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October 15, 2021

Mike Rogoway
Business Writer, The Oregonian
mrogoway@oregonian.com

Jonathan Kara
City Attorney, City of The Dalles
jkara@campbellphillipslaw.com

Dear Mr. Rogoway and Mr. Kara:

Pursuant to ORS 192.470, Mike Rogoway, from the Oregonian, filed an appeal petition requesting I review the City of The Dalles denial of his public records request. Mr. Rogoway emailed me his appeal to me on October 7, 2021.

Mr. Rogoway's request to The Dalles was sent via email on September 24, 2021 asking for 1) Google's/Design's water use last year, and 2) total industrial water over the last five years. Mr. Kara responded within hours of the email, acknowledging its receipt, and exempting from disclosure both requests for separate reasons. 1) The request was denied under the trade secrets exemption, ORS 192.345(2) and the documents were reasonably considered confidential, ORS 192.355(4). 2) The documents were denied because the City of The Dalles is not the custodian of the records. (The email exchange is Exhibit 1). Mr. Rogoway's requests that I review only part 1) of his request for Google's/Design water use last year (2020). Mr. Kara submitted a memorandum on October 12, 2021 (exhibit 2). Mr. Rogoway submitted a memorandum on October 13, 2021 (exhibit 3).

This letter constitutes my ruling in the matter of Mr. Rogoway's appeal of the City of The Dalles claiming exemption on his public records request.

Legal Analysis

The Dalles has the burden of persuasion to convince me that their decision in this matter was proper. ORS 192.450(1).

Standard of Proof

In order for The Dalles to carry their burden I must affirmatively conclude that the records request was not denied, or, that the requested records are exempt from disclosure. If I do not so conclude, I must order them to be disclosed. *Attorney General's Public Records and Meetings Manual 2014, section I.G.1.b (citing Oregon Attorney General Public Records Order, March 4, 2008, Brent Walth)*.

Application of Law:

For the following reasons, the petition is granted. The only the issue at hand is the city's claim that Google's water usage falls under the trade secret exemption under ORS 192.345(2). Mr. Kara conceded that the documents were not exempt under ORS 192.355(4) in his memo after Mr. Rogoway clarified his request that he is only seeking documents prepared by the City.

Are City Documents Concerning Google's Water use in The Dalles exempt from public records disclosure?

The City has not met its burden to show that Google's water usage in a trade secret. I make this finding for two reasons.

1. Water Use Does Not Fall Under the Definition of Trade Secret in the Plain Language of the Uniform Trade Secrets Act, ORS 646.462(4).

Oregon law provides that trade secrets, as defined by the Trade Secrets Act, are unconditionally exempt from disclosure under the Oregon Public Records Law. *Pfizer Inc. v. Oregon Dep't of Justice*, 254 Or App 144 (2012). ORS 646.461(4) defines a trade secret as: information, including a drawing, cost data, customer list, formula, pattern, compilation, program, device, method, technique or process that:

- (a) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The documents Mr. Rogoway is requesting contain numbers concerning Google's use of a public resource. There is no "drawing, cost data, customer list, formula, pattern, compilation, program, device, method, technique, or process" concerning the water's use in the document. The document simply states the amount of water used by Google in The Dalles. Without water use falling under the definition of a trade secret, the document is not subject to exemption under ORS 192.345(2) or ORS 192.355(9) as it incorporates the definition in ORS 545.462(4).

2. Water Use Does Not Fall Under the Definition of Trade Secret Under ORS 192.345(2).

Though the Oregon Court of Appeals has used the definition of trade secret from ORS 646.462(4), I address ORS 192.345(2). The City's argument that use of water, a public resource, falls under the definition set out in ORS 192.345(2) is unpersuasive. ORS 192.345(2) states that trade secrets:

may include, but are not limited to any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information 1) which is not patented, 2) which is known only to certain individuals within the organization and which is used in a business it conducts, 3) having actual or potential commercial value, and 4) which gives its user an opportunity to obtain a business advantage over competitors who do now or use it.

The city interprets the definitions in the statute very broadly. Only in the statute's broadest context could one interpret that water use falls under the definition set out in the statute. As the City points out in its argument, there is a four-part test in the statute whether the document would fall under this definition. For part one, while it seems obvious, water usage is not patented, because it is something that cannot be patented. This fact makes it less convincing that water usage falls under the trade secret definition. For part two, it seems that Google only allows a handful of employees the information pertaining to water use. Though it is not clear in the response how many or the percentage of employees on site. For parts three and four, the City's arguments are tenuous. Many of the arguments are conclusory statements that giving away the water usage will give an advantage to competitors. Nothing about water use gives away the design or actual use of the water, just the amount. Without something more, the City fails to meet its burden to uphold its claim of exemption.

