

# Salem REPORTER

Local News That Matters

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Paige Clarkson  
Marion County District Attorney  
555 Court Street NE, Suite 3250  
Salem, OR 97301

Sept 27, 2022

RE: PUBLIC RECORDS PETITION – City of Salem: RESPONSE

Dear Ms. Clarkson,

Please consider this a supplement to our Public Records Petition dated Sept. 19, 2022. This addresses the city of Salem's response to that petition. We appreciate your courtesy in allowing this response.

As a first matter, the city of Salem misreads the petition. We seek only a decision regarding Salem's effort to withhold the administrative leave letters and any supporting documentation. We did not represent nor did we request that your office address Salem's decision to withhold other records.

In light of that, you may disregard the majority of the city's response, for it raises exemption claims for documents not at issue in this petition. Salem Reporter, for instance, is not asking you to weigh in on communications by Steve Bellshaw with the city or the email log of Mr. Bellshaw.

Regarding the actual elements of our petition, the city of Salem's response did not provide any legal challenge or facts to refute the three primary errors we called to your attention.

The city has not in any fashion contested the evidence submitted to you by Salem Reporter that there was NO personnel investigation in this matter. The city continues to hold out hope that opening a file is the same as investigating. The city would have in its grasp any and all evidence that there was an investigation but here has provided or referred to none.

The city has not in any fashion contested Salem Reporter's position that the physical location of a document does not govern, but rather the content of the document at issue. The city has provided no facts, no legal citation to justify exempting a public document merely on the basis that it has been commingled with other information.

The city puts on full display its dismissive view of the Oregon Public Records Law. The city provides no acknowledgement anywhere in seven pages that the true purpose of the public records law is to provide citizens the ability to oversee the functioning of government. We provided you legal citations to that point in our original petition. The city rebuts not a syllable.

Rather, the city takes a mocking view of the dozens of Salem citizens who wrote directly to city officials demanding disclosure in this instance. Those citizens repeatedly cited the need for public confidence and oversight. The city gives them no due. "Even if there is a handful of emails from the public about this matter, that is not reflective of the city as a whole," the city

writes. Every citizen who took the time to write will be stunned that their efforts to seek redress before their government are so casually dismissed. Left to the city of Salem, no matter would ever be proven to be in the public interest unless a vote was taken showing a majority of citizens had an interest in disclosing records in a particular instance.

The city does make one important disclosure in its response. There were apparently two separate letters of administrative leave. "There are two responsive documents," is how the city phrased it. This only heightens the public interest. A top police executive is assigned to work from home not once but twice? And the city sees no reason the public should question that or learn the information? Disclosure of these administrative letters is crucial to understand the timing and whether the conditions of leave changed. That arms citizens with facts to pursue additional explanations about the Bellshaw matter.

The city's sole claim to justify withholding these letters is the application of ORS 181A.674. We have addressed in our original petition why this does not apply in this circumstance. In its response, however, the city utterly misrepresents the statute, saying that this law prohibits "disclosure of personnel information." No, that is not what the law states. In fact, that statute states: "A public body may not disclose information about a personnel investigation" except where the public interest requires disclosure. The city apparently is attempting to pull this shield over a much wider body of public documents than this law permits.

The city makes one other admission – it DOES have procedures for conducting personnel investigations.

On Sept. 19, Salem Reporter emailed John Winn of the city of Salem staff and asked: "Can you please share the policy or procedure manual that outlines how the City of Salem is to conduct a personnel investigation?" This was in the context of the Bellshaw matter.

The following day, Mr. Winn responds: "There is no document that outlines "investigations" in total. Our employee handbook (Human Resources Rules) Sections 7 & 8 speak to policies and discipline but do not outline investigations specifically."

A close reading of the Human Resources Rules contains no reference whatsoever to personnel investigations, and Mr. Winn proffered no other resource.

Now, the city represents that there are SPD "procedures and practices" that were followed "as part of the Professional Standards Investigation." That should have been provided. We note that only to add to the evidence the city of Salem has not been faithful in its duty to the truth and to public disclosure.

Indeed, the city seems to cast about for any reason it can muster to shield the administrative leave letters from disclosure.

It contends that the simple fact a public employee is on administrative leave just shouldn't be shared. "Employees on leave generally consider this fact a private personnel matter," the city writes. But it cites no exemption for such a claim, and provides no factual support whatsoever to support what it represents that all employees "generally" feel.

Finally, the city takes a "Just trust us" approach that eviscerates the purpose of the Oregon Public Records Law – to allow citizens to question their government.

"The city has not mishandled this matter," the city declares.

Put another way, the city well might have written: "We've reviewed our conduct, found it good, so no one needs to know anything more."

In a matter of public controversy, public officials are not to be left to judge their own conduct out of view of the citizens they serve.

As before, if you need any additional information or documents, please contact me. Otherwise, we look forward to your order.

Cc: Michelle Teed

Sincerely,

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