



ROD UNDERHILL, District Attorney for Multnomah County

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April 20, 2017

Bethany Barnes
The Oregonian
1500 S.W. First Avenue, Suite 400
Portland, Oregon 97201

Jenifer Johnston
Senior Deputy City Attorney
City Attorney's Office
1221 S.W. Fourth Avenue, Suite 430
Portland, Oregon 97204

Re: Petition of Bethany Barnes, on behalf of The Oregonian, seeking records relating to public records responses from the Portland Police Bureau

Dear Ms. Barnes and Ms. Johnston:

In her public records petition, dated April 10, 2017, petitioner Bethany Barnes requests that this office order the Portland Police Bureau (PPB) to fulfill a records request that she filed on January 31, 2017. PPB asserts that it has not denied Ms. Barnes' request and asks this office to dismiss the petition.

Ms. Barnes requested, in summary, three items from PPB and paid the City of Portland's standard \$30 research fee:

- 1) an export of the database underlying the city's online public records request portal, to include financial information about the request;**
- 2) any documentation showing the definitions of the codes or terms used in the database, and**
- 3) any general orders relating to how money received from public records requestors was to be spent.¹**

PPB told petitioner that it did not possess records responsive to items two and three. After multiple exchanges, PPB further stated that it could provide, at no additional charge, a subset of the database information that petitioner had requested, but that including financial information

¹ The full text of the records request was: "The Oregonian requests an export of the database underlying this request portal. Fields include, but are not limited to, date of request, requester name, type of requester, type of records requested, whether a request is associated with a tort claim or litigation, whether a fee waiver was requested, whether a fee waiver was granted, original cost estimate, amount paid by requester (there may be multiple payments associated with a given request), status of request, date of request completion. Please provide these records in a machine-readable format, preferably as one or more .csv files. Please also provide any record layouts or data dictionaries that show the meanings associated with any codes used in the database and the full array of tables and fields. Additionally, please provide any general orders that describe how money generated through public records requests is to be budgeted and spent by Portland Police Bureau and/or the City of Portland."

about the requests would be time intensive as it referenced a different database system. The paralegal handling the matter informed petitioner that if she wanted information from both databases, to include financial information, the paralegal would prepare a fee estimate, but that it would be very high due to the labor involved in reviewing the thousands of responsive records for redaction.

Ms. Barnes agreed to accept the offered, limited, data export in order to determine if that would satisfy her needs or if more data would be needed for her work. On March 28, 2017 PPB provided, at no additional charge, a database export to Ms. Barnes for the period January 1, 2016 to April 8, 2016 that omitted the fields that would require review for redaction (financial information and details relating to the actual records requested.) This export included approximately 4,900 entries, each of which contain: "Create Date," "Customer Full Name," "Request Status," "Requester Type," "Litigation/Tort Claim," "Fee Waiver," and "Close Date."

In response to some follow-up questions, PPB provided a second database export covering a larger period of time, December 8, 2015 to December 7, 2016, to her on April 3, 2017, again at no additional charge. This export included 18,503 entries. On April 3, 2017 Ms. Barnes indicated that she wanted a sampling of the financial information in order to assess her options. At this point PPB told Ms. Barnes that it believed it had fulfilled her request and, if she wanted additional records, she needed to submit a new public records request. This appeal followed.

Petitioner challenges both PPB's requirement that she open a new public records request to continue pursuing this matter as well as PPB's assertion that it possesses no responsive records to items two and three.

DISCUSSION

A. Has access been denied?

ORS 192.460 provides that, where a person has been "denied the right to inspect or receive a copy of any public record of a public body other than a state agency," she may ask the district attorney of the county in which the public body is located to review the agency's decision. Accordingly, this office has the authority to resolve public records disputes only where access to records has been "denied."

PPB asserts that it is now, and has always been, willing to prepare a fee estimate for the more expansive records request (i.e. to include financial information). PPB states it had worked with petitioner to narrow her request and, as a result of petitioner's initial willingness to narrow the request, agreed to waive its costs for complying with the narrowed request.

Petitioner sees the situation differently. She argues that she is being penalized for her willingness to be reasonable and compromise. Specifically, that by initially agreeing to receive only a subset of the data she did not forgo her ability to still receive all of the data. By being asked to submit a new records request, pay a new \$30 research fee, and then, potentially, pay additional fees on top of that, she believes PPB has effectively denied her request.

A detailed discussion or assessment of the correspondence between petitioner and PPB over the last few months is unnecessary to resolve this petition. Our evaluation of a public records petition is not based on the process that preceded the filing of the petition, but rather on the circumstances as they exist on the date of our order. See, *Petition of Barnes*, MCDA PRO 17-01 at p.2 (2017) (agency's retraction of an initial denial and expressed intent to issue a fee

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estimate sufficient to divest this office of jurisdiction to consider the matter). As of today, petitioner is seeking financial information from PPB's public records system, and PPB has indicated that it is willing to prepare a cost estimate to retrieve those records.

PPB has not denied petitioner's request; it has outlined the additional steps she needs to take for them to proceed with processing her request. We understand why petitioner might question being asked to submit what she views as a redundant request, and assessed another \$30, to continue work on what she believed to be one all-inclusive request. However, even \$60 appears well below the amount that PPB could recover under ORS 192.440 for responding to this request whether characterized as a single request or as two requests.² We lack the statutory authority to order PPB to adopt a specific procedure or practice in how it processes public records requests.

To the extent that petitioner is asserting that records responsive to the second and third items in her request exist notwithstanding PPB's claim to the contrary, 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. *Petition of Newbrook*, MCDA PRO 17-17 (2017).

For the reasons discussed above, we conclude that PPB has not denied petitioner's records request.

ORDER

Accordingly, we lack the authority to resolve this dispute. The petition is dismissed.

Very truly yours,



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District Attorney
Multnomah County, Oregon

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² It appears that much of the confusion or disagreement comes from petitioner characterizing her initial request in terms of "the database underlying this request portal." PPB relies on two separate database systems, one is the database, "GovQA," that underlies the request portal, the second is a payment system that contains financial payment information. PPB views petitioner's 4/3/17 specific request for financial information as a new request, because it references a database outside the scope of the initial 1/31/17 records request. Petitioner views it as a unitary request because she clearly requested financial details in her initial request and would have had no way of knowing that there are really two separate databases involved for these separate aspects of a records request. Whether this is properly viewed as one or two requests is immaterial to our resolution of this matter.