3. Public Interest is not Addressed in this Letter.

Though I make the finding that Google's water usage is not a trade secret, if the records were found to be a trade secret, Oregon law would exempt disclosure. ORS 192.345(2) conditionally exempts trade secrets from disclosure under the public records law. However, the Court of Appeals has made clear that the misappropriation of trade secrets provisions in ORS 646.461 et seq. apply unconditionally in the public records context. *See Pfizer* at 158 (2012). To put it plainly, if release of a public record would constitute a misappropriation of a trade secret, those records are exempt from disclosure without consideration of the public's interest in disclosure. Accordingly, I do not address the public interest of water use in this order.

ORDER

The petition is granted. The City of The Dalles is ordered to promptly disclose all records responsive to this request. This disclosure is subject to payment of fees to the city, if any, not exceeding the actual cost in making this information available.

A handwritten signature in blue ink, appearing to read 'Matthew Ellis', is written over a horizontal line.

Matthew Ellis
District Attorney
Wasco County, Oregon

Notice to Public Agency

Pursuant to ORS 192.450(2), 192.460, and 192.490(3) your agency may become liable to pay petitioner's attorney's fees in any court action arising from this public records petition (regardless whether petitioner prevails on the merits of disclosure in court) if you do not comply with this order and also fail to issue within seven days formal notice of your intent to initiate court action to contest this order, or fail to file such court action within seven additional days thereafter.

Subject: RE: Google's water use
Date: Friday, September 24, 2021 at 5:02:45 PM Pacific Daylight Time
From: Jonathan Kara
To: Mike Rogoway
CC: Dave Anderson, Izetta F. Grossman
Attachments: image001.png, image002.png

Mike:

Thank you for your inquiry. Dave forwarded me your email string from this morning; in summary—

You asked the Public Works Director for Google's/Design's water use last year. Dave responded he could not disclose quantities of water used or wastewater discharged. You replied by asking for him to cite an exemption to the Oregon Public Records Law to support the City's withholding and asking for total industrial water use in The Dalles for the past five years. Dave referred you to me.

In accordance with ORS 192.324(2), this email acknowledges the City of The Dalles (City's) receipt on September 24, 2021, of your request for records connected with (A) Google's/Design's water use last year and (B) total industrial water use in The Dalles over the last five years.

The City is the custodian of records potentially responsive to Part (A) of your request to the extent such records exist.

The Public Records Law confers a right to inspect Oregon public bodies' public records subject to certain exemptions and limitations. Here, the City's position is certain records responsive to Part (A) of your request are not subject to disclosure consistent with the following statutory exemptions—

1. ORS 192.345(2) conditionally exempts trade secrets from public disclosure. Trade secrets include any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.
2. ORS 192.355(4) categorically exempts information submitted to the City in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the City has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

The City is not the custodian of records responsive to Part (B) of your request. The Public Records law does not require public bodies to create new public records. See, e.g., Public Records Order, Nov 14, 1996, Schwartzrock. Nor does it require public bodies to disclose the reasoning behind their actions, answer questions about their records, or analyze their records. Letter of Advice to Jim Kenney, at 4-5, 1987 WL 278343 (OP-6126) (June 1, 1987). You may coordinate with Dave regarding what information is otherwise available at your discretion.

Since the City withheld records from disclosure, you may seek review of this withholding pursuant to ORS 192.401, 192.411, 192.415, 192.418, 192.422, 192.427, and 192.431. The City's position is you may seek review of this denial by submitting a petition to the Wasco County District Attorney's Office.

The Public Works Director and City Clerk are copied here; please reply-all to any correspondence connected with this request.

Jonathan Kara
City Attorney
City of The Dalles

Jonathan M. Kara
Municipal Attorney



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From: Mike Rogoway <mrogoway@oregonian.com>
Sent: Friday, September 24, 2021 3:32 PM
To: Jonathan Kara <jkara@campbellphillipslaw.com>
Subject: Google's water use

Good afternoon,

It's Mike Rogoway with The Oregonian newspaper over in Portland. I understand you serve as The Dalles city attorney, and I believe Dave Anderson forwarded my request for details on Google's water use. I believe that's a straightforward public record. Would love to get that information today – or early Monday at the latest.

