

Dear Ms. Darcy,

Thank you for acknowledging the request submitted by Jackson County For All (JCFA) that the Oregon Secretary of State investigate how the Jackson County Commissioners and Administrator have employed County employees to oppose the collection of signatures on the three JCFA petitions, and to oppose the JCFA Measures themselves. The County Administrator further acted on his own while "on the clock" to thwart signature-gathering and the Measures on the merits.¹ JCFA is a grassroots group of citizens, all private individuals, all volunteers working on their own from home with none of the power or resources available to the Commissioners and Administrator. Your two-day deadline to provide further details is quite tight. We have done our best to respond as average citizens, working without the vast means of government, and ask your leave to provide further information if needed to secure a recommendation that an investigation proceed. In fact, JCFA has been presented by County Administration with yet another invoice which must be paid before the County will release additional public records relevant to Exhibits 6.4 and 6.6 and statements regarding those documents made by the Administrator and Commissioners.

As you note, ORS 260.432 is complex. But to serve its intended role the statute must not be construed or applied with such complexity that average citizens cannot identify and take action to address violations of its bedrock principle: government officials cannot exploit their power to direct public employees to turn their taxpayer-paid work towards opposing grassroots initiatives like those of JCFA.

JCFA acknowledges that the Commissioners as individuals are not constrained from directly opposing signature-gathering or the initiatives on the merits, but they as persons cannot direct County employees to create oppositional work product. In fact, the Jackson County Commissioners started to voice their opposition many months ago, but based on partisan preconceptions and "generalities." They did not have any backup materials. They had not done any analyses. They had no "facts." (Exhibit 6, p. 12.) They learned of the policy adopted by the Jackson County Republican Central Committee (JCRCC) to oppose the JCFA Measures as a top priority, but were impatient that JCRCC wasn't moving as quickly as the Commissioners wanted. Context is very important. Their lack of factual support, and the delayed oppositional strategy adopted by the JCRCC, came to the forefront in the official public meeting of the Commissioners with the County Administrator on January 11. (Exhibit 3.2.)

At the next Board/Staff meeting on January 18, after all proper County

¹ With regard to the involvement of County Counsel, JCFA pursued a public records request for the materials withheld from its volunteers at the February 15 meeting. The materials produced almost a week later have signs of being collected and generated by the County Counsel or staff in his office. We as mere citizens have no way to investigate this further, short of filing an expensive lawsuit, thus our request to the Secretary of State.

business was concluded, the Administrator presented a way to direct County employees to fill the gaps in the Commissioners' arguments and jump-start the JCRCC campaign against the JCFA initiatives. The Commissioners endorsed this scheme and told the Administrator to have County staff create "the numbers" to support their crusade against the JCFA initiatives. They planned the unveiling of this custom-made fabrication at a one-sided public meeting, staged to draw media coverage without any opportunity for fact-checking or rebuttal and without providing notice to JCFA despite a prior written request.

The citizens who had been exercising their constitutional and statutory rights as JCFA volunteers were stunned: Really, can the Commissioners and Administrator task County employees to build a case against the JCFA initiatives? We were perplexed by the line drawn by the powerful Administrator:

You know, **if we do this before it qualifies for the ballot it's different than after it qualifies for the ballot.** And it will take some Staff resources to do it but we can run, you know, a lot of those numbers.

JCFA volunteers didn't give up. We studied and engaged and learned that the Administrator was using the trigger event for a referral by the Commissioners themselves. We discovered the Secretary of State's rule providing that ORS 260.432 took effect on July 28, 2023, when JCFA filed prospective initiative petitions. Under the Administrator's erroneous interpretation, the statute to this day *still* would not apply to our grassroots efforts.

Whether County employees were directed to "prepare neutral, factual information on how a measure could affect the public agency" is specified in your request for citations to the record. Of course, an investigation into exactly what the County Administrator told underlings to do would be revealing. We as outsiders to the County bureaucracy can only interpret the materials that were ultimately released. Moreover, we repeatedly sought, and were denied, materials that were *not* disclosed by the Administrator. We find it improbable that Exhibits 6.1-6.6 are the entirety of the work product generated by County staff for the Administrator. They were not pulled together on the morning of February 15 and for the first time in the Administrator's hands at 9AM. Where are earlier drafts? Which scenarios and arguments were cut from the final set of handouts? Which facts were omitted because they didn't support what the Commissioners wanted to say? Recall that JCFA made a public records request on January 28 for all such materials, not limited to those prepared personally by the Administrator. The Administrator wrongly denied the request *the very next day* with the suggestion that he could ignore such requests until *after* he decided to present his handpicked documents at a public meeting:

From: BOC-CAO_ADMIN <BOC-CAO_ADMIN@jacksoncountyor.gov>
Subject: RE: ["Suspicious Email"] Public Records Request
Date: January 29, 2024 at 2:50:15 PM PST
To: 'Denise Krause' <denisekrause4jc@gmail.com>

Ms. Krause:

Thank you for your Public Records Request (PRR). At this time, Danny Jordan has not yet prepared any records which fall within your PRR. He does intend to do so and, once prepared, any such records will be made available to the public and presented at an upcoming Board of Commissioners' meeting (date not set). A Public Records Request form may be submitted at that time.

