



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

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March 20, 2017

Arden Newbrook  
3317 N.W. 122<sup>nd</sup> Street  
Vancouver, Washington 98685

Lauren King  
Deputy City Attorney  
City Attorney's Office  
1221 S.W. Fourth Avenue, Suite 430  
Portland, Oregon 97204

Re: Petition of Arden Newbrook seeking land use records from the Portland Bureau of Development Services relating to the Portland Yacht Club property

Dear Mr. Newbrook and Ms. King:

In his public records petition, dated March 5, 2017, petitioner Arden Newbrook requests this office to order the Portland Bureau of Development Services (BDS) to disclose copies of the following records:

**all written and graphic communications related to land use application LU-16-149273-EN prepared or received after June 22, 2016.<sup>1</sup>**

Mr. Newbrook submitted this request to BDS by U.S. Mail on January 3, 2017. BDS reports that as of February 8, 2017 it had uploaded its entire file for LU-16-149273-EN, comprising approximately 192 pages of documents, to its public records management system for Mr. Newbrook. Most of these documents pre-date the date of interest to Mr. Newbrook: June 22, 2016.<sup>2</sup>

Mr. Newbrook responded that he had reason to believe from reviewing the PortlandMaps website that the following documents responsive to his request also exist and have not been provided to him:

- The notice of receipt of Application and Site Plan Corrections on 07/18/16 as reported by Patricia Golebieski.

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<sup>1</sup> Mr. Newbrook submitted a second public records request to BDS at the same time relating to Building Permit 97-002659, but it appears that only records relating to this request are at issue in this appeal.

<sup>2</sup> As this office has previously held, we do not find it a problem that BDS has disclosed *more* records than strictly requested. *Petition of Natalie Hval*, MCDA PRO 16-23 (2016). A public agency is generally free to release records of its own accord. But this is irrelevant to the question of whether or not the actual request made has been denied and, if so, whether that denial was appropriate.

- The notice of receipt of further Application and Site Plan corrections on 08/31/16 as reported by Victor Palchey.
- The notice of receipt of further Application and Site Plan corrections on 01/24/17 as reported by Dierdra Jenkins.
- The Applicant's notification of an Application and Site Plan planning and zoning check sheet on 09/08/16 as prepared by Susan Ellis.
- The notice of receipt of Site Development corrections on 01/24/17 as reported by Jason Butler-Brown.
- The Applicant's notification of an Application and Site Plan Life Safety checksheet on 08/15/16 as prepared by Bill Quillin.
- The preparation of a Pre-Issuance Check on 08/31/16 and recorded as PREISSUANCECO:SD:ZP
- The issuance of a Site Development permit extension on 01/31/16.

BDS has informed us that PortlandMaps is its own public facing website that directly references its land use file, which it has already fully disclosed to petitioner. BDS asserts that it has not denied Mr. Newbrook's request because it has provided him with all documents that it has relating to the LU-16-149273-EN and BP 97-002659 files. BDS states it has been unable to determine if the documents specifically listed above exist or, if they exist, where they would be located.<sup>3</sup> BDS does state it has searched all the records in its possession relating to the two file numbers specifically referenced by petitioner, and these records are not associated with those files.

On February 23, 2017 Mr. Newbrook specified that he did not want his request limited to any particular land use file. As his original requests were tied to specific case numbers, this widely expanded the scope of the request. BDS communicated that it felt it had complied with the original request. BDS, via counsel, has informed this office that it is willing to prepare a cost estimate for Mr. Newbrook based on this revised request for information in *any* land use file should he submit a new public records request.

To the extent that Mr. Newbrook is asserting that the itemized records exist in either the LU-16-149273-EN or BP 97-002659 files, this office is not statutorily empowered to investigate or challenge a public body's factual assertion that it does not have a requested public record. See, e.g., *Petition of Mark Bartlett*, MCDA PRO 15-24 (2015); *Petition of Shepherd for McGee*, MCDA PRO 06-12 (2007).

In *Bartlett*, which also involved land use issues, we denied a public records petition for similar reasons.

[P]etitioner has made specific public records requests, outlined above. The city has provided the lists that it maintains in response. Petitioner believes that those lists should contain more information than they do and, thereby, asserts that his

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<sup>3</sup> BDS is not required to do this research to locate this list of records absent prior to payment of its estimated costs for this more expansive search as specified in ORS 192.440. The situation would have been clearer, and perhaps avoided an appeal to this office, had BDS expressly informed Mr. Newbrook that it viewed his February 23, 2017 communication a new records request that would require a separate administrative reference number and fee estimate as opposed to simply closing out the original request as "completed."

request has been denied. The city states that the information petitioner apparently desires is not contained in the records he requested. As we have previously recognized, we are not empowered to compel adherence to records collection or retention laws.

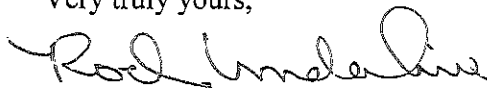
*Bartlet*, 15-24, p. 2.

Consistent with our reasoning in *Bartlet*, we likewise are unable to find here that BDS has denied access to records within the meaning of the public records law.

**ORDER**

Accordingly, the petition is denied.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rod Underhill". The signature is written in a cursive style with a large, looping initial "R".

ROD UNDERHILL

District Attorney

Multnomah County, Oregon