

THE OREGONIAN

Prying open the public's files

Editorial

March 13, 2005

Back in 2000, a retired dentist named Bert Teamey suspected that \$2.5 million in budget cuts in the Klamath County School District had more to do with local mismanagement and official misconduct than declining state support. He demanded that the school board investigate.

Teamey's suspicions ran in the direction of self-dealing and nepotism. The school board reluctantly ordered an inquiry, hiring a lawyer to conduct it.

A win for the power of involved citizens, right?

Wrong.

When the board got its report back it issued a news release to the effect that everything's fine _ there's no real problem here. When Teamey asked to see the report, the board invoked lawyer-client privilege and refused to release it. The case is pending before the Oregon Court of Appeals. While pursuing the truth, Teamey endured a counter-lawsuit from the school district and has been billed for more than \$20,000 in legal and other fees.

Nearly five years have passed; the report still remains secret.

So it goes in the greatest democracy the world has ever seen. When it comes to the lifeblood of the democratic process _ information _ we share the same penchant for secrecy that infects the world's worst regimes.

Maybe that is the tendency of all bureaucracies, or just human nature. After all, nobody likes criticism. Most people don't even like advice all that much. But democracies are built on liberal doses of both, and good government requires that citizens be kept informed.

Not that it has been a government priority, even in the United States.

It took 190 years for the republic to formally acknowledge that its citizens have a right to know what goes on in government. Even so, the Freedom of Information Act that Congress enacted in 1966 serves as much as a shield for recalcitrant bureaucrats as it does as a sword for engaged citizens. One still-open FOIA disclosure request has dragged on for 24 years.

Oregon was a national leader when the Legislature approved the Oregon Open Records and Open Meetings Act in 1973. The occasion prompted an eloquent debate on the floor of the state House of Representatives. Republican Rep. Dave Frohnmayer argued for adoption of the act; Democratic Rep. Ted Kulongoski argued against it.

Since then, the Legislature has routinely expanded the territory that is officially off-limits to public view and, as the story by The Oregonian's Ryan Frank points out, local officials all too often carry secrecy far beyond even those expanded limits.

The public-records audit Frank described shows that local governments in Oregon have a long way to go before they meet their most fundamental obligation to their constituents: keeping them informed. The duty isn't just to "educate" the public, it isn't just to explain things. It is to make available the fundamental records and discussions that allow citizens of a free society to reach their own conclusions.

Nationally, The Associated Press reported, requests for public records under the

Freedom of Information Act have grown sharply, topping 3.2 million in 2003. If you exclude relatively routine requests to the Social Security and Veterans administrations, the percentage of requested information that was eventually released has declined since 1998.

The CIA, for example, released all of the information requested of it in FOIA requests only 12 percent of the time in 2004, compared with 44 percent in 1998.

One obvious factor has been the fear that some critical information may jeopardize national security. Once public information has been pulled off Web sites and out of other publicly available archives.

This fear extends to the state level, too. The AP reported that at least 20 states have proposed new laws to further limit release of public records. Mostly, these changes are aimed at preventing terrorists from seeing evacuation, emergency and security plans.

But even this can reach the point of silliness, as with Oregon's requirement that the locations of bridges and large industrial plants be hidden from publicly viewed records. It's hard to figure out how that would deter anyone who can simply walk around and see those things for themselves.

Careful politicians might also note that this fear of disclosure is not one the public shares. In 2000, before the terror attacks on New York and Washington, a survey taken for the American Society of Newspaper Editors showed that seven of 10 Americans were either very concerned or somewhat concerned about government secrecy. The poll was repeated this year with nearly identical results.

Sixty-eight percent also agreed that public access to government records is "crucial to the functioning of good government." That number increased from 60 percent in 2000.

As the statewide monitoring project described in Frank's story indicates, local officials too often don't know, or don't care, what records are legitimately available for public inspection. It is perfectly legal, for example, to know the contents of an arrest record or the names of people given the privilege of carrying concealed weapons. But monitors sent to local governments across Oregon were given access to routine, open records only half the time.

Even when the law is applied properly, its loopholes are gaping.

There is no precise accounting because they are scattered throughout state law, but the exemptions to Oregon open records and meetings requirements have grown from 16 in 1973 to at least 249 today.

A determined local government can run the clock, as the Klamath County School District is doing, in the hope of avoiding disclosure, or at least moving an embarrassing record from news to the category of historical trivia.

Portland Public Schools did this, semi-successfully starting in 1993, when it fought disclosure of a police report that said two Benson High School administrators had stolen school property. The district dropped the school-police report into the men's personnel files, which are exempt from disclosure under state law, and argued that the reports were no longer public records as a result. The Oregonian sued the district about the obvious subterfuge and won in the Oregon Supreme Court.

After spending \$240,000 in legal fees to fight disclosure, the district was forced to release the reports describing the thefts _ six years after the fact.

Sometimes, maybe even most of the time, the law works for public benefit. Portland lawyer John DiLorenzo used it, for example, to pry out the \$20,000 monthly fee charged

the Saif workers' comp system by former Gov. Neil Goldschmidt's consulting firm, and other details.

If his efforts were in pursuit of a political agenda, so what? That is what free societies are all about. DiLorenzo's side lost that particular battle, but SAIF became a better, more transparent operation as a result.

Portland lawyer Jack Orchard, who advises newspapers on open-records matters, points out that access to primary documents _ source data such as spending records, campaign-finance reports, the minutes of executive sessions _ is the heart of good open-government law, even if it is often the most fiercely protected by officialdom.

Access to such documents undermines "the temptation of those in power to abuse the system," Orchard said.

Of course, access can't prevent all abuses. But openness remains the best counterweight to the desire of those in power to keep secrets from those who delegated that power to them: you and me.