



ROD UNDERHILL, District Attorney for Multnomah County

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November 8, 2017

Jay Shore
withoutcapacity@gmail.com (via email only)

Kimberly Sewell
TriMet
1800 S.W. First Avenue, Suite 300
Portland, Oregon 97201

Re: Petition of Jay Shore seeking a fee waiver from TriMet

Dear Mr. Shore and Ms. Sewell:

In his public records petition, dated October 30, 2017, petitioner Jay Shore requests that this office order TriMet to waive its fee for providing him access to video of an incident on a TriMet bus.

On October 12, 2017 petitioner filed a public records request for:

a copy of any and all video and audio for bus route 75, beginning at 8:25 p.m. on October 8, 2017, until 8:55 p.m., for a bus with a driver called "Jay" that is average height, close-cropped grey hair, looks like he uses steroids to enhance his physique, and who left Pier Park at approximately 8:34 p.m. on October 8, 2017

On October 17, 2017 TriMet provided an estimated cost of \$55.15 for petitioner to either receive a copy of, or to review on site, the video he requested.¹ Petitioner requested a fee waiver, which TriMet denied. This appeal ensued.

The underlying incident here involves a dispute between petitioner and a particular TriMet driver regarding a broken fare box on a #75 bus. TriMet characterizes it in its response as a "verbal assault" by petitioner on the bus driver. Petitioner views events differently. He states that he could not hear the driver's comments about the fare box due to engine noise, that the driver unnecessarily escalated the situation thereby triggering petitioner's PTSD, and that the driver then became aggressive in response to petitioner's reaction. A determination of what precisely occurred is not necessary to resolve the narrow question of TriMet's decision to deny a fee waiver.

For the reasons discussed below, we do not find that TriMet abused its discretion in denying petitioner's requested fee waiver.

¹ Petitioner also challenges the imposition of a fee for him to review the records on site. TriMet has asserted that its costs in locating the video and converting it into an accessible format are the same whether it provides petitioner a copy or not. In any event, we are not empowered to determine whether or not a fee estimate constitutes an agency's true costs, this authority lies with the circuit court. *Petition of Babcock*, MCDA PRO 15-22 (2015).

DISCUSSION

A. Fee Waivers – ORS 192.440

ORS 192.440(5) provides that:

The custodian of any public record may furnish copies without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public.

ORS 192.440(6) provides that:

A person who believes that there has been an unreasonable denial of a fee waiver or fee reduction may petition the Attorney General or the district attorney in the same manner as a person petitions when inspection of a public record is denied under ORS 192.410 to 192.505. The Attorney General, the district attorney and the court have the same authority in instances when a fee waiver or reduction is denied as it has when inspection of a public record is denied.

An agency evaluating a requested fee waiver faces a two-step analysis. First, would making the records available primarily benefit the general public, that is, is it in the public interest. Second, if the request is in the public interest, the agency must then exercise its reasonable discretion to decide whether or not it will waive or “substantially reduce” the fees.

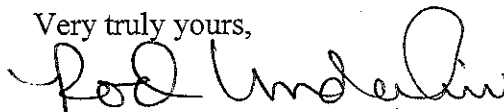
In reviewing an agency’s decision to deny a fee waiver, the district attorney may only determine whether or not the agency acted within the permissible bounds of discretion; we may not substitute our judgment for that of the agency. ORS 192.440(5).

Here petitioner’s request is a quintessential personal interest request. It relates to a discrete incident involving himself and the public agency. TriMet did not act unreasonably in determining this did not meet the public interest standard for a fee waiver. See, *In Defense of Animals v. OHSU*, 199 Or App 160, 188 (2005) (“A matter or action is commonly understood to be ‘in the public interest’ when it affects the community or society as a whole, in contrast to a concern or interest of a private individual or entity.”) ATTORNEY GENERAL’S PUBLIC RECORDS MANUAL (2014) at 21 (“if a requester seeks records relating to the requester, a mere allegation that the public body has treated the individual oppressive, absent a broader public interest, does not satisfy the public interest standard.”)

ORDER

Accordingly, the petition is denied.

Very truly yours,



ROD UNDERHILL

District Attorney

Multnomah County, Oregon