

# Unreasonable burden on the public in public records requests



Groups clash at Pilot Butte Neighborhood Park Oct. 3, 2020. This incident was the subject of a public records request.  
Ryan Brennecke/  
Bulletin file

The city of Bend’s dispute with the Central Oregon Peacekeepers over a records request raises questions about Oregon’s public records law that are going to come right back again.

The records dispute was about many things. Size of the request. Effort needed by the city to fulfill it. Whether the Peacekeepers should be entitled to a waiver of fees. What’s reasonable for the city to charge.

To sum up: It was about money. Who pays for public records? We feel the right argument appears to have won. The city ended up supplying the records, it paid to provide them and will apparently pay the court costs of the lawsuit.

What’s going to come back is the challenge presented by Oregon’s public records law. Any fee charged can be a wall blocking the public from information. And under Oregon law, governments can charge reasonable fees to recoup their costs. The incentive is for government agencies to charge what they feel is reasonable, not to make public access to public records the priority.

Remember what this Bend/Peacekeepers dispute was about. Mike Satcher of Central Oregon Peacekeepers made a request for records about a clash between supporters of Black Lives Matter and those with other views at Pilot Butte on Oct. 3, 2020. The request asked for documents from the Bend Police Department and records related to organizations such as the Peacekeepers, which advocates for racial justice.

The fee given by the city was \$4,777.62 for 62 hours of work. There were a lot of emails. Some needed to have things such as cell-phone numbers redacted. Satcher requested a public interest fee waiver. The city didn’t dispute the documents were in the public interest. It offered to reduce the cost by 25%, so about \$3,500. That fee is not a “no” to the public records request. It can be just like a “no.” Satcher appealed to Deschutes County District Attorney John Hummel.

Hummel granted a 100% fee waiver and gave the city 30 days to produce the records. The city disagreed with Hummel’s ruling and sued Satcher. That may sound odd, but that is a legal option the city had

if it disagreed with Hummel’s ruling. The city says the lawsuit was not about the requestor. The city told us it believed Hummel’s ruling “to provide thousands of records without cost to the requestor was and still is legally wrong.”

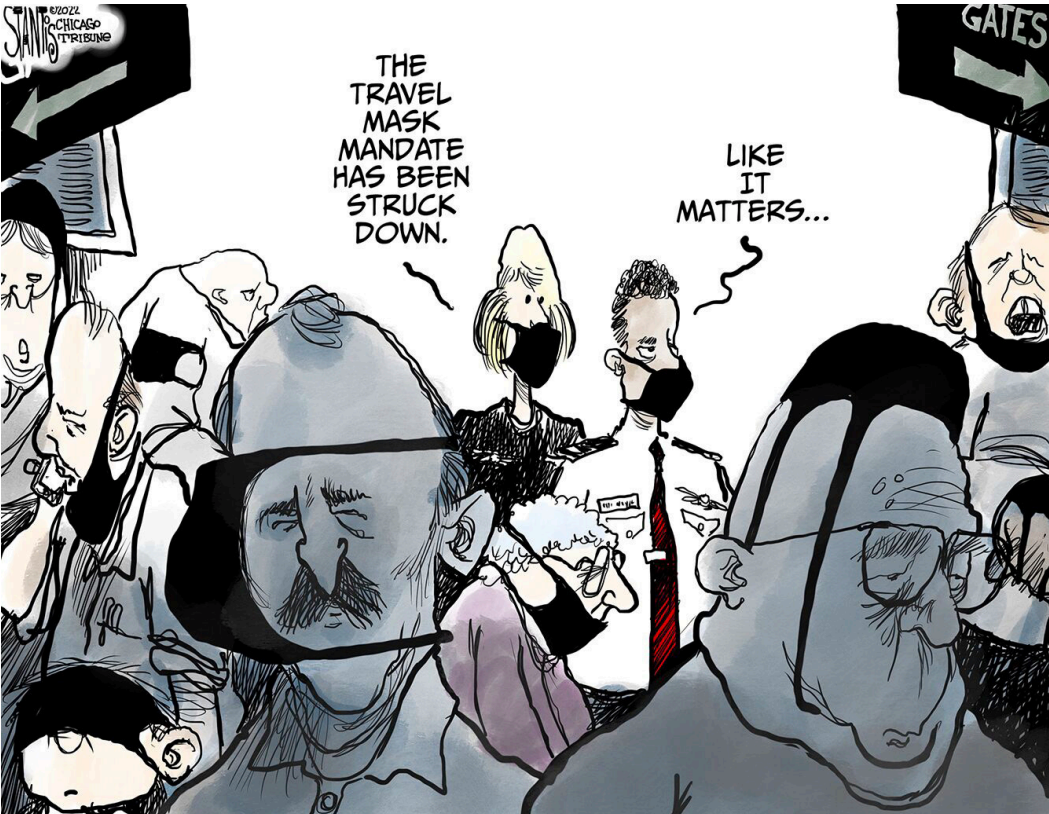
This week, the city and the Peacekeepers filed a motion to dismiss all the claims in that lawsuit. The city would agree to pay \$18,000 in legal fees.

