

# Salem REPORTER

Local News That Matters

(503) 575-1251 • [info@salemreporter.com](mailto:info@salemreporter.com)

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

Sept 19, 2022

RE: PUBLIC RECORDS PETITION – City of Salem

Dear Ms. Clarkson,

This is a petition pursuant to the Oregon Public Records Law. Salem Reporter asks that you issue a Public Records Order compelling the City of Salem to immediately disclose records in its custody as detailed below and which it claims are entirely exempt from disclosure.

By submission to the city of Salem records portal on Aug. 11, 2022, Salem Reporter requested: “The letter to Steven Bellshaw notifying him of his placement on administrative leave, with supporting documentation.”

By anonymous email, the city of Salem on Aug. 15, 2022, requested clarification: “Please list the specific types of “supporting documentation” that “you are referring to.”

By email Aug. 16, 2022, Salem Reporter responded by explaining the request sought: “Any supporting documentation provided to Mr. Bellshaw as part of placing him on administrative leave.”

By anonymous email dated Sept. 6, the city of Salem declared it needed additional time to process the request, extending its deadline to Sept. 14 – 25 business days (five weeks) since the request was filed and exceeding the statutory requirement that records be produced within 15 business days.

By letter dated Sept. 6, Salem Reporter Editor Les Zaitz wrote to the interim city manager and assistant city attorney, asking that the letter to Bellshaw and supporting documentation be provided more quickly, and that other elements of the request could be handled in due course. By email that same day, reporter Ardeshir Tabrizian wrote to the city of Salem’s records office that, “Since the letter notifying Steven Bellshaw of his placement on administrative leave would not require additional time, we expect that letter by close of business today.”

The interim city manager, assistant city attorney and records office made no response.

By anonymous email dated Sept. 14, the city of Salem asserted that no record or any part of any record covered by this request would be released: “Regarding item No. 1 - the material(s) you requested are contained within the Salem Police Department's file related to a professional standards (formerly internal affairs) matter. These materials are exempt from disclosure under ORS 192.355(9) and ORS 181A.674, as we have previously explained.”

By email dated Sept. 15 to Michelle Teed, assistant city attorney for Salem, reporter Ardeshir Tabrizian sought information on how the city arrived at its exemption claim: “I am hoping you can clarify how the city concluded that there was no public interest in documents being withheld that are covered by the balancing test under Oregon Public Records Law.”

By email dated Sept. 16, Ms. Teed would provide no amplification: “We have no further comment on that request.”

## **FACTUAL BACKGROUND**

Steve Bellshaw was an employee of the Salem Police Department, completing his service on Feb. 15, 2022, and concluding that service in the capacity of deputy police chief. As such, he held a key executive position with significant authority over public resources and employees. His departure appears unusual for a senior city executive. There was no public announcement. There were no posts on any of the city’s social media. Bellshaw apparently was escorted into his city office on a Sunday to remove personal effects.

The severance agreement subsequently released to Salem Reporter stated that Bellshaw wanted to “voluntarily retire” as deputy police chief. The city agreed to “severance pay” of \$53,500, to be paid on Feb. 15, 2022. The agreement was signed by Bellshaw on Jan. 31 and by then-City Manager Steve Powers on Feb. 1.

Salem city officials since then have provided no explanation about these matters. They have not explained what alleged misconduct led to the departure of a senior police executive. They have not explained why Bellshaw was given an extraordinary extra sum if he was voluntarily retiring. They have not explained the calculation leading to the total payment figure of \$53,500.

Since stories about this appeared in Salem Reporter, Salem citizens have written directly to Salem public officials to declare their interest and the public interest in more transparency around this circumstance. Many of those writers indicated the city’s handling damaged trust in the city’s public administration, damage that could only be cured by disclosure. Salem city councilors met privately with city officials out of concern despite having no direct role in city personnel matters.

## **OREGON PUBLIC RECORDS LAW – THE BASICS**

Oregon law for more than half a century has provided citizens the right to see government documents. Over and over again, appellate courts have described the intent of that law and its essential purpose of providing oversight of government and public officials. Such oversight is meant to detect corrupt or unacceptable practices, to allow a full understanding of government practices, to ensure fair treatment of all before the government and to ensure fundamental trust in public institutions that exercise tremendous power. “Writings coming into the hands of public officers in connection with their official functions should generally be accessible to members of the public so that there will be an opportunity to determine whether those who have been entrusted with the affairs of government are ***honestly, faithfully and competently performing*** their function as public servants,” our appellate courts have ruled [emphasis added].