Please call if you've got questions.

Best,

Mike

Mike Rogoway
Business writer
The Oregonian
503-294-7699
Twitter: @rogoway



October 12, 2021

Matthew Ellis
Wasco County District Attorney
511 Washington Street, Suite 304
The Dalles, OR 97058
matthewe@co.wasco.or.us

Re: Mike Rogoway – Public Records Appeal

Mr. Ellis:

On September 24, 2021, the City of The Dalles (“City”) received a Public Records request (“Request”) from Mr. Mike Rogoway, business writer for The Oregonian; specifically, the Request sought records connected with Google/Design, LLC (“Design”):

- (A) Design’s water use in 2020; and
- (B) Total industrial water use in The Dalles from 2016-2020.

On September 24, 2021, the City responded separately to each part of the Request:

- (A) The City confirmed it is the custodian of records potentially responsive to Part (A) of the Request but explained its position is such records are exempt from disclosure consistent with ORS 192.345(2) (the so-called *Trade Secrets* conditional exemption) and ORS 192.355(4) (the so-called *Confidential Submissions* categorical exemption).
- (B) The City confirmed it is not the custodian of records responsive to Part (B) of the Request and explained neither the Public Records Law nor its authoritative legislative, executive, or judicial interpretations compel the City to create such a record.

Since the City withheld records potentially responsive to the Request, the City confirmed its position was Mr. Rogoway may seek review of its denial by submitting a petition to your Office consistent with state law. It appears Mr. Rogoway sought review of the City’s withholding by petitioning your Office review the City’s position on October 7, 2021.

Part (B) of the Request

The City maintains it is not the custodian of records responsive to Part (B) of the Request because the City neither possesses an existing nor partial record of “total industrial water use in The Dalles from 2016-2020.” Such a record is not one ordinarily created in the typical business of the City and thus the Public Works Department or Finance Department must create it only in response to the Request. However, as cited to Mr. Rogoway in the City’s response, the Public Records Law does not mandate the City create a new record to respond to the Request: in fact, the Oregon Department of Justice and Oregon Attorney General consistently hold the Public

Records Law does not require a public body create new public records (*see, e.g., Public Records Order, Nov 14 1996, Schwartzrock*), disclose the reasoning behind its actions, answer questions about its records, or analyze its records (*Letter of Advice to Jim Kenney, at 4-5, 1987 WL 278343 (OP-6126) (June 1, 1987)*)).

Part (A) of the Request

The following analysis elaborates on and contextualizes the City's position with respect to its understanding of the Public Records Law and supports the withholding of records responsive to Part (A) of the Request.

ORS 192.355(4) – Confidential Submissions

ORS 192.355(4) categorically exempts:

Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by disclosure.

Mr. Rogoway's petition asserts the Confidential Submissions exemption does not apply because he is seeking records created by (*cf.* "submitted to") the City—however, the actual language of the Request was ". . . can [the City] tell me what Google's/Design's water consumption was last year?" The City interprets all Public Records requests both broadly (to support the public interest) and narrowly (to support governmental interests in efficiency); accordingly, the City's position when it responded to Mr. Rogoway on September 24, 2021, was the Request does not exclusively seek records created by the City but also seeks records otherwise in the City's custody by way of a confidential submission by Design. However, considering Mr. Rogoway's petition to your Office on October 7, 2021, it appears he clarified he only sought records "created by" the City, so the City agrees the Confidential Submissions exemption does not apply to his clarified Request.

ORS 192.345(2) – Trade Secrets

Background

Design operates an existing data center in the City. Design and its parent company (Google) provide computing and data services in a highly competitive global market. Design's competitive advantage, and that of its parent company, hinges on the unique design, siting, and capacity of its data centers, including the facility in the City. As explained below, the information contained in records sought by Part (A) of the Request would, if disclosed to Design's competitors, do substantial harm to Design's and Google's competitive position.

The Trade Secrets Exemption

ORS 192.345(2) conditionally exempts trade secrets. "Trade secrets", as used in the Public Records Law, may include, but are not limited to:

[a]ny formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

The information contained in records withheld from disclosure under this provision must meet all four of the following criteria:

1. The information must not be patented;
2. The information must be known only to certain individuals within an organization and used in a business the organization conducts;
3. The information must have actual or potential commercial value; and
4. The information must give its users an opportunity to obtain a business advantage over competitors who do not know or use it.

