



**MICHAEL D. SCHRUNK**, District Attorney for Multnomah County

600 County Courthouse • Portland, Oregon 97204 • (503) 248-3162 • FAX (503) 248-3643

September 7, 2001

Scott Forrester  
2030 NW 7<sup>th</sup> Place  
Gresham, OR 97030

Susan Bischoff  
City Attorney's Office  
City of Gresham  
1333 NW Eastman Parkway  
Gresham, OR 97030-3813

Re: Petition of Scott Forrester on behalf of the Friends of the Clackamas River received August 28, 2001 to disclose certain records of the City of Gresham

Dear Mr. Forrester and Ms. Bischoff:

#### BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Scott Forrester, on behalf of the Friends of the Clackamas River, requests the District Attorney to order the City of Gresham and its employees to comply with his request to:

**Please email as an attachment a electronic copy of Both the June 5<sup>th</sup> and July 16<sup>th</sup> versions of the CH2M Hill Technical Memorandum entitled: "Clackamas River Water Source Concept Evaluation."**

**I request a fee waiver on behalf of the Friends of the Clackamas River, a 501 (c) (3) Oregon Non-profit Corporation whose mission is to protect the Clackamas River.**

Petitioner originally requested the records on August 13, 2001. Petitioner acknowledges that he has received printed copies of the Technical Memorandum. Petitioner wants to receive the "original electronic versions of the Technical Memorandums" created by the staff of CH2M Hill for the City of Gresham. Dave Rouse, Manager of the Department of Environmental Services, advised petitioner that "he would provide [petitioner] with hard copies, not electronic form.

On August 28, 2001, this office sent a letter to Mr. Rouse requesting a response to the petition. Gresham City Attorney Susan Bischoff responded to the petition in a letter dated September 4, 2001. Ms. Bischoff takes the position that "to preserve the integrity of city records, we are not willing to provide him copies of the reports he requests via email as to do so would allow him to unilaterally alter the CH2M documents." The City of Gresham volunteered that it is prepared to offer "read only" versions of the documents on computer disks.

The City rejects petitioner's request for a fee waiver although it acknowledges petitioners reported affiliation with a group that calls itself Friends of the Clackamas River. Ms. Bischoff notes that "[i]t is not true, however, that this group represents the interests of the general public or that making the record available primarily benefits the general public."

### DISCUSSION

#### **I. Electronic Record.**

ORS 192.440(2) establishes a custodian's duty to provide copies of records maintained in machine readable or electronic form:

If the public record is maintained in a machine readable or electronic form, the custodian shall provide copies of the public record in the form requested, if available. If the public record is not available in the form requested, it shall be made available in the form in which it is maintained.

The City of Gresham acknowledges that CH2M Hill "did provide the city electronic versions of its reports." The City is willing to provide the reports in an electronic format. Whether the public records are transmitted as email documents or on a disk is a matter for the discretion of the custodian. It is sufficient for purposes of this petition that the City has agreed to provide copies of the documents "maintained in machine readable or electronic form." ORS 192.440(2).

#### **II. Fee Waiver.**

The Public Records Law expressly authorizes a public body to establish fees "reasonably calculated to reimburse it for its actual cost in making such records available." ORS 192.440(3). The public body is permitted to include in its fees "costs for summarizing, compiling or tailoring [a] record, either in organization or media, to meet the person's request." ORS 192.440(3).

"Actual cost" may include a charge for the time spent by the public body's staff in locating the requested records and "a public body may preliminarily estimate charges for responding to a records request and require prepayment of the estimated charges before acting on the request." Attorney General's Public Records Manual, 1999, page 12.

The public agency may provide the records without charge or at a reduced fee "if the custodian determines that the waiver or reduction is in the public interest because making the record available primarily benefits the general public." ORS 192.440(4). The Attorney General has recognized that even if making the record available is in the public interest, a public body may still deny a fee waiver or reduction if warranted by certain factors:

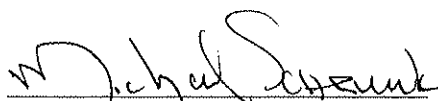
any financial hardship on the public body, the extent of time and expense and interference with the business of the public body, the volume of the records requested, the necessity to segregate exempt from non-exempt materials, and the extent to which an inspection of the records is insufficient for the public interest or for the particular needs of the requestor. Attorney General's Public Records Manual, 1999, page 16.

A distinction must be drawn between a request for records readily available for inspection or copying and those records that must be compiled (or created) in a special production. This is particularly true here where petitioner has already received the documents in hard copy form. We are not prepared to say there has been an abuse of discretion in the decision of the City of Gresham not to expend its limited financial resources by granting petitioner a fee waiver.

ORDER

Accordingly, it is ordered that the petition of Scott Forrester on behalf of the Friends of the Clackamas River for a waiver of fees for the production of records of the City of Gresham is denied. The petition for disclosure of the records in electronic form is allowed.

Very truly yours,



MICHAEL D. SCHRUNK  
District Attorney  
Multnomah County

Page 4  
September 7, 2001  
Re: Petition of Scott Forrester

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 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.

**01-13**