

## The Oregonian

# Portland City Council may appeal the release of quarter-century-old public records: Editorial

*By The Oregonian Editorial Board*

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For the city of Portland, it seems, no public document is too old to keep away from the public. On Wednesday, City Council will vote on a resolution upholding that lofty principle.

The resolution is an almost instantaneous response to a Jan. 8 determination by the Multnomah County District Attorney's Office in support of transparency. Back in September 2015, Mark Bartlett requested a handful of city attorney opinions and a memorandum from City Attorney Jeffrey Rogers to the mayor and a couple of city commissioners. The memorandum was written in 1990, and the mayor at the time was Bud Clark.

The city of Portland told Bartlett to take a hike, citing attorney-client privilege. Bartlett appealed the denial to the district attorney, pointing to a state law requiring the disclosure of documents more than 25 years old. In his Jan. 8 determination, District Attorney Rod Underhill sided with Bartlett, agreeing "that, regardless of whether or not the records at issue were subject to attorney-client privilege when created," the law in question "requires that they now be disclosed."

The language of the law requiring disclosure of documents at the quarter-century mark "is unambiguous," Underhill wrote, and contains a tiny list of categories to which it does not apply. Attorney-client privilege is not among them.

Moreover, he writes, "It is consistent with the well-established principles of open government in Oregon that the legislature should see fit to place a temporal limit on the otherwise perpetual attorney-client privilege as to the advice government attorneys have given to other government actors."

Underhill all but scoffed at the city's argument for continued secrecy. The city, he writes, "argues that releasing the requested information would violate their attorneys' legal ethical obligations to keep confidential client information." The problem is that the rule that provides the foundation for the city's argument doesn't apply to information released in order to comply with another law. Like, you know, Oregon public records law, which requires the release of documents when they begin to crumble from old age.

As surprising as it is that the city wasted a second of staff time fighting Bartlett's request, that's nothing compared to the resolution commissioners will vote on tomorrow: to appeal the district attorney's decision. City Council, in other words, will consider spending more public money to prevent the public from finding out what it was the city attorney wrote to former Mayor Bud Clark more than 25 years ago.

The resolution, by the way, begins by alleging, "The City of Portland is committed to an open and transparent government, in which all people have access to public documents ..."

The Oregonian/OregonLive editorial board called the city attorney who'd prepared the resolution, Jenifer Johnston, and asked which commissioner was pushing for the appeal.

"I think those details go into confidential communications, which I don't think I'm at liberty to discuss," she said. "Since the whole thing is about attorney-client privilege, I certainly don't want to waive it by having a discussion with you."

An email to mayoral spokesperson Sara Hottman inquiring about the resolution's origins, sent late Tuesday afternoon, had not been answered by our deadline.

## **The Portland Mercury**

### **Police Union Says Cops Have Little Faith In Chief Larry O'Dea, Demands More Officers**

*By Dirk VanderHart*

*January 12, 2016*

It's hardly a controversial take these days that Portland has too few cops.

Late last year, Mayor Charlie Hales convinced his city council colleagues to spend more than \$500,000 hiring 11 new background checks investigators, which Hales said were needed to fill dozens of vacancies in the police bureau. Police Chief Larry O'Dea has been trying to plug holes and reduce overtime expenses by rotating officers into patrol shifts they're not used to. And the Portland Police Association (PPA)—not without controversy—has been posting billboards around town blaring the message "Having Enough Police Matters."

The PPA, Portland's rank-and-file police union, isn't content on letting that sentiment stand. The union this afternoon sent out the results of a survey—filled out by 82 percent of its nearly 800 members—suggesting Portland cops are deeply dissatisfied with how things are going in the police bureau.

"Morale in the Portland Police Bureau is as low as I've ever seen it in my 24-year-career," PPA President Daryl Turner wrote in the release, "in large part because of catastrophically inadequate staffing levels. Chief O'Dea has ignored my message."

Among the findings from the survey, which appears to have been crafted by union leadership:

- 96 percent of respondents believe "overall morale" at the bureau is below average or poor
- 97 percent believe that's because of low staffing levels
- 93 percent disagree with O'Dea's new practice of rotating staff into police patrols
- 85 percent of respondents feel police bureau leadership is below average or poor

According to a report in the Oregonian in December, the PBB had 40 vacancies a month ago, with nearly 90 officers eligible to retire by spring.

Mayor Charlie Hales is taking the union's strident rhetoric in stride, apparently. Hales has been tasked with overseeing the city's settlement with the US Department of Justice over a lawsuit detailing abuses by Portland police, and has consistently pointed to O'Dea as helpful to that process.

"I picked Larry O'Dea as chief of police because he's a change agent," Hales said in a prepared statement. "When you make change, you make waves."