The appellate courts have concluded that “the burden is cast upon the agency to explain why the records sought should not be furnished” and if competing interests in disclosure and nondisclosure are of equal value, “the public’s interest in disclosure predominates.”

That public interest is heightened regarding law enforcement, particularly those in leadership roles.

“The public interest in the transparency of government operations is particularly significant when it comes to the operation of its police departments and the review of allegations of officer misconduct.” (360 Or 269 (2016) )

## THE LAW AT ISSUE

The prime document sought by Salem Reporter is any written directive to Steve Bellshaw placing him on administrative leave. Such directives are routinely disclosed to the public by government at all levels – except in the city of Salem. The request also sought any supporting documents provided to Mr. Bellshaw as part of the administrative leave letter. In usual circumstances, public agency employers need not provide such documents to the employee but Salem Reporter wanted to be thorough in its requests, given the city’s poor record of transparency in this matter.

The city of Salem makes three errors in rejecting the request for these records:

1. It wrongly claims the documents were part of a personnel investigation. The city itself has revealed there was no investigation – personnel or otherwise.
2. It wrongly claims the letter is exempt because it was physically placed in the supposed investigation file that itself was exempt. Physical location of a record does not control whether a record is exempt.
3. It wrongly failed to consider the public interest in disclosure. Its inquiry apparently stopped at finding a seemingly suitable exemption to keep the public at bay.

## THE “PERSONNEL INVESTIGATION” CLAIM

The Salem city officials take harbor in Oregon law that states: “A public body may not disclose information about a personnel investigation of a public safety employee of the public body if the investigation does not result in discipline of the employee.” (ORS 181A.674)

For this claim to stand, the city of Salem must first establish that there was in fact “a personnel investigation.”

An investigation is, of course, the act of investigating. The statute cited twice relies on the word “investigation.” The statute anticipates an investigation will reach a conclusion because there has to be enough finding to result in a decision not to discipline an employee. Nowhere does the statute offer any modifier such as “planned” or “intended.”

“Investigate” is defined by Merriam-Webster as such: “to observe or study by **close examination and systematic inquiry.**” [Emphasis added]

The World Law Dictionary defines “investigate” this way: “to try to **find out the facts** about something or the cause of something.” [Emphasis added]

Salem city officials undertook no “close examination” and made no effort to “find out the facts.” The evidence of this is abundant:

•The separation agreement, released by the city, specifically notes that the agreement was entered ***“in lieu of a furthering a personnel investigation.”*** [emphasis added]

• Ms. Teed writes: “A professional standards investigation was opened, but was not completed due to the unavailability of qualified investigators and Mr. Bellshaw’s retirement.” She does not explain what she means by “opened” but that is not the material element needed for the exemption claim to stand. Opening an investigation can mean something as mundane as writing “BELLSHAW INVESTIGATION” on a file folder or in a computer system. The fact the city could not find investigators clearly establishes that there never was a “close examination” or any effort to “find out the facts.” There was no investigation.

•John Winn, an official city of Salem spokesman, wrote in a recent email: “The records at issue relate to a personnel matter involving a public safety employee, where an investigation ***was contemplated, but neither initiated nor completed,*** and where there was no discipline of the employee. No determination was made regarding the appropriateness of conduct and the City will not inappropriately discuss a former employee by making assertions or assumptions by sharing information ***that has not been investigated*** or had findings and conclusions made.” [Emphasis added] The key here: ***“Neither initiated nor completed.”***

•A Salem Police Department officer submitted an F4 Form to the state agency licensing Mr. Bellshaw as a public safety officer. This is a copy of a portion of that document and it can be provided to you in its entirety as necessary:

***γ. No investigatory work was undertaken.***

This was no casual representation. The city official swore he was telling the truth in his submission. Again, we provide you a direct excerpt from that F4:

