to appeal unreasonable fees. The law allows for government agencies to charge the "actual cost" of producing the records. However, it does not offer further guidance on how to calculate that cost or place limits on what government can charge.

"Government can charge for every last paper clip," Walth says, "just to make it difficult for the public to see what the public already owns."

RIOT COP PHOTOGRAPHED BY WILLIAM GAGAN △

DID YOU KNOW?

200,000 Wisconsin Voters Were Kept Away From the Polls, and Trump Won the State by 22,000 Votes

The 2016 election was the first election in 50 years without the full protection of the Voting Rights Act, first passed in 1965. In *Shelby County v. Holder* (2013), a 5-4 conservative majority in the U.S. Supreme Court struck down a key provision requiring jurisdictions with a history of violations to "pre-clear" changes. As a result, changes to voting laws in nine states and parts of six others with long histories of racial discrimination in voting were no longer subject to federal approval in advance.

Since *Shelby*, 14 states, including many Southern states and key swing states, implemented new voting restrictions, in many cases just in time for the election. These included restrictive voter-identification laws in Texas and North Carolina, English-only elections in many Florida counties, as well as last-minute changes of poll locations, and changes in Arizona voting laws that had previously been rejected by the U.S. Department of Justice before the *Shelby* decision.

Ari Berman, author of *Give Us the Ballot: The Modern Struggle for Voting Rights in America*, was foremost among a small number of non-mainstream journalists to cover the suppression efforts and their results. In May 2017, he reported on an analysis by Priorities U.S.A. of the effects of voter suppression, which showed that strict voter-ID laws in Wisconsin and other states resulted in a "significant reduction" in voter turnout in 2016 with "a disproportionate impact on African-American and Democratic-leaning voters." Berman noted that turnout was reduced by 200,000 votes in Wisconsin, while Donald Trump won the state by just over 22,000 votes.

Nationwide, the study found that the change in voter turnout from 2012 to 2016 was significantly impacted by new voter-ID laws. In counties that were more than 40 percent African-American, turnout dropped 5 percent with new voter-ID laws, compared to 2.2 percent without. In counties that were less than 10 percent African-American, turnout decreased 0.7 percent with new voter-ID laws, compared to a 1.9 percent increase without. As Berman concluded, "This study provides more evidence for the claim that voter-ID laws are designed not to stop voter impersonation fraud, which is virtually nonexistent, but to make it harder for certain communities to vote."

As Berman noted in an article published by *Moyers & Company* in December 2016, the topic of "gutting" the Voting Rights Act did not arise once during the 26 presidential debates prior to the election, and "cable news devoted hours and hours to Trump's absurd claim that the election was rigged against him while spending precious little time on the real threat that voters faced."

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