

THE OREGONIAN

CORRECTION/CLARIFICATION: Published correction ran Thursday, March 24, 2005:

* The essay, "Prying Open the Public's Files," in The Sunday Oregonian's Commentary section on March 13 misstated the nature of a legislative vote concerning public records in which then-Reps. Dave Frohnmayer and Ted Kulongoski took opposite sides. The question was whether to repeal a law that shut down public access to police arrest records. Kulongoski voted for a minority report that kept police arrest records from being disclosed to the public. Frohnmayer voted against that amendment. Ultimately the Legislature repealed the police-records secrecy provision, and both voted to repeal. The vote occurred in a special legislative session in 1975, not 1973.

PRYING OPEN THE PUBLIC'S FILES

By RYAN FRANK

The Oregonian

The Associated Press contributed to this story.

An Oregon woman asks to see concealed handgun permits at the Wasco County sheriff's office. She leaves the office empty-handed and in tears after a confrontation with Sheriff Rick Eiesland.

Another citizen requests access to Superintendent Newell G. Cleaver's employment contract with the John Day School District. The man won't give his name, so Cleaver refuses to hand over the contract. When the citizen left, Cleaver follows him outside, ducks behind a car to hide from him and calls police to report the incident.

A third Oregonian leaves a hand-written request in January with Morrow County sheriff's deputies for records of drunken driving arrests. Seven weeks later, the man was still waiting for a response.

Oregon's public records law, enacted in 1973 during the Watergate scandal, requires government workers to open their doors and files for public inspection. But a recent survey by news organizations shows the law's practice is uneven _ and too often confusion reigns.

In the survey, three dozen Oregonians fanned out across the state to check government compliance with the law. Since mid-January, these citizens walked into offices in each of Oregon's 36 counties seeking access to 178 public records from city halls, police departments, sheriff's offices and school districts.

They were granted access only 56 percent of the time. These citizens had no problems inspecting city budgets and had few hang-ups in reviewing school superintendent's employment contracts.

In some cases, officials went out of their way to provide access to records.

But nearly one in every three law enforcement agencies turned down requests for arrest records; more than 40 percent of sheriff's offices would not give out information on concealed handgun permits. And asking to review a city manager's expense report resulted in mass confusion. Often those expenses weren't tracked in a single document.

"It surprises me more than a little bit," says Dave Frohnmayer, the University of Oregon president who helped draft the law more than 30 years ago. "Especially on behalf

of the law enforcement agencies. I would have thought they would be used to the public records law now."

Office workers frequently asked why citizens wanted to know, though the reason for a request is generally irrelevant.

" 'Just because' ought to be a legally sufficient answer," Frohnmayer says.

Some auditors were journalists, but all entered the offices acting as citizens, not reporters. When asked, they were instructed to give their names and say they were working on a research project but not reveal they were working for a news organization. Sometimes, citizens didn't follow those instructions.

As survey results were compiled and the outcome of a particular request was unclear, government officials received the benefit of the doubt when deciding whether access to the record was granted, denied or unresolved.

The results are published across the state today, which kicks off Sunshine Week, an initiative by newspapers and others to promote open access to government. What does this mean to you? Records open a window into how the government spends your money and how your elected officials perform.

Since 1992 more than 50 similar public records audits have been conducted around the country.

Open records, skittish police

The Oregon law's premise is simple: All scraps of paper, audio tapes and electronic files inside city hall, the police station or any other public agency are assumed to be open for public inspection to anyone who asks.

The law provides exceptions to the rule, called exemptions. It's government's burden to prove a record might not have to be disclosed. Despite revisions that have placed new limits on the release of government records, Oregon's law remains one of the most liberal in the country.

In Oregon, the most emotional confrontations during the survey came when citizens tried to access law enforcement records. After denying access, officials at four police departments said later that the arrest records should have been disclosed.

Arrest records, according to the law, should include the person's biographical information, criminal offense and the time and place of the arrest.

"I can't think of a single exemption" that would apply to an adult arrest for drunken driving, says Kevin Neely, spokesman at the Oregon Department of Justice.

But Cindy Young-Bolek took issue with the survey. The support services manager at the Hillsboro Police Department says the citizen's request for records on five unrelated drunken driving arrests doesn't reflect a typical request made by the public.

Her department is "aware of the law," she says. "We do strive to comply with it in a reasonable time frame."

When it came to concealed handgun permits, 15 sheriff's offices denied access to the records.

"I can't fathom why that list wouldn't be available," Neely says.

Officials in five counties who originally denied the requests reversed the decision in follow-up interviews.

Others stuck by their decision.

Officials often cited the need to maintain the privacy of permit holders. The records can include people's names, addresses and Social Security numbers.

But Jack Orchard, a Portland lawyer who represents newspapers in public records requests and an advisor on this project, says the agencies should have blacked out the private information and provided access to the rest of the record, as required by law.

A skeptical sheriff

Back in Wasco County, Sheriff Eiesland is a quick study of people after 17 years as an investigator.

He says he didn't want to hand over the information on concealed handgun permits in part because something seemed strange about the woman asking for them.

She wouldn't say why she wanted the information.

"Why do you need to have the information?" Eiesland recalled asking. "Let's play tit for tat here. I'll refuse it and you can go get a court order.

"I'd probably want to err more on the rights of a person than I would be to give up somebody's information," Eiesland says.

"For I all know she could have been a terrorist."