Because there are no records within the scope of your PRR dated 1/29/24, this Request will be deemed complete and considered closed and nothing further will be done as to this PRR.

Sincerely,

Linda Strickland
Sr Administrative Assistant
Jackson Co Commissioners'/
County Administrator's Office
541-774-6002

Why this evasion if the Administrator was simply compiling neutral facts? It is unprecedented for County Administration to process a public records request in one day. It took three months for JCFA to receive documents requested on August 30, and six days to get the February 15 handouts which were sitting on the table right in front of the Administrator and Commissioners. The Administrator went almost to the end of the ten-day deadline to acknowledge JCFA's latest follow-up request regarding February 15, and then only to present a \$9.00 invoice which must be paid in person at the County offices before documents created almost a year ago, to set the Commissioners' salaries, will be released.² The minutes and four-page report of the County Compensation Board should already be posted and easily accessible by the public as part of last year's Budget hearings. This game playing is further evidence of the Administrator's adversarial intent. What if the January 28 records request had remained open for the normal ten days? Where are the materials, whether in draft or final, generated in advance of February 15?

JCFA has identified multiple instances where the Administrator chose to use overstated hypothetical budget estimates rather than known, provable, documented costs. To prepare this follow-up response JCFA volunteers took another close look at Exhibits 6.1-6.6, and went back to the County data eventually obtained pursuant to the August 30 public records request for commissioners' salaries going back to 1979. Please compare Exhibit 6.4, which the Administrator suggested he personally prepared (Exhibit 6, p. 4), and the 2008 salaries previously reported by the County: ***the numbers do not match!***

2 See Attachment A to this response.

<u>Analysis of Exhibit 6.4</u>	<u>Comm. 1</u>	<u>Step 1/Comm 2</u>	<u>Comm. 3</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>
2008 salaries used by Jordan		\$86,341		\$90,480	\$95,181	\$99,944
Actual salaries paid	\$68,432	\$86,341	\$68,432			

The Administrator's argument has one tie to reality, that Commissioner 2 was paid the Step 1 amount of \$86,341. The rest of this demonstration was irrelevant and misleading. We took the Administrator's invitation to rerun the CPI calculator of his choice, but using the reported facts about 2008 salaries, and here is the result:

https://www.in2013dollars.com/us/inflation/2008?amount=68432

Inflation Calculator U.S. Canada

\$68,432 in 2008 is worth \$98,027.39 today

Amount	Start year	End year		Inflation from :
\$ 68432	2008	2024	Calculate	Cumulative price change
				Average inflation rate

So the reality, the true fact, is that actual Commissioner salaries have increased significantly above the consumer price index from 2008 to present.³

The documents and statements deployed by the Administrator and Commissioners, especially Commissioner Dyer, were by no means neutral or factual.⁴ They manufactured their opportunity to present extreme hypotheticals by citing hearsay by unidentified persons and repackaging statements out of context.

It is important to note that the Administrator had County employees gin up a *preliminary draft FY 24-25 budget* for the Board of Commissioners, and then represented these "rough numbers" as though they should be anticipated as *actual costs* in 2027. Budgets are forecasts, hypotheses, conjectures, and by design overstate true costs – who wants to be caught unprepared? The

- 3 Exhibit 6.4 is a hypothetical construct, a plan which has never matched reality. The Administrator represented Exhibit 6.4 as "the facts about the pay. These are actually the pay – these are the pay." Exhibit 6, p. 6. But they were not.
- 4 There were numerous errors and omissions in the Administrator's arguments about the Public Meetings Law, Exhibit 6, p. 12. What he twice called "the Secretary of State's Handbook" is in fact the [Attorney General's Public Records and Meetings Manual 2019 - Oregon Department of Justice \(state.or.us\)](https://www.sos.or.gov/public-records-and-meetings-manual-2019) . The Manual does not account for the significant statutory amendments and related legislative history generated in 2023. Moreover, the Manual is quite clear that its legal advice is for *state* and *not county* governing bodies. See Sec. II Special Note. The Administrator suggested the opposite: "It's meant to not allow conversations about county business outside of a formal noticed meeting." Exhibit 6, p. 12. As a non-lawyer, the Administrator's exposition cannot be viewed as neutral fact sharing.

Administrator and Commissioners surely know the track record of how much Board budgets have overshoot real world costs:

<u>FY</u>	<u>BoC budget</u>	<u>BoC actual</u>	<u>Overstated by</u>
16-17	\$796,485	\$722,746	10.2%
17-18	\$798,031	\$641,245	24.5%
18-19	\$854,327	\$722,871	18.2%
19-20	\$936,480	\$893,794	4.8%
20-21	\$990,265	\$823,126	20.3%
21-22	\$954,778	\$788,958	21.0%
22-23	\$1,003,117	??	
23-24	\$983,530	??	

