



ROD UNDERHILL, District Attorney for Multnomah County

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October 22, 2018

Jason Wilson
jason@jasonwilson.media (via email only)

Krista Stearns
Assistant General Counsel
Portland State University
P.O. Box 751
Portland, Oregon 97207

Re: Petition of Jason Wilson seeking a fee waiver from Portland State University

Dear Mr. Wilson and Ms. Stearns:

In his public records petition, received by this office on October 10, 2018, Jason Wilson requests that we order Portland State University (PSU) to waive fees associated with a request for records. Petitioner is a journalist who writes for The Guardian, a media organization that publishes in a variety of formats.

The records request at issue was made on October 3, 2018 and asked that PSU produce:

- any and all emails or other written communications between Professor Boghossian and [12 identified individuals] in 2017 and 2018; and
- any emails from Professor Boghossian's account in 2018 containing my name, Jason Wilson, or the title of the newspaper I write for, The Guardian.

Professor Boghossian is an assistant professor of philosophy at PSU. Petitioner's interest stems from Professor Boghossian's involvement in what has variously been described as an investigation, a study, or a hoax, in which he and his two co-authors submitted fake articles to a number of academic journals in an attempt to reveal poor academic controls in certain disciplines. On October 2, 2018, the three involved academics published an article revealing what they had done.¹ In all 21 articles were submitted and, at the time he and his co-authors came forward, seven had been accepted for publication. This story received international attention when it broke and responses have varied as to the merit and ethics of the work.²

¹ Helen Pluckrose et al., "Academic Grievance Studies and the Corruption of Scholarship," *Aero Magazine*, Oct. 2, 2018, <https://areomagazine.com/2018/10/02/academic-grievance-studies-and-the-corruption-of-scholarship/>

² See, e.g., "Hoax papers: The shoddy, absurd and unethical side of academia," *The Irish Times*, Oct. 10, 2018, (<https://www.irishtimes.com/life-and-style/people/hoax-papers-the-shoddy-absurd-and-unethical-side-of-academia-1.3655500>); and "What the 'Grievance Studies' Hoax Means," *The Chronicle of Higher Education*, Oct. 9, 2018 (<https://www.chronicle.com/article/What-the-Grievance/244753>)

PSU responded to this request with a cost estimate of \$478.28, based on 5.5 hours of time to pull and review the email records, and 10 hours of staff time to gather the “other written communications.”

For the reasons stated below, we deny the petition at this time.

DISCUSSION

A. Fee Waivers – ORS 192.324

ORS 192.324(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 192.324(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 192.311 to 192.478. 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 192.324(5).

It is undeniable that there has been substantial interest in the story of Professor Boghossian’s work. Indeed it appears conceived in large part specifically to create such an interest. On the other hand, it is not immediately apparent what the public interest in the second portion of petitioner’s request is. That portion relates to him personally and the organization for which he writes.

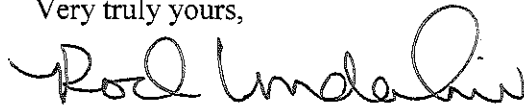
Further, in requesting his fee waiver of PSU, petitioner stated, in its entirety, “The request is for journalism in the public interest.” There is strong presumption that a request from a journalist is, in fact in the public interest. However, this is not sufficient in itself to warrant a fee waiver. *Petition of Brown for KXL 750*, MCDA PRO 04-10 (2004) (so stating).

In sum, the general topic is of public interest. But given the limited information provided to PSU to assess the fee waiver request, the breadth of the request, and the lack of any attempt to work with PSU to focus or limit the scope of the request we cannot say that PSU's decision to deny a fee waiver was an abuse of its discretion. PSU has expressed a willingness to engage with petitioner regarding tailoring the scope of his request and, potentially, reduce fees as to a smaller set of records. We would encourage this consistent with our public interest determinations above.

ORDER

Accordingly, the petition is denied at this time.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rod Underhill". The signature is fluid and cursive, with a large loop at the end.

ROD UNDERHILL

District Attorney

Multnomah County, Oregon