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GOVERNMENT & POLITICS

Governor's aide gripes of 'tough news cycles'; agency withholds press release about fallout from patient death

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QuickTake

In emails, aides for the governor's office and Oregon Health Authority debated a planned press release and the need for transparency after a patient at Oregon State Hospital died. Then the health authority redacted the email exchange.

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On April 1, Oregon State Hospital administrators were bracing for another tough news cycle.

So tough, in fact, that a communications staffer in Gov. Tina Kotek's office recommended that the Oregon Health Authority hold off on releasing news about a federal investigation into the death of a patient at the Oregon State Hospital, the state-run psychiatric hospital in Salem.

The health authority, which runs the state hospital, pushed back, stressing the need for transparency. But the press release never went out to media outlets, unless reporters asked specifically about the results of the federal investigation.

Further, in response to a public-records request from Lookout Eugene-Springfield, the health authority then redacted any mention of the conversation about when to release the news.

Following the patient's death at the Oregon State Hospital on March 18, inspectors with the federal Centers for Medicare and Medicaid Services placed the hospital in what it calls "immediate jeopardy" status, which forces it to quickly make changes related to patient care and safety. Federal inspectors found a slew of violations related to how patients in seclusion are safeguarded, as well as a failure to provide a timely response after a patient fell and died on the floor of a seclusion room.

Kenneth Hara, a 25-year-old who was often homeless in Lane County before entering the state hospital, was the patient who died, his family has told Lookout.

Lookout later found that staff watched and waited more than four minutes to enter a seclusion room after Hara fell and lay motionless on the floor. In that case, the health authority redacted a report on the violations, hiding those details and many other infractions from the public before a whistleblower provided it to Lookout.

Efforts to delay or limit the flow of routine information about the hospital's failures stretch back further, records show.

Recently, the Oregon Health Authority, at Lookout's request, released heavily redacted emails that bid discussions about whether to limit or delay the agency's proactive release of public information to Oregonians. Those talks included an email from a communications aide in the governor's office who recommended the health authority hold off on a press release.

Lookout obtained unredacted emails from the agency only after filing a petition with the Oregon Department of Justice, disputing the health agency's reductions. It had cited attorney-client privilege to justify blacking out the written comments of public relations staffers. The health authority also initially relied on attorney-client privilege to deny releasing a draft of a press release contained in the email exchange.

The unredacted emails show that strategic communications manager Amber Shoeb[illegible] drafted a press release about the "immediate jeopardy" finding and forwarded it and an internal staff memo for review to her bosses at the Oregon Health Authority.

The agency's plan to release the public information drew resistance from a communications aide in the governor's office, who was included on the email, records show.

'A couple of tough news cycles'

Lucas Beerera, the governor's deputy director of communications, recommended the agency hold off on issuing a press release until the state hospital fixed the problem, the public records obtained by Lookout show.

One reason he gave: "A couple of tough news cycles."

"I have one question about the press release: Is there a reason why we issue a proactive press release now as opposed to at the end of the process when the designation is lifted?" Beerera replied to Shoebridge on April 1, in the email group, which also included Oregon Health Authority Director Sejal Hathi and other agency leaders. "There have been a couple of tough news cycles and would recommend shifting the proactive comms to a holding statement to deploy if media inquire about this designation."

Beerera suggested that the agency only issue a "proactive press release" after the hospital's "immediate jeopardy" designation had been lifted. Since then, the hospital's immediate jeopardy status has been lifted.

When Lookout Eugene-Springfield initially submitted a public records request for the email chain, the Oregon Health Authority blacked out and redacted the entirety of Beerera's recommendation, as well as Shoebridge's response to him, citing attorney-client privilege.

The complete, unredacted account obtained by Lookout shows Shoebridge pushed back on Beerera's recommendation, saying transparency is more important than tough news cycles.

"I'm recommending we send the news release because it is an established standard procedure for (the state hospital)," Shoebridge emailed back to the group. "I believe it shows us to be transparent. Yes, it does mean more bad news in the short term, but I feel it is more important to show transparency in the long run."

OHA declines to discuss transparency

In the end, the health authority's news release never went out proactively to media outlets, even though the state hospital has done so in the past with similar cases. The information was provided only if reporters heard about it from another source and inquired about it.

That information was included in Lookout's first published story, only because a reporter asked for it.

The health authority's reluctance of public records also faced headwinds, despite the agency's stated need for transparency in the long run.

It's unclear why the health authority redacted the exchange. Shoebridge declined to explain why the health authority needed a public records petition to release an unredacted conversation about transparency.

Beerera said no one from the governor's office gave input into the authority's decision to redact the exchange between him and the health authority.

He declined to say if his feedback was made solely on his initiative or at the direction of someone else in the governor's office. He also pushed back on the assertion that his feedback was to not inform the public.

"Your premise is completely false," Beerera emailed. "The question, not feedback, I was putting forward was regarding the precedent and the appropriateness of releasing incomplete information while a (Centers for Medicare and Medicaid Services) process was underway to the public on a matter of public interest."

Besides Hathi, Shoebridge and Beerera, the email conversation participants included Ashley Thirstrup, OHA's chief of staff and Kristine Kautz, a deputy director at the agency. The emails were also copied to Kailana Pirmana, senior assistant attorney general for health and human services in the Oregon Department of Justice.

Lookout's petition to the Oregon Department of Justice argued in part that emails exchanged between government agency staffers do not qualify for an attorney-client privilege exemption from disclosure merely because an attorney is copied on the correspondence. That principle is also embedded in Oregon's public records manual, published by the Oregon Department of Justice, to guide the public and government agencies.

After Lookout filed its petition, the authority released another set of records during the Oregon Department of Justice review.

"After reviewing your petition, Oregon Health Authority is providing to you the attached revised responsive records to your public records request for Director Sejal Hathi's emails," public records coordinator Joanne Windham, who handled the initial request as well, wrote to the outlet.

Todd Albert, an attorney and Oregon's public records advocate, works with the public and government agencies to resolve disagreements about public records requests.

"Just the simple act of only copying an attorney done in the context of a conversation, in and of itself, is unlikely to be attorney-client privilege," Albert said in an interview.

The authority kept the attorney's comments redacted.

The authority's initial response also redacted OHA director Hathi's feedback on the email thread, which expressed approval of the information and didn't object to its release: "Thanks, Amber. No edits."

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