A neutral, factual presentation would have made clear that (A) the Commissioners' budgets are by design estimates with a big margin of padding, not true "costs" and (B) Board budgets have routinely overstated true costs by as much as 24.5%.

The statistics above, drawn from the County's published budgets at www.jacksoncountyor.gov, suggest a key line of investigation for the Secretary. By February the Administrator and the Commissioners knew the *actual* costs recorded by the Board for FY22-23. This fact has not yet been disclosed to the public. By how much was the Commissioners' FY22-23 budget inflated? Knowing this constant trend of overstated budgets, why would they use a preliminary draft budget as the basis to concoct a hypothetical case against the initiatives? Why did neither the Administrator nor the Commissioners reveal the facts about actual costs incurred? Because, we suggest, that candor would not have served to oppose the JCFA petitions and discourage voters from signing them.

Our Request identified numerous specific claims presented by the County Administrator on February 15 that were neither neutral nor factual. Again, a few examples:

- That \$50,000 in dues to the Association of Oregon Counties would be a "cost" in some inexplicable way attributable to the Measures.⁵
- That conceptual design estimates prepared by County employees of \$319,550, which already included 10% contingency boosters, were somehow without justification rounded up to \$350,000 and presented as a "cost" which, by the Administrator's own admission, was a matter to debate, not a neutral fact. (Compare Exhibit 6., p. 2 with Exhibit 6.6.)

⁵ The Administrator dodged explaining this, saying only "Professional membership; we do expect a cost increase" and moving on. Exhibit 6, p. 11. The Commissioners asked nothing, and the public of course couldn't even see that the Administrator was sweeping \$50,000 under the rug for another six days. We again suggest reviewing the video record, the best evidence of the style and tenor of the February 15 session.

- Overall, the Administrator repeatedly *admitted* that he was not presenting neutral, provable facts: "These are general numbers... These are my estimates... I didn't prepare that. I gave you rough numbers... *In my opinion*, that's a potential if not probable outcome... I didn't prepare that, I gave you rough numbers."

It would be an enormous undertaking to provide citations to all of the statements that underscore the need for further investigation. What JCFA volunteers have done as a practical alternative within their means is to color-code the transcript of the February 15 presentation of County employee work product.⁶ The compendium of materials, compiled and prepared by County staff, is itself proof of violations of ORS 260.432, particularly Exhibits 6.4, 6.5 and 6.6 which were created from scratch to present extreme nonfactual hypotheticals intended to denigrate the JCFA initiatives.

Note further that the Administrator threatened, through some unfathomable accounting trick of reallocating overhead, that if the Measures were approved by voters, County services in the real world would be reduced. (Exhibit 6, pp. 7, 9.) In comparison, the assertions in the 2022 Johnson City case are quite benign.

As an update, on March 5, JCFA convened a Town Hall, open to all, in the auditorium at centrally-located Medford Library, the most capacious venue available. Attendance was literally standing room only. Chief Petitioner Denise Krause presented a detailed rebuttal to the major fallacies and misrepresentations in the County work product and the Administrator's and Commissioners' – especially Commissioner Dyer's – argumentative presentations. The public took advantage of the open forum to ask whatever questions they wished. This process further fleshed out how the materials and presentations made on February 15 were nonfactual and unsubstantiated. JCFA is submitting the PowerPoint presentation from the Town Hall for the Secretary's consideration.

The volunteers of JCFA, citizens of Jackson County, can understand how the Secretary might hesitate, for staffing or other reasons, to look into what we see here in Southern Oregon on the ground, hear in the official Jackson County meeting rooms, and read in the County-generated documents designed to undermine our grassroots efforts. We trust that our concerns will be taken seriously. If the ultimate outcome is for the Secretary to assess this case and say that the actions of the Jackson County Commissioners and Administrator are entirely appropriate, that this episode is a stellar example of how Oregon law is

⁶ Statements misrepresenting opinions, predictions, conjectures or hypotheticals as "fact" are highlighted in yellow. Some yellow statements are flatly wrong, such as claiming that the 1990 Hudson v. Feder opinion "is case law." Exhibit 6, p. 10. Statements acknowledging that a claim is debatable or argumentative, or that the Administrator had incomplete information, are highlighted in green. Statements misrepresenting what the Measures and ballot titles actually say – the legally operative language reviewed and approved by the County Clerk and District Attorney – are highlighted in blue. Statements that substantiate violations of the Public Records Act or ORS 260.432 are highlighted in pink.

intended to work, such an outcome will at least lend some clarity to ORS 260.432. And a framework as to how the law should be amended to achieve its true purpose.

From our perspective, we see the Commissioners and Administrator directing County employees to do work to thwart signature-gathering and the passage of JCFA Measures. We see the Administrator while on the clock presenting overblown, nonfactual hypotheses and conjecture; ignoring documented facts; and offering dubious legal opinions to dissuade voters from signing and voting. We ask that the Secretary of State fulfill her proper role by investigating and applying ORS 260.432 to this situation.