What did the city get? It told us in an email: “While an attorney fee payment of \$18,000 is not insignificant, it is likely much less than what it would have cost the City if the City continued to pursue the lawsuit on the merits. With a major issue in the litigation resolved, the City decided staff and attorney time were better spent on other matters.” It also told us that it feels like Hummel has since “acknowledged the City’s public records fee structure is authorized by Oregon law.”

What did the Peacekeepers get? Peacekeepers got the records. They didn’t have to pay for them. They didn’t have to pay their legal fees, though they sure did go through much time and hassle. That should be remembered, as well.

Reading through the 189 pages of documents the city sent us about this dispute — for free and very swiftly — we were struck by one paragraph in particular. The city called the request for a fee waiver an unreasonable burden in an argument it supplied to Hummel. “To require City staff to expend at least 65 hours of time on a request where the requestor has refused to narrow or focus the scope would improperly discount the City’s judgment that doing the work without charging the fee allowed by state law and City policy would be an unreasonable burden.”

We understand what the city was arguing. But the intent of Oregon’s public records law is that the public gets access to what are agreed to be public records. What’s unreasonable is to charge fees that keep the public in the dark.



## My Nickel’s Worth

### The high desert spirit

Bend has a park: First Street Rapids Park. It’s not really a park with grass and benches. It’s a parking space at the end of a dead-end street.

I park, walk down to the Deschutes River Trail, and see the rapids up close. A bench had a sign that used to say, “Love the River!” Upstream on the water’s surface I see swans, gliding confidently on the currents.

The stately swans share the slipstreams on occasions with women swimming southward against the waters headed for the Columbia River.

My walk from the rapids to a steep hill is a puny workout compared to the aquatic Amazons’ routine; but I see the First Street Rapids Gang. First is the senior citizen couple who would be at home on Berkeley’s Telegraph Avenue. Then is the male partner of the highly educated bioscientists’ twosome who have the smartest Lab in town. A debilitating illness now precludes his wife’s companionship on the walk.

A resident of First Street walks daily, despite temperatures below 20 degrees and a severe wind chill on certain days. We wave and think, thank goodness the “summer soldiers” are gone — the rapids, the sky, the freezing wind and the rock overhangs are ours.

These gang members remind me of Bend 20 years ago — unpretentious, rugged and at one with their setting. Each member is a personification of the high desert, its river, its rocks and its timeless and indomitable spirit.

— Tim Conlon, Bend

### Where were the solutions?

As we finished reading the guest column Wednesday, April 20, suggesting a reset on the city of Bend’s

policies on homelessness, we scratched our heads thinking, “So what are your solutions?” There have been and are so many grand ideas presented, so many locations and yet we always seem to be at an impasse.

Maybe we should start with simple and basic. A place to relieve oneself with dignity: portable toilets. A place to get rid of trash and other items: a dumpster. A way to clean up, have better hygiene: portable showers. And before we start with “but that’s enabling,” think about keeping it simple and encouraging these folks with social services to help them help themselves. Let’s start by giving these folks a chance to have some human dignity. It’s hard to see so much human suffering. This problem is our problem. From Confessions of a Recovering Engineer by Charles Marohn:

“1. Humbly observe where people in the community struggle 2. Ask the question, ‘what is the next smallest thing we can do right now to address that struggle?’ 3. Do that thing. Do it right now. 4. Repeat.

— Barbara Smiley and Dave Howe live in Bend; Howe is a member of The Bulletin’s community advisory board.

### Light pollution matters

I applaud the April 7 Bulletin editorial raising awareness of light pollution in Central Oregon. Artificial light at night (ALAN) has adverse effects on us, our ecosystem and our community — including bird health (migrating birds are thrown off by ALAN), insect death and wasted energy. While many of us don’t think much about insect death, we should. Nothing good happens when pollinators and the bottom of the food chain dies out.

