



**ROD UNDERHILL**, District Attorney for Multnomah County

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June 30, 2015

Barbara Spears  
P.O. Box 15319  
Portland, Oregon 97293

Joel Morton  
Office of Metro Attorney  
600 NE Grand Ave  
Portland, Oregon 97232

Re: Petition of Barbara Spears for the disclosure of documents related to the relationship between The National Elephant Center and the Oregon Zoo.

Dear Ms. Spears and Mr. Morton:

### **BACKGROUND**

On February 24, 2015 petitioner requested that the Oregon Zoo (the Zoo), which is operated by Metro, provide her the following documents relating to the Zoo's relationship with The National Elephant Center:

**All documents and correspondence including emails, letters, memos, meeting minutes and transcripts, proposals, assessments, recommendations, contracts and agreements, plans for current or future projects including goals and cost projections. Relevant dates: April 1, 2014 to present.**

After making a down payment on the estimated cost of producing these records the Zoo indicated it would comply with the request. On June 14, 2015 the Zoo responded that the records were ready for delivery, but indicated that it was withholding some documents as trade secrets or confidential submissions. Ms. Spears subsequently requested a list of documents the Zoo had withheld. The Zoo refused to provide such a list.

In her public records petition under ORS 192.410 et seq., petitioner Barbara Spears requests that the district attorney order the Zoo to produce the records that the Zoo claims are exempt from disclosure.

The National Elephant Center (TNEC) is a non-profit organization located in Florida that, according to its website, provides "short-term and long-term care for North American elephants in support of the accredited zoo population and for the welfare of elephants in need." The Oregon Zoo is one of the institutions that contribute funding to TNEC.

As required by ORS 192.470(2), counsel for the Zoo has submitted for this office's review the documents that Zoo staff withheld in response to Ms. Spears' request. Counsel has

also submitted a letter from the vice-chair of TNEC's board of directors asserting the organization's privacy interest in the records.

## DISCUSSION

### A. List of Documents Withheld

In Ms. Spears' initial request to this office she requested that we order the Zoo to provide her with a list of the documents that they had declined to produce. The Zoo refused, stating that it did not ordinarily compile the data that she had requested (i.e. a list of withheld documents) and that Oregon law did not require it to create new records in response to a public records request. The Zoo is correct. As the Attorney General notes:

The Public Records Law does not require public bodies to create new public records. Nor does it require public bodies to disclose the "reasoning" behind their actions, or other "knowledge" their staff might have. And it does not require public bodies to explain or to answer questions about their records, analyze their records, or perform legal research or opinions.

Attorney General's Public Records Manual, p.7 (2014).

If such a list had been created by the Zoo, it likely would be subject to disclosure as a public record. And indeed, the Zoo's response to this petition, already copied to Ms. Spears, contains a high-level summary of the types of documents withheld.

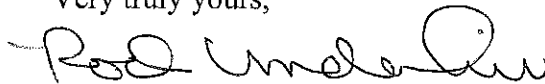
### B. Evaluation of Claimed Exemptions

As to the records themselves, the Zoo asserts they are exempt from disclosure by operation of ORS 192.501(2) (trade secret) and ORS 192.502(4) (confidential submission.) We need not resolve the applicability of these exemptions because, after careful review, none of the records provided to this office for review are responsive to Ms. Spears' public records request. Ms. Spears' petition to this office is, thus, moot. The Zoo has satisfied her request by indicating its willingness, upon payment of the balance of the fee, to provide the responsive records.

## ORDER

Accordingly, the petition is denied.

Very truly yours,



ROD UNDERHILL  
District Attorney  
Multnomah County, Oregon

cc: Lori Ford, Oregon Zoo