

# Obtaining police emails can take months, cost thousands

By Terry Spencer, AP

When the editor of a gay-oriented newspaper in Florida requested records that he thought should be public, he cast a wide net, asking that the email of every employee of the Broward County Sheriff's Office be searched for specific gay slurs over a five-month period.

The sheriff's office initially told Jason Parsley that his request would cost \$399,000, take four years and require the hiring of a dedicated staffer. The response set off a public-records marathon that lasted nearly a year. The Associated Press featured Parsley's effort last year during Sunshine Week, a national government-transparency initiative that takes place each March, and then decided to join forces with his newspaper, the South Florida Gay News.

The goal was to determine whether such police emails were indeed public and, if so, how the public and media could obtain them in a timely and cost-efficient way.

After making multiple records request to four Florida law enforcement agencies, the two news organizations have at least a partial answer, which could provide a blueprint for other news organizations reporting on police accountability.

As law enforcement agencies have come under increased scrutiny in recent years, media organizations, watchdog groups and others have become more vigilant about filing public-records requests for emails and documents, particularly after police shootings. Police agencies have not always complied, and those that do sometimes put up obstacles, charging fees that many open-government advocates say are excessive and aimed at keeping hidden information that should be public.

“They throw up ridiculous costs, ridiculous delays as a roadblock,” said Barbara Petersen, head of Florida’s First Amendment Foundation. “If you throw out a humongous number, the person is going to walk away,” particularly private citizens who often do not have the money to hire lawyers or the know-how to challenge inflated fees.

In many states, including Florida, government agencies can waive records fees if they deem releasing the information in the public interest. While it is routine for media organizations and others to seek such waivers, it is rare for agencies to grant them.

Other examples of excessive fees abound in Florida and elsewhere.

After the fatal 2014 shooting of Michael Brown by a Ferguson, Missouri, police officer, the city hired an outside firm to handle the requests for police officers’ and city officials’ emails, said Adam Marshall, a lawyer with the Reporters Committee for Freedom of the Press.

The firm charged requesters \$500 plus \$135 an hour. If done by Ferguson clerks, the cost would have been \$13.90 an hour. In one example, he said, a search for emails containing any of seven key words cost \$1,375. Two Ferguson police officers resigned after they were found to have sent racist emails.

“Anyone who uses modern email programs knows you can find any email containing a key word in about a half a second,” Marshall said. “The practical effect is that it is inhibiting the public’s right to know. ... That shouldn’t depend on an individual’s ability to pay thousands or tens of thousands of dollars, particularly when it comes to law enforcement, which has the power to shoot and arrest people.”

The AP and Parsley decided to press the issue in Florida, rather than let his original request die after he received the estimate for \$399,000 in fees.

Last May, the AP asked two other Florida sheriff's offices, in Hillsborough and Orange counties, to search for employee emails containing any words on a list of specific racial and gay slurs. Hillsborough County said the search would cost \$2,668, a cost that was prohibitive.

Orange County originally said the search would cost \$37, an amount the AP paid. In November, six months after the request, Orange responded and said it was mistaken – the search would cost \$1,224. When AP questioned the jump, Orange County responded by saying it again had provided a mistaken figure: The actual cost to search its officers' emails would be \$44,360.

After negotiations between the Orange County sheriff and lawyers for the AP, the request was modified to delete a gay slur that contains the word "she," because sheriff's officials said "she" was causing the system to capture too many emails. The cost dropped last month, nine months after the original request, to \$349, a cost the AP and South Florida Gay News paid. Officials with the Orange County Sheriff's Office say those emails are now being processed.

Parsley, meanwhile, made fresh requests to both the Broward County sheriff and the Fort Lauderdale Police Department. After discussions with officials at the agencies and information technology experts, both news outlets ultimately asked only for more recent emails that would still be on the law enforcement agencies' servers. Older emails that reside on backup systems are more cumbersome to search, requiring more time and expense.

Parsley has yet to receive the emails he requested from Broward or Fort Lauderdale. But local prosecutors decided to pursue the same information on their own, filing a request for derogatory emails with Fort Lauderdale police. The police department acted relatively swiftly, fulfilling prosecutors' request within months.

Prosecutors wanted to make sure no arresting officers had a bias against minorities or gays that could be exploited by defense attorneys at trial, said Ron Ishoy, spokesman for the Broward County state attorney's office. The office did not have to pay for the information because it was for a law enforcement purpose, he said.

It is common practice to provide information to other law enforcement agencies without charging a fee, according to Detective Keven Dupree.

After being tipped off, Parsley paid \$5 to get a copy of the Fort Lauderdale police emails that were shared with prosecutors. They revealed that two department employees used a racial slur and another used a gay slur. Two officers were recommended for short suspensions, while a civilian employee received a one-day suspension.

In an emailed statement to the AP, a Fort Lauderdale police spokesman said the department is waiting to hear back from Parsley after giving him the cost estimate.

Parsley said he has no confidence he will ever get the information from the two agencies.

"In Fort Lauderdale, the price tag for our request came out to be \$1,215, significantly less than the \$399,000 we got from (Broward). But even that price is a lot of money for a small publication," he said. "I've looked into narrowing my search even more to continue to bring down the cost."

David Herzog, an associate professor of journalism at the University of Missouri, said such conflicts could be avoided if law enforcement agencies simply posted relevant emails and documents to their websites when a major case develops.

"That way," he said, "the department doesn't have to go through repeated public records requests."