Signature	12. Form prepared by (optional) <input type="checkbox"/>			
	I attest that I am the Department Head or hold DPSST Certification and am authorized by the Department Head to sign below. I certify that the information entered on this form has been verified and is substantiated by records maintained by my agency. If certified by DPSST, I understand that falsification of this document makes my certification(s) subject to denial, suspension or revocation under ORS 181A.640 and OAR 259-008-0300. <input type="checkbox"/>			
	Signature		Date	2-14-22
	Printed Name	Jeffrey Wiedemann	Title	Sergeant
	DPSST No.	44085		
Email Address	JWiedemann@cityofsalem.net		Phone	503-589-2129

Finally, the city has provided no information about the timing of the notice to Bellshaw of administrative leave. If the notice to Bellshaw were issued prior to even the creation of a supposed investigation file, the notice was not part of that investigation.

The city of Salem has misrepresented to your office and to the community that there was, in fact, a personnel investigation. Considering such an investigation is far different than investigating. The purpose of the statute cited by the city is not to protect city officials from disclosure that they bungled a personnel matter in a way costly to taxpayers. The statute was meant to protect police officers when an investigation does not substantiate allegations. The Oregon Court of Appeals has found the statute was established by “a legislative intent to protect the privacy of officers whose alleged misconduct is not substantiated.”

In this instance, there was no finding either way – because there was no investigation. The statute cited by Salem city officials was not meant to screen off from disclosure allegations

of police misconduct that were never investigated. That's like saying a burglar is innocent because the district attorney opted not to prosecute a crime. The burglar isn't innocent – the matter was never resolved. In this instance, there is no record – none – that allegations against Mr. Bellshaw were determined by investigation to be unsubstantiated.

Based on this record, the conclusion is clear.

There was no personnel investigation so therefore the exemption claim from Salem city officials is inapplicable. The administrative letter and other requested documents as they may exist are not protected by ORS 181A.674.

If your review reaches the same conclusion, you are in a position to issue an order compelling disclosure. If you judge in some fashion that despite a record to the contrary the city is within its rights to assert the exemption, other elements of the Oregon Public Records Law require analysis.

### **THE LETTER'S LOCATION**

Salem city officials' claim that an administrative notice putting an employee on leave is exempt because it has been added to an otherwise exempt file must fail.

In Oregon, exemption claims apply to information in a particular record. The record does not change colors or purposes by the simple act of being moved from one physical file to another. If the location of a document and not the document itself governed what can be disclosed, mischief would be afoot. Any public official would be free to jam into a supposedly exempt "file" a record that is embarrassing or even criminal to avoid public disclosure. To illustrate the point, assume that a city employee placed a shopping list for lingerie into a personnel investigation because the employee wrote out the list while *considering* the investigation. The lingerie list would, at least in the city of Salem, be exempt from disclosure because it was in what it says is a personnel investigation file. Such a file could be a depository for any record the city doesn't wish to disclose.

The city of Salem has been admonished before about attempting such a maneuver as it is doing with the Bellshaw notice. In another case, the city of Salem fought to avoid disclosing the record of an arrest, arguing that the information was in a case file regarding a child abuse investigation and since reports on investigations are confidential, the arrest information is confidential. Such processes "defy common understanding" the court said in ruling against the city.

"We...reject the city's assertion that it cannot release a report of...arrest because it has stored that report in a single 'document' with other reports that are exempt from disclosure," the court said.

In this instance, placing the administrative notice in a purported exempt file does not exempt the notice from disclosure. An analysis of the **content** of the notice is required by the Oregon Public Records Law.

### **THE PUBLIC INTEREST**

Salem city officials appear to have ignored a key provision of the exemption they cite, stopping at the point that justifies their position. These officials suggest to the community and to your office that they have no choice but to keep the material confidential. That is a misleading representation.

The exemption cited does prohibit disclosure of certain material – unless one of the exceptions in the statute exists. One exception in particular requires the city’s consideration: ORS 181A.674 (4): “*Subsection (3) of this section does not apply: (a) When the public interest requires disclosure of the information.*”

Salem city officials can’t represent that they missed this element. Salem Reporter has pointed it out to them and underscored it in our previous petition to your office. In this instance, Salem Reporter reasonably sought an explanation from the city of Salem about what consideration they gave to whether the public interest required disclosure. The city has no less a duty to consider that exception than it does its obedience to the statute’s dictate in most circumstances to keep records confidential.

