



ROD UNDERHILL, District Attorney for Multnomah County

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April 29, 2019

Alan Kessler
805 S.W. Broadway, Suite 1580
Portland, Oregon 97205

William Glasson
Multnomah County Attorney's Office
501 S.E. Hawthorne, Suite 500
Portland, Oregon 97214

Re: Petition of Alan Kessler seeking certain financial transaction records of the Multnomah County Department of Assessment, Recording, and Taxation

Dear Mr. Kessler and Mr. Glasson:

In his public records petition, dated April 18, 2019, Mr. Kessler asks this office to order the Multnomah County Department of Assessment, Recording, and Taxation (DART) to provide him with records of payments made to the county recorder under ORS 205.320(1)(d)(B).¹

DART maintains property records, marriage and domestic partnership records, tax assessment records, and other similar official documents. DART also takes in revenue from a number of different sources. The statute referenced in the request, ORS 205.320(1)(d)(B), provides a set rate for county clerks to charge for providing copies of records of the sort that DART maintains, specifically "not more than \$3.75 for locating a record requested by the party and 25 cents for each page." Revenue taken in for providing copies of records is one of the revenue streams that DART oversees.

There are two relevant computer database systems used by DART that are relevant to this appeal Helion and Orion. Helion stores high resolution digital images of property records. If a person seeks access to a particular record, Helion will generate an internal "receipt" to document the transaction associated with particular plot. Orion is the accounting database used by DART that records, among other things, revenue taken in by DART from various sources, including those payments made to the recorder for property records.

In response to petitioner's request to DART, DART responded that it did not possess any responsive records. In its submission to this office, DART further explained that its data systems do not store data in a way that permit it to determine which payments are made under ORS 205.320(1)(d)(B) and which payments are made for other reasons. Once a transaction is in Orion,

¹ The request was actually slightly more specific: those records that show the identity of and amount of revenue received from entities who have paid more than \$200 under this section or, if that were not available, a list of all transactions under this section. As discussed below, this distinction is not relevant to the disposition of this petition.

it is not possible on a bulk basis to determine the origination of a particular charge. In Helion, one can see that a transaction is associated with a particular plot and the amount, but it contains no reference to any statutory section or easy proxy that would permit a bulk dump or query of records responsive to this request.

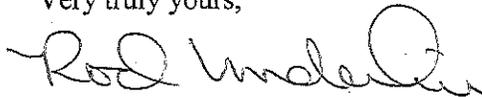
Put simply, petitioner has requested very specific information: transactional records that are linked to ORS 205.320(1)(d)(B). DART states that it does not track this information, so has no records to provide. DART does receive some revenue under this section, but its current data systems and data entry practices do not allow it to isolate and report on what revenue came in under this section in particular.² The public records law does not require a public body to create new records in response to a request, nor does it require it to produce records that it does not have. *Petition of Apanel*, MCDA PRO 17-57 (2017) (“the public records law does not require agencies to produce records they do not possess.”) Whether or not a public body should, or must, create or retain any particular record in any particular way is beyond the scope of this office’s authority under the public records law.

Although not required to under the public records law, the county has engaged in some informed speculation as to the question underlying petitioner’s request and run different queries, not directly tied to ORS 205.320(1)(d)(B), with negative results. The county searched to see if it had “one or more financial records identifying individuals or entities that paid more than \$200 in 2018 to the Division of Assessment Recording and Taxation (DART) for documents filed with the Recorder’s Office.” It did not and, as such, informed petitioner that no responsive records existed.

ORDER

Accordingly, the petition is denied.

Very truly yours,



ROD UNDERHILL

District Attorney

Multnomah County, Oregon

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² That said, the county has outsourced the bulk of its work responding to requests for property records to a private contractor who, for complex reasons, is contracted out of the county archives rather than DART.