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State employee denied access to records related to her work

By Wes Allison
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RICHMOND, Va. - Barbara D. Teiber says she works hard for the Virginia Department of Taxation main office, spending hours on the phone each day answering questions from worried, confused or angry taxpayers.

So when her supervisor said she needed to take more time to answer taxpayer mail, then gave her a less-than-stellar evaluation, she was floored.

``Do better on the mail? I'm on the phone all the time,'' said Ms. Teiber, who has worked for the department 13 years. ``How am I going to do this and do that?''

The December 1997 evaluation rated her performance as satisfactory, but Ms. Teiber thought she deserved better. She also suspected that some co-workers were winning higher marks with less work, so she filed a grievance to challenge her evaluation.

To prove the complaint, Ms. Teiber and her attorney say they need phone records to illustrate how much time she and others in the customer service department spent responding to phone calls.

For months, however, they've been unable to get them. Although the phone records exist, the Department of Taxation says they aren't readily accessible. And that makes them exempt under Virginia's Freedom of Information Act, the agency contends.

``It's completely contrary for the purpose of the act for the state agency to maintain inadequate records in one form, and hide behind that as a reason for not producing them,'' argues Ms. Teiber's attorney, Harris D. Butler.

``The whole purpose of the process is to get information so you can resolve disputes. Both sides need to be working with the same deck.''

Added Ms. Teiber, ``It seems to me, if an (agency) really wanted to hide something, they could just convert it to computer and make sure you have to do something to the (program) to produce it.''

State officials don't dispute that the phone records are public under the state Freedom of Information Act. However, they contend that the way the records are stored - on computer tape - makes them too troublesome to access and print out.

``This information requires substantial special programming in order to produce the reports that are requested,'' Eugene A. Short, a human resources manager with the tax department, wrote Butler.

``It would require numerous days to program the system to produce...

(FOIA) does not require that the agency create or prepare any record if it does not already exist.'

An agency spokeswoman said the Department of Taxation could not comment further. She also declined to comment when asked whether citizens should expect that public records be maintained in such a way that they can be readily produced if requested under FOIA.

Ms. Teiber filed her grievance late last year, but the process has foundered while she fights for the phone records. In August, she took her story to a General Assembly subcommittee reviewing proposed changes to the FOIA, which some citizens contend gives state agencies too much freedom to deny requests for information.

Ms. Teiber said the tax department has provided her with paper copies of some of the phone records, but about half are missing. Meanwhile, in an effort to be accommodating, she and Butler have narrowed their request from 12 months' worth of records to four.

The battle has cost her about \$5,000 in attorney's fees, and she's now threatening to file a lawsuit to try to obtain the records.

``It's so ironic. All I want is information to prove my grievance, to prove what I'm saying about the distribution of work,' Ms. Teiber said. ``And they're saying that because it's on computer, they don't have to give it to me.''

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