



ROD UNDERHILL, District Attorney for Multnomah County

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July 31, 2017

Jessica Floum
The Oregonian
1500 S.W. First Avenue, Suite 400
Portland, Oregon 97201

Jenifer Johnston
City of Portland
Office of the City Attorney
1221 S.W. Fourth Avenue, Room 430
Portland, Oregon 97204

Re: Petition of Jessica Floum, for The Oregonian, requesting a fee waiver for public from the City of Portland

Dear Ms. Floum and Ms. Johnston:

This is a second public records petition that was filed with this office on July 17, 2017. It is a companion matter to MCDA PRO 17-36. Upon filing her Public Records Request with the City of Portland on April 11, 2017, petitioner marked the “Yes” on the prompt for Fee Waiver or Reduction Requested.

The City of Portland denied the fee waiver on May 16, 2017. At that time, the City of Portland had considered the request and determined that the requested records did not fulfill the criteria to establish that the records would primarily benefit the general public. The email sent to petitioner went on to state that the request for a fee waiver was also being denied due to the burden that the request would place upon the City of Portland.

Petitioner responded, via email, on May 19, 2017. In that email, petitioner stated that this request, which was being made simultaneously with dozens of other public employers, would ultimately produce the most comprehensive database of public employee compensation. In turn, this information would provide “a great deal of value and insight” for the public, as it would provide transparency in the hiring and compensation of public employees throughout the State of Oregon.

The City of Portland concluded, in an email dated July 10, 2017, that this public records request would not provide any new information that was not already within the public domain.

DISCUSSION

There is no provision within “the Public Records Law that authorizes a person to petition the Attorney General to review an agency’s fees established under ORS 192.440(4).” *Attorney General’s Public Records Manual* (2014), pages 18-19. Likewise, there is no provision for the district attorney to review an agency’s fees. Only a state court may determine the reasonableness of the fees. *In Defense of Animals v. OHSU*, 199 Or App 160, 182-83 (2005).

Under ORS 192.440(5) and (6), the district attorney may review whether a public agency has acted unreasonably in either denying to reduce, or waive, fees. There is a multi-part test to determine reasonableness. The analysis includes: “a) whether a waiver is prohibited by law, b) whether the ‘public interest’ test is met, and c) whether the agency’s decision was ‘unreasonable.’” *Petition of Ashy*, Att’y Gen. PRO, (Aug. 7, 2007).

However, this analysis is predicated on the determination that the request is for a public record. In the companion opinion, MCDA PRO 17-36, we determined that this particular request of petitioner fell outside the scope of the Public Records Law. Each part of petitioner’s request is a public record, but the final product can only be created through the use of some other protocol, report, or software tool that has not been constructed. Public bodies are under no obligation to produce new records. *Manuel*, page 8.

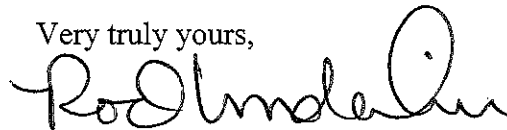
In reviewing all of the materials submitted by the parties, the document requested by petitioner of the City of Portland appears to be a collaborative project, and not strictly a request for public records.

In conclusion, there is no statutory authority for the district attorney to review a fee imposed by a public body. As this is not a public record, the district attorney has no authority to determine whether the City of Portland acted unreasonably in its decision to deny petitioner a waiver of the fee associated with this project.

ORDER

Accordingly, your petition is dismissed for lack of jurisdiction.

Very truly yours,



ROD UNDERHILL
District Attorney