As a physician and sleep specialist, another key aspect of ALAN is human health. A recent article in the Proceed-

ings of the National Academy of Sciences demonstrated that even small amounts of light at night produce adverse physiological changes in humans. While most of the light we are exposed to at night comes from within our house, the light shining in from outside, as from a streetlamp, also can have an impact.

The best part of ALAN is that we can reduce it quickly and easily. It might be as simple as turning off your porch light at night when you no longer need it, or putting your lights on timers and security lights on motion sensors. Make friends with a neighbor who has too many lights and help them understand why that’s a problem. Reducing light pollution is something we can all do.

The High Desert Museum is presenting a wonderful educational opportunity: “Vanishing Night: Conserving Dark Skies in the High Desert,” running April 16 through July 10, 2022.

— David Dedrick, Bend

### About that eco-friendly house

While I applaud the May couple’s desire to create a dwelling that is uber-eco-friendly that was in The Bulletin recently, I have to wonder at their thought that this project will inspire other Bend residents to do the same. Are there that many folks here who have that kind of money to do this? And how many nice (kind of affordable) dwellings will be torn down to accommodate these buildings? Why is 1,700 square feet of space needed for two people? Seems kind of pie in the sky to think they can get by with rainwater. How much moisture have we had lately?

But this is Bend after all, and it seems that just about anything goes. — Barbara “BJ” Thomas, Bend

# Moving forward with the Deschutes County libraries

BY RAY MIAO

Libraries are an important foundation of any community. I love libraries; that’s why I’ve served on the Library Board for 23 years, working to make our library system the best it can be. Recent controversy about the proposed central library is a cause of great concern to me. I want to share my vision and options for libraries that help to build more livable, complete communities.

Imagine a community where you can take a short car ride to your local library, walk your kids to story time or bike to the library to grab a book. Community libraries connecting people through programs and resources. That’s my vision for libraries.

I also want to share what the library bond measure requires.

According to the library’s bond attorney the board needs to do what

is stated in the Ballot Title, Question and Summary (Measure 9-139). The Bond Title says: “Bonds to Renovate, Upgrade, Construct and Equip Library Facilities.” The salient part of the Summary states:

“If approved, this measure would finance capital costs, including projects that:

Provide a new Central Library; Provide a new Redmond Library expected to significantly increase square footage; and Repair, modernize, and upgrade Sisters, Sunriver, La Pine, Downtown Bend and East Bend Libraries.”

Bond measures such as the library’s proposed do not state size or location of new facilities. This allows flexibility. That is why the size and location of the central library were not defined in the bond measure. Consequently, it doesn’t have to be a 100,000-square-

foot facility on the north side outside Bend city limits.

The current proposed central library is about equal to three downtown Bend libraries and is only one option. There are other alternatives that fulfill all the requirements of the bond and may actually cost less.

For example, we could build a permanent east Bend library. It would be the central library housing central operations including admin, IT and materials handling, among others. The leased library in east Bend could then be incorporated into the central library saving continuous rent money. La Pine, Sunriver and Sisters are also growing. We could enlarge as well as remodel these libraries to provide more actual floor space for children’s

### GUEST COLUMN

discovery and community rooms.

With money saved, we could possibly build branch libraries in north and/or west Bend. Two or three libraries for the price of one — and they would be community libraries that are accessible, easy to use, and provide for a new central library.

These are just some alternatives that would meet all the requirements of the bond and could cost less than the current plan. Any monies saved could be used to prepay the interest on the bond and reduce property taxes.

It’s clear the community is divided over the board’s current plan. There are creative, workable alternatives that will serve the people of Deschutes County. We need civil discourse that leads us to a plan that reflects the needs of the community and can be supported unanimously by the board. The board needs a professional medi-

ator to work with us to find common ground. We need to have in-depth discussion of the options and develop a plan that also includes fresh community input and possible revitalization of a community advisory panel.

The problems identified by the City Council give us the opportunity to re-examine the details of our plans moving forward. And they give us a chance to rethink and re-engage the community in each city before spending any more of the taxpayers money.

A new plan, developed by a unified board, can meet all the requirements of the bond and bring together the needs of the communities we serve. It will be hard work, but the effort is worth it.

Our communities and libraries deserve nothing less.

■ Ray Miao is a member of the Deschutes Public Library Board.