In considering whether information is trade secret, the Oregon Department of Justice provides reviewers (such as the City and your Office) may also consider “internal steps the entity takes to keep the information secret; steps taken to ensure that any associated third-parties keep the information secret; how the information would be economically valuable to a competitor or could be used to economically harm the entity; and the time, effort, and expense needed to compile the information.”

The City’s position is records containing the information sought by Part (A) of the Request is exempt from public disclosure under the Trade Secrets exemption and the public interest does not require disclosure in this particular instance.

In its negotiations with the City over the years, Design has been clear it considers its water use data exempt from public disclosure under the trade secrets exemption.

1. The requested information is not patented.

None of the information Design seeks to protect from public disclosure (namely, records responsive to Part (A) of the Request) is patented.

2. The requested information is used in Design’s business and known only to certain individuals within the company.

Design uses the requested information in the course of conducting its business of operating its data center in the City. This information is known only to a limited number of people within Design’s organization and certain contractors who need to know this information to provide services to Design. All persons with knowledge of the requested information are required to maintain its confidentiality.

Design ensures the requested information is kept confidential by:

- requiring employees to sign confidentiality and nondisclosure agreements;

- securing the site perimeter and limiting site access to only authorized employees and approved contractors;
- maintaining policies ensuring employees and contractors comply with strict confidentiality protocols as it pertains to Design's water use data; and
- requiring any third-party contractors with access to the site or Design's water use data enter into nondisclosure agreements under threat of legal penalty for any violation.

3. *The requested information has actual and potential commercial value.*

Design has developed its data center designs, including its water systems, to enable it to design, construct, and operate data centers compatible with and supporting to Google's existing infrastructure and operations, and to ensure its data center in the City is competitive in the global market. Accordingly, the requested water use data has substantial economic and commercial value. Information regarding the size and utilization of Design's facility in the City is of considerable interest and commercial value to Design's competitors, who could use water usage data to infer the size and utilization of the facility.

If the requested information was released to the public, a competitor could use the information to its commercial advantage to compete with Design and ultimately siphon market share away from Design and its parent company. The water use data derives independent economic value from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use—the very definition of a trade secret.

4. *If disclosed, the requested information would confer a business advantage on Design's competitors, who do not know or use it.*

Design's competitors are interested in acquiring details about Design's data center operations in the City. Disclosure of the water use data Design seeks to protect would erode any business advantage Design and Google have over their competitors as to the data center in the City and its role in the larger data center network. Revealing the requested water use data would give competitors valuable insight into the data center's operations. This information, either alone or when combined with other information known to Design's competitors, would provide competitors a sufficiently precise understanding of the water use and ultimate computing and data storage capacity of the facility. Such information is highly proprietary and protected by Design and its parent company Google.

Revealing the 2020 water usage at the data center in the City would compromise Design's data center siting and design strategy, which relates directly to the site's water use, a key driver of data center operations and an area in which Design and Google invest tremendous research and development resources. Design's proprietary data center design, including its water use, thus provides a competitive advantage over its competitors, as its unique design enables reduced and more efficient water consumption. Maintaining information related to its data center water use as confidential also enables Design and Google to maintain a competitive environment when negotiating for water and sewer rates, both for this and other projects.

The public interest does not require disclosure in this particular instance.

Consistent with ORS 192.345(2), trade secrets are exempt from disclosure unless the public interest requires disclosure in the particular instance. In this instance, it is unclear what, if any, public interest would be served by disclosing the requested information. To be sure, the public interest is served by the City's ongoing monitoring of Design's water use. The City's interest is not in question here, though, because the City has access to Design's water use information.

In general, the Public Records Law favors disclosure of public records. However, specifically when assessing whether the public interest requires the disclosure under the Trade Secrets exemption, the Oregon Attorney General relies on federal law evincing a legislative policy in favor of protecting trade secrets and finds it appropriate to give heightened scrutiny to contentions the public interest demands disclosure of a trade secret. (*See* State of Oregon, Department of Justice Attorney General's Public Records and Meetings Manual (June 2019), Page 57).

When assessing whether the public interest requires disclosure of a trade secret, the Oregon Attorney General typically looks to:

- (a) How much harm the entity asserting a trade secret would suffer by disclosure;
- (b) The benefits enjoyed by that entity in connection with submitting the information at issue; and
- (c) The nature of the governmental activity connected to the information.

