



Nathan Vasquez, Multnomah County District Attorney

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via email only

Benjamin J. Barnes
thewishcatcher@gmail.com

Trevor Byrd
Deputy City Attorney
City of Portland
trevor.byrd@portlandoregon.gov

Re: Petition of Benjamin J. Barnes requesting certain records from the City of Portland

Dear Mr. Barnes and Mr. Byrd:

On April 9, 2026, Mr. Barnes submitted a public records request to the Portland Police Bureau (PPB) seeking “any emails, communications, or records held by the Portland Police Bureau related to Oregon Air Support Unit involvement in the Mount Rainier search operation on January 1 and January 2, 2012,” and specifying four specific subcategories of communications and operational records. Between April 9 and May 21, 2026, Mr. Barnes and PPB exchanged messages refining the search parameters, and the City conducted its search using the parameters Mr. Barnes provided. On May 21, 2026, PPB informed Mr. Barnes that it had “performed a reasonable search and could not locate any records responsive to your request.” Mr. Barnes petitioned this office for review the same day.

In his petition Mr. Barnes argues that PPB failed to describe the its search in any meaningful way, identifying neither the accounts and systems queried, the search terms used, the archived or legacy systems consulted, nor the aviation-related personnel contacted; failed to address each enumerated subcategory of the request; failed to state whether responsive records ever existed or what became of them; and thereby produced a determination that “cannot be reviewed” for adequacy.

Mr. Barnes requests an order requiring PPB to do four things:

1. conduct a documented search identifying custodians, systems, and search terms;
2. address each category of the request;
3. state whether responsive records ever existed and, if not, why;
4. produce any responsive records located.

For the reasons below, I deny the petition.

DISCUSSION

A. Sufficiency of search

ORS 192.329(2) prescribes the permissible categories of response a public body may make to a public records request. As relevant here, subsection (2)(d) states that a response is complete when, “[t]o the extent that the public body is not the custodian of records that have been requested, [it] provide[s] a written statement to that effect.” The statute does not require the public body to document the methodology of its search, identify the custodians or systems queried, list its search terms, or explain why no records resulted.

A challenge to the thoroughness of a public body’s search is not within the authority the legislature has delegated to us. *Petition of PRADA*, MCDA PRO 23-134 (2023) (“Since at least 2007 this office has consistently held that the legislature has not granted us the authority to entertain factual challenges to a public body’s assertion that it does not possess a record responsive to a public records request.”) Where a public body asserts that it does not possess any public records responsive to a request, this office is “not equipped or empowered to evaluate that determination” and the district attorney “cannot order [a public body] to provide a record that it does not possess.” *Petition of Kessler*, MCDA PRO 18-28 (2018), at 4 and *Petition of Cashman*, MCDA PRO 22-01 (2022), at 2 respectively.

Mr. Barnes argues that a conclusory “we searched and found nothing” response forecloses any meaningful review. That may be true, but ORS 192.329 establishes a closed list of permissible responses and this is one of them. The legislature did not include a duty to particularize the search. Whether a public body’s records-management practices ought to require more transparency about search methodology is a question for the City Council as a matter of policy or the Legislative Assembly as a matter of law.

B. Questions about records

The public records law authorizes inspection of records that exist; it does not authorize a requester to require a public body to answer questions about its records. The ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETINGS MANUAL (2024) states the rule directly: the public records law does not require public bodies to “disclose the reasoning behind their actions; answer questions about their records; analyze their records; or perform legal research in order to identify records that are responsive to a request.” *Id.* at 6.

Mr. Barnes seeks an order compelling PPB to state whether responsive records ever existed, whether they were destroyed, whether they were transferred, and whether they reside in archived systems. Those are four questions about the historical existence and disposition of records the City states it does not currently possess. The City’s obligation under ORS 192.329(2)(d) is to state, in writing, that it is not the custodian. The City did so. The records law does not require it to reconstruct a fourteen-year-old retention history to answer the follow-on questions Mr. Barnes poses. Records retention obligations exist, but they are housed in a different statutory and

regulatory scheme over which the public records law gives me no adjudicative authority. Compare ORS 192.005-192.170 with ORS 192.311-192.431.

ORDER

The first request for relief is denied because the public records law does not grant me the authority to order a public body to identify or disclose the details of its search protocol.

The second request for relief is denied because PPB's May 21, 2026 response that it "performed a reasonable search and could not locate any records responsive to your request" did address every part of petitioner's request that it was required to respond to.

The third request for relief is denied because the public records law does not require public bodies to answer questions.

The fourth request for relief is denied because it depends on having already ordered PPB to redo its search, which I denied in the first request for relief.

Regards,

NATHAN VASQUEZ
District Attorney
Multnomah County, Oregon

By:


Adam Gibbs
General Counsel