



ROD UNDERHILL, District Attorney for Multnomah County

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July 6, 2017

Jeff Merrick
Merrick Mediation
4800 S.W. Meadows Road, Suite 300
Lake Oswego, Oregon 97035

Linda Law
City of Portland – City Attorney’s Office
1221 S.W. Fourth Avenue, Room 430
Portland, Oregon 97204

Re: Petition of Jeff Merrick, seeking records from the City of Portland

Dear Mr. Merrick and Ms. Law:

Mr. Merrick filed a public records petition, which this office received on June 19, 2017, appealing the City of Portland’s denial of his request for “the names, contact information and the substance of the reports from those who reported to the ‘One Point of Contact.’” The City of Portland initially cited ORS 192.502(2) and ORS 192.502(40) for the denial of any information.

“One Point of Contact” is a reporting system designed for members of the community to report “issues about campsites.” The City of Portland’s webpage¹ lists four methods for people to report campsites. There is an online form. There is the “PDX Reporter App.” A person can send messages by way of email to reportpdx@portlandoregon.gov. Reports can also be made by calling (503) 823-4000. Information is tracked in the City’s TrackIT Database. The email account also serves as an “interagency coordination hub,” which is accessed by partner agencies. Listed on the website are several campsite reports. These reports do not contain the information which petitioner seeks.

The City of Portland responded on June 28, 2017, that the denial of petitioner’s request was premature. On June 27, 2017, a fee estimate of \$39,050.55 “for the request as currently written” was sent to petitioner. The City of Portland believes it would take 200 business days to fulfill the request, once a deposit of 50% (\$17,545.28) is paid. The City of Portland also advised that costs could go up, or down, depending upon the actual costs incurred in “locating records, reviewing records to redact exempt material, supervising the inspection of records, copying records, certifying records and mailing records.” It is estimated that there are “approximately 20,000 records.”² The City of Portland has now stated that it “is ready and willing to proceed with the public records request upon payment of the appropriate fee.”

The petitioner responded in a letter dated June 27, 2017, with regard to the estimate of cost for the production of records. In his letter, the petitioner asserts that the City of Portland has failed to fully disclose the basis for the cost estimate, among other allegations.

¹ <https://www.portlandoregon.gov/toolkit/70039>

² The City of Portland’s written response to Petitioner’s request, dated June 28, 2017.

DISCUSSION

The District Attorney's authority to resolve public records disputes is established by, and accordingly limited by, the Oregon Public Records law. ORS 192.440 permits an agency to charge a fee for the time necessary to respond to a public records request. Neither the Attorney General, nor the District Attorney, have jurisdiction to review whether or not a requested fee represents the "actual cost" of an agency in complying with a public record request. *In re petition of Mayes*, ATTORNEY GENERAL PRO (3/29/2000). See also, *In re petition of Robert Babcock*, MCDA PRO 15-22 (2015). See also, *In re petition of Jason Wright*, MCDA PRO 16-29 (2016).

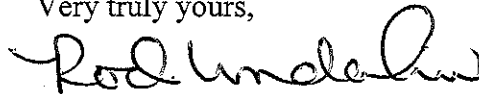
At this time, the City of Portland has stated that it is willing to proceed with fulfilling the request of petitioner. "'Actual Cost' may include a charge for the time spent by the public body's staff in locating the requested records, reviewing the records in order to delete exempt material, supervising a person's inspection of original documents in order to protect the records, copying records, certifying documents as true copies, or sending records by special methods such as express mail." *Attorney General's Public Records Manual* (2014), at 17. Once an agency quotes a fee, it is not required to perform work until the fee is received. *Id.*

We agree with the City of Portland that any discussion relating to ORS 192.502(2), the Personal Privacy exemption, and ORS 192.502(40), the E-mail Address exemption, is premature.

ORDER

Accordingly, your petition is denied for lack of jurisdiction.

Very truly yours,



ROD UNDERHILL
District Attorney