



ROD UNDERHILL, District Attorney for Multnomah County

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September 30, 2019

Richard Ellmyer
richard@goodgrowthnw.org (via email only)

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

Re: Petition of Richard Ellmyer seeking a determination of undue delay and imposition of punitive sanction.

Dear Mr. Ellmyer and Ms. Madkour:

In his public records petition dated¹ September 18, 2019, petitioner Richard Ellmyer requests this office to find that Multnomah County has unduly delayed its response to a public records request and impose a fine against the county as authorized by ORS 195.407 (as amended by HB 2353 (2019), effective June 4, 2019).

On July 21, 2019, petitioner sent a public records request to Denis Theriault, the Communications Coordinator for Multnomah County, requesting, "[T]he Joint Office of Homeless Services current fiscal year budget." Mr. Theriault acknowledged receipt of this particular request on July 22, 2019. Petitioner simultaneously filed three additional requests. Mr. Theriault was assigned to work on all four requests and was in communication with petitioner. Two of the requests were the subject of MCDA PRO 19-42. Mr. Theriault did not provide a response regarding the request.

On September 18, 2019, upon learning of this petition,² Mr. Theriault emailed petitioner, stating that "the current budget information for the Joint Office and all other County offices and departments is publicly available online on the County's website." Included in the email³ were links to the requested information, as well as a link to past budgets. Mr. Theriault has stated that it was his oversight that he did not forward the links to petitioner.

DISCUSSION

A. Penalty for Untimely Response – ORS 192.407

ORS 192.407 gives the district attorney the authority to impose against a public body a penalty of \$200, or order a waiver or reduction of quoted fees, if the district attorney determines

¹ The petition was sent at 3:12 pm to the Multnomah County District Attorney's Office and copied to Denis Theriault, Marc Jolin, Chair Deborah Kafoury, Julie Sullivan-Springhetti, Mayor Ted Wheeler, and Allen Seraphie.

² Mr. Theriault's email response was sent to petitioner on September 18, 2019 at 3:46 pm.

³ Mr. Theriault further explained that a key word Google search would bring up the requested budget information.

that the body's response, or lack of response, to a properly presented public records request violated the timeliness provisions of ORS 192.329. Petitioner followed the county's posted procedure for submitting a public records request. ORS 192.407(1) therefore permits him to file a petition seeking the relief specified in ORS 192.407(3).

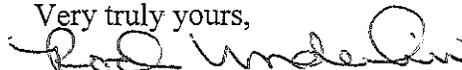
ORS 192.329 requires a public body to complete its response with 15 business days of the public body's receipt of the request. ORS 192.329(2)(a) states, in part, that a public body's response is complete when it "explains where the records are already publicly available." The records in this matter are publicly available on the county's website. The county has explained that it was an oversight on their part to not promptly include the links to the published material to petitioner.

The authority to impose a financial penalty against a public body in ORS 192.407 is discretionary. The county has given a reasonable explanation and has provided the links to the publicly available information. The petition is moot as to the substantive request. The circumstances of this case do not warrant a financial penalty.

ORDER

Accordingly, the petition is dismissed.

Very truly yours,



ROD UNDERHILL

District Attorney

Multnomah County, Oregon