Here, the City's position is the public interest does not require disclosure under Oregon law and precedent because:

- (a) Google would suffer by the City's disclosure of information it internally restricts, hired specialized Public Records counsel to protect, and otherwise coordinated with the City to enter nondisclosure agreements to guard;
- (b) Google enjoys the spoils of its innovation relating to its proprietary data systems and such enjoyment would be jeopardized if the City released information connected with Google's water consumption and/or discharge because Google's competitors could reverse engineer or otherwise gain and uncompetitive or unfair insight into its proprietary systems with the information, which would mitigate any business advantage afforded to Google; and
- (c) The City entered nondisclosure and confidentiality agreements to keep confidential information connected with Google's water consumption and discharge to bring Google to the negotiating table to construct an over \$1 billion dollar project in The Dalles instead of siting the project in any other city throughout the state, nation, and globe. The City's confidence was a primary consideration in Google's selecting The Dalles as its "first owned and operated data center". *See* <https://www.google.com/about/datacenters/locations/the-dalles/> Google and the City's partnership provides the City with tremendous economic vitality and critically contributes

to the City's water and sanitary sewer infrastructure and resiliency to the benefit of all City water users.

The two agreements Design is currently negotiating with the City relate to future data centers in the City (and not existing facilities)—a Strategic Investment Program Agreement and Development Agreement will be reviewed and voted on by the City Council in an open public meeting slated for later this month on October 25, 2021. There have been no less than five public City Council and Wasco County Board of County Commissioner meetings on these agreements over the past year. Any member of the public interested in the terms of those agreements may participate in those meetings, and many have.

Further, as explained by the City's Public Works Director during the City Council meeting on September 27, 2021, under the terms of the draft Development Agreement, Design will transfer existing groundwater rights (currently held by Design) to the City for incorporation into the municipal water system. Design's transfer to the City will provide more water than the data centers covered by the agreement will use. See here: <https://thedalles-oregon.ompnetwork.org/sessions/229005?embedInPoint=1&embedOutPoint=9283&shareMethod=link>

In sum, the City's denial to disclose records responsive to Part (A) of the request is supported by the Public Records Law and its interpretations by the Oregon Department of Justice as records qualifying as trade secrets subject to withholding and the public interest does not require disclosure in the particular interest. The City is not the custodian of records responsive to Part (B) of the Request and the Public Records Law does not require the City create new records, disclose the reasoning behind its actions, answer questions about its records, or analyze its records.

Please let me know your thoughts and your Office's disposition here. I am most quickly reached at jkara@campbellphillipslaw.com or directly at (503) 917-0078 if you require any further information connected with this matter.

Regards,

/s/ Jonathan Kara
Jonathan M. Kara
City Attorney

cc: Julie Krueger, City Manager
Rachel Anderson, Municipal Paralegal



OREGONLIVE

The Oregonian

OREGONIAN MEDIA GROUP

Oct. 13, 2021

Mr. Matthew Ellis
Wasco County District Attorney
Wasco County Courthouse
511 Washington, Suite 304
The Dalles, OR 97058

Dear Mr. Ellis:

Please consider this information supplementary to The Oregonian/OregonLive's Oct. 7, 2021, public records petition and in response to the City of The Dalles submission of Oct. 12, 2021.

Oregon courts interpret exemptions to the public records law narrowly. In addition, a public body that denies a records request has the burden of proving that the information is exempt from disclosure.

In this case, the City of The Dalles has failed to meet its burden. The city repeatedly cites "harm" – indeed, "substantial harm" – to the public interest if the records are disclosed, but it offers no showing, not one shred of evidence, to support this contention.

The Oregonian/OregonLive submits that the city has not offered any evidentiary showing of harm to the public interest because it simply cannot. This information is public in other states. If any harm to the public interest can be attributed to that disclosure, where is the evidence of it?

In South Carolina, for instance, Google's water consumption for its data center is publicly disclosed. Just this year, Google announced it would its expansion to its data center there.

<https://www.counton2.com/news/local-news/berkeley-county-news/google-announces-500m-investment-expanding-data-center-in-berkeley-county/>

Trade secrets

Google's water use is simply not the sort of thing that constitutes a trade secret. Google has requested or was granted 2.3 billion gallons of water in three states, according to Bloomberg. That includes 1.46B gallons of water in Red Oak, Texas. And in South Carolina, the company requested 1.5m gallons of groundwater. In Mesa, the company is guaranteed 1m gallons a day and up to 4m gallons a day, Bloomberg reports. The Post and Courier has the same figures for Google's water demands in South Carolina.