The city, in fact, has a legal duty to consider that public interest.

“Determining whether the public interest requires disclosure of a particular record is a two-step process. First, the public body should determine what the competing interests are in disclosure and nondisclosure, as well as the significance of those interests. This involves looking to the exemption at issue and any case-specific facts, including the records themselves. Second, the public body should weigh those interests and determine which one predominates, with the presumption in favor of disclosure.” (Attorney General’s Public Records Manual)

Oregon courts have specifically addressed the statute cited by Salem, noting the exemption from disclosure is *conditional*, not absolute, and “the appropriate question.... is whether the public interest in disclosure outweighs the competing interest in confidentiality, with ***the presumption in favor of disclosure.***” [Emphasis added]

As we cited in our earlier petition, Oregon courts have been especially clear that allegations against police officers, particularly those of rank, warrant public disclosure. The elemental trust in Oregon’s policing forces is at stake, the court found.

“One way to promote that necessary mutual trust is to make police practices and procedures transparent and to make complaints about police misconduct and the discipline that is or is not meted out open to public inspection,” the court declared.

That public interest in the Bellshaw records was unequivocally established in email after email to Salem city officials after Salem Reporter’s accounts about how the city was keeping the Bellshaw records secret. Here is a sampling of those emails to Salem officials. We can provide you full copies or even more examples if you need them:

- “*I am a reliable supporter of our Police Department. It does them no good to be mixed up in this kind of scandal. I will be in touch with my elected officials to demand an inquiry into this whole mess.*”

- “*It is tax dollars that went to pay Sgt. Bellshaw, paid by the citizens of Salem and the citizens want to know why Sgt. Bellshaw was gifted such a nifty sum? Why is that such a difficult question?*”

- “*The fact is, the Salem Police Department and the City of Salem are digging a rather large hole for themselves. I've seen it happen countless times, and I promise the deeper you dig, the greater the rescue effort.*”

- “*I beseech you, Interim City Manager Kristin Retherford, and City of Salem to allay suspicions of coverup and communicate openly, honestly, and transparently, regarding Steven Bellshaw. It is of vital importance to instill public trust and confidence in government at all levels, specifically herein at local city level.*”

But perhaps there is no more potent evidence of the substantial public interest than this: The city of Salem waived records fees it intended to impose to provide the Bellshaw notice and other records. The city did so based on Salem Reporter's representations that disclosure primarily serves the public interest. Since the city has determined there is a public interest, the exception under ORS 181A.674 (4) is controlling now – and disclosure is not a discretionary act, but in fact required by the law.

**FINALLY...**

The city of Salem in this request and its previous responses has completely failed to follow the requirements to segregate exempt from nonexempt material. This isn't an option. It is Oregon law, as appellate courts have found: "Disclosure of requested records is not an all-or-nothing proposition."

"When a record contains both exempt information and nonexempt information, the public body must produce the nonexempt information." (Attorney General's Manual).

Regarding the Bellshaw notice, the only possibly exempt material we can imagine would be his home address, something readily redacted.

Regarding our previous requests, the city made no effort to segregate exempt from nonexempt material in, for instance, the arbitration decision. Your office concluded in its previous order that the decision was exempt in its entirety, but we commend to you a reconsideration to ensure that the city of Salem, in fact, considered the segregation requirements of the Oregon Public Records Law.

Regarding your previous Public Records Order, you have rejected our request once already to reconsider your absolute support of the city of Salem's position. We now ask you again to reconsider your decision, which was primarily anchored on the erroneous adoption of the city's claim that there was, in fact, a personnel investigation. With the evidence that there was no personnel investigation, your office ought to reexamine its factual findings and consider whether a different conclusion as to that petition is warranted.

Please let me know if you need additional information, copies of documents or if you need clarification on any point in this petition.

Sincerely,

Ardeshir Tabrizian  
Criminal justice reporter, Salem Reporter  
(503) 929-3053  
[ardeshir@salemreporter.com](mailto:ardeshir@salemreporter.com)

cc: Michelle Teed, Salem assistant city attorney

Enclosures:

- City of Salem email acknowledging receipt of public records request (original request included)
- City of Salem response