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April 15, 2016

Jeff Merrick
820 N.W. 12th Ave., Unit 110
Portland, Oregon 97209

Lauren King
Deputy City Attorney
Office of the City Attorney
1221 S.W. Fourth Ave., Suite 430
Portland, Oregon 97204

Re: Petition of Jeff Merrick concerning City of Portland records showing responsibility to maintain sidewalks under I-405

Dear Mr. Merrick and Ms. King:

In his public records petition under ORS 192.410 et seq., petitioner Jeff Merrick appeals the denial of his March 10, 2016 request for the following documents from the city of Portland:

Public records indicating who is responsible to maintain the sidewalks under the I-405 bridge.

Through subsequent communication between the parties petitioner narrowed his request to NW Johnson, NW Kearney, and NW Lovejoy between 15th and 16th and NW 16th between Johnson and Lovejoy on the east side of the street. Petitioner paid the requested fee and, after some exchange of communication, the city provided petitioner with a referral to the website portlandmaps.com regarding ownership of the properties in question, a citation to the Portland City Code regarding the city's sidewalk maintenance obligations (PCC 17.28.070), and a refund of the fees paid since all the documents provided were already directly available to the public online. At this point, March 30, 2016, the city communicated that it felt it had complied with the request and stated that "no further information or response will be provided in connection with this request."

On April 6, 2016 petitioner filed this appeal. On April 11, 2016, in further communication between petitioner and the city, petitioner stated that he believed his query was broader than the city's interpretation and he felt that any contracts or leases delegating responsibility for maintaining the identified sidewalks would be responsive to his request.

DISCUSSION

The public records law does not require a public body to answer questions posed by the public or to perform legal analysis on their behalf. ATTORNEY GENERAL'S PUBLIC RECORDS MANUAL, p.7 (2014) (the Public Records Law "does not require public bodies to explain or to

answer questions about their records, analyze their records, or perform legal research or opinions.”) It does require a public agency to provide specific documents requested by any person. This dispute hinges on the distinction between a question and a request for a specific record. For the reasons set out below we believe that petitioner’s initial query to the city is properly categorized as a “question” and not as a request for a specific record. Accordingly, although the city did attempt to respond to it, the city was not obligated to do so.

A person does not alter the essential nature of a question by framing it in terms of public records. Take, for example, a person who wished to know the answer to the question “may a Portland police officer make an arrest in another city?” This requestor may not compel a response by framing the question as “provide me with any public records showing whether a Portland police officer may make an arrest in another city.” To turn this question into a proper public records request, to which the city would be obligated to respond, the requestor could ask for, “Portland Police Bureau written policies relating to the authority of officers to make arrests in other cities.” The practical distinction between these two formulations is who must analyze the question being asked and determine what categories or types of documents might be responsive to the question. Under the public records law that responsibility lies with the requestor.

We recognize that a legally unsophisticated requestor may not be able to identify with precision the document or type of document sought, but an effort in that direction must be made. An agency may well be able to work with a requestor to reframe a broad question into a more narrow document request to avoid just the type of dispute that arose in this case. And nothing prevents an agency from attempting to answer a question if it so chooses. We only recognize here that the public records law does not require it to do so.

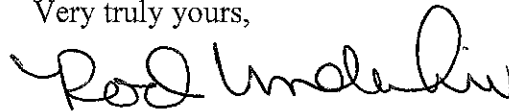
In this case, petitioner’s original query was truly a question of the city, to wit: “who is responsible for maintaining the sidewalks under the I-405 bridge.” Although the city did engage by attempting to clarify the scope of petitioner’s question and providing citations to certain publicly available documents, we cannot say that the refusal to answer this question to petitioner’s satisfaction constitutes a denial of a public records request.

By contrast, petitioner’s April 11, 2016 communication to the city identified two specific types of documents he wanted: any contracts or leases relating to the identified sidewalks or abutting property. This is a request for specific documents that they city may treat as a new public records request and respond to as required by ORS 192.410 et seq.

ORDER

Accordingly, the petition is denied.

Very truly yours,



ROD UNDERHILL
District Attorney
Multnomah County, Oregon