It is incumbent on The Dalles to show that disclosure has in some way hurt Google's competitive position – and not only that, but that water use in The Dalles is in some way different from water use in those other communities where the company's use is readily available to competitors.

It has failed to do so.

Moreover, the city appears to be primarily concerned with *Google's* interests, not the public's. It references the company's "highly competitive global market" and its "competitive advantage." (reply, page 2, "Background").

Those are not in any way the public interest. The concerns of a highly successful and lucrative private business are not what are at issue here. The public interest is plainly whether or not Oregonians are getting a good deal from a company whose sole interest is enriching itself.

The Dalles' entire response seems to amount to little more than "trust us." But that is not how government in Oregon works. We have public disclosure laws because we believe citizens ought to be informed about how the business of government works and whether officials who represent them are good stewards of the public's resources.

Even if the information is of value to competitors, which we do not concede, it is entirely plausible that the public interest would be better served by more competition for Google. Competition might drive the company to sweeten the bargain for The Dalles taxpayers and water users, for example.

Nondisclosure agreements

The city in its response (page 3) notes that "... (D)esign has been clear it considers its water use data exempt from public disclosure under the trade secrets exemption." Again, the city has provided no evidence of this.

The Oregonian/OregonLive has obtained three nondisclosure agreements The Dalles executed with Google. Not one of them mentions "water," "use," "usage" or "consumption."

In fact, they explicitly say "This Agreement imposes no obligation upon Participant with respect to Confidential Information that: (a) *was known to Participant* before receipt from Google, as evidenced by Participant's files and records in existence before the time of disclosure." (Emphasis added)

The city knows the information and did not receive it from Google. If the company had intended for it to be covered by the NDA, it would have explicitly said so.

The city says Google uses the information in the course of conducting its business and "(T)his information is known only to a limited number of people within Design's organization and certain contractors who need to know this information to provide services to Design."

But how many workers in the Department of Public Works know this information? How many others within city government at large know this information? Were each and every one of those workers asked to sign a confidentiality agreement? The city has offered no evidence any city worker is bound by some confidentiality agreement. The city in its response (bottom of page 3) says it has required

employees and contractors to sign nondisclosure agreements, but the only agreements The Dalles provided to us do not cover the information we seek.

Public interest

Turning to the city's public interest analysis, we find very little discussion of the public.

Point (a), for example, says "Google would suffer." That is a private interest, not a public one.

Similarly, point (b) says "Google enjoys the spoils of its innovation ..." and the "enjoyment would be jeopardized." Google's private interests are not a factor in the public interest in disclosure of public information.

As to point (c), the city says it entered into nondisclosure agreements to "bring Google to the negotiating table" to invest in a major public works project. Again, Google's interest in expanding in The Dalles is a narrow private one. The public interest is what the city gets in return – and what it gives up.

The city says Google will transfer water rights to The Dalles for incorporation into its municipal water system. But the public is unable to assess whether this is a good deal or a bad one unless they also know how much of that water, a public resource, Google plans to consume.

The residents of The Dalles are keenly concerned about this issue. Some of them testified at the city council's last meeting, and at prior meetings, about the importance of disclosure at this point. A member of The Dalles' city council told us, in fact, that "At this point, nobody has enough information to make any kind of decision." She said residents deserve to have as much information about the deal as Google does.

Plainly, there's a public interest in this case. The public and elected officials think so, in any case.

Last, on Part B, the city rightly notes it is not required to create a new record. However, the attorney general says quite explicitly it is required to obtain information from its databases. "... (A) *a public body is required to retrieve pre-existing information, which includes electronic data stored in databases.*³⁶ *This obligation exists regardless of whether the public body has actually generated a report for its own use that contains the requested data.*" (Attorney General's Manual)

The Oregonian/OregonLive is not making an issue of this. Our primary concern at the moment is obtaining records showing Google's water consumption.

The public interest requires release of the information so that residents of The Dalles and all Oregonians can assess whether we are getting a good enough deal from Google.

Sincerely,

Mike Rogoway
Business reporter
The Oregonian/OregonLive

Cc: Jonathan Kara, City Attorney, City of The Dalles