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December 24, 2019

Al Margulies
marguliesa@gmail.com [via email only]

Erik Van Hagen
Director, Legal Services – TriMet
1800 SW 1st Avenue, Suite 300
Portland, Oregon 97201

Re: Petition of Al Margulies seeking information from TriMet's SIP database

Dear Mr. Margulies and Mr. Van Hagen:

In his public records appeal petitioner, Al Margulies, asks this office to order TriMet to produce data from its internal SIP database. As discussed below, looking at the petition, and TriMet's response, it appears that TriMet is willing to provide the information that petitioner seeks, in response to a properly framed request.

TriMet maintains a Service Improvement Process (SIP) database that contains information relating to customer complaints, contacts, and other related information. The SIP database is not an off-the-shelf product and was developed internally by TriMet.

On November 13, 2019, TriMet provided an OPB reporter with data out of that database documenting customer contacts in the last 60 days concerning riders complaining about fare evasion by other riders. The results of the database query that TriMet generated were presented in a spreadsheet showing four columns: SIP number, Report Date, Content Summary, and Full Content.

Petitioner subsequently became aware of this request and made his own request for "a copy of all rows of these four columns from the spreadsheet or database used to create the document sent to Mr. Haas." TriMet responded that it did not possess a responsive document. The same day, petitioner made a second request for the first 40 rows from any spreadsheet used to generate the response to the OPB request or, if it did not originate from a spreadsheet, a listing of all columns from each table in the relevant database. TriMet again indicated it did not possess a responsive document.

Petitioner then requested the entire SIP database in a native format. In response, TriMet responded:

> I double checked with our IT staff regarding your request for a schema for the database. Staff confirmed that we do not have an existing record that contains a schema for the SIP database and that it is not possible to run a query to export it, as suggested below.

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> The SIP database is a computer program developed by TriMet for its own use and is exempt from disclosure under ORS 192.345(15). You may seek review of TriMet's determination that requested information is exempt from disclosure, pursuant to ORS 192.415. [...]

> With respect to [the OPB] request, yes, it was a database query. *If you would like to query the database as well, please submit a public records request and provide the parameters of your requested search.* I have closed this public records request. (emphasis added)

This appeal ensued.

DISCUSSION

Petitioner in this case argues that "[TriMet] could run a query like they did for [OPB]. It seems like I should have the same consideration that he got." Yet, as TriMet's response to petitioner shows, TriMet is willing to do exactly this: "If you would like to query the database as well, please submit a public records request and provide the parameters of your requested search."

Petitioner's initial request in this matter was for "all rows" of the four columns that were provided to OPB. This uses the language of spreadsheets (rows and columns) for data that does not exist in spreadsheet form. Data is pulled from a database using a query. That query generates a report that frequently is in the form of a spreadsheet. However, the spreadsheet itself does not exist within the database, it is created in specific response to the parameters of a query. OPB defined the terms of its query: 60 days of complaints relating to fare evasion.[1]

We understand petitioner's frustration; to him the request he has made is clear. From his submissions, including the appeal to this office, it appears that petitioner is seeking complaints relating to fare evasion, documented in SIP, and unbounded by time. However, petitioner has been too specific and that is not what he has actually requested. He has requested, alternatively, 1) rows and columns from a spreadsheet that does not exist; 2) a copy of all four columns from a database, which cannot be done without more contextual information to define a query; a database schematic, which TriMet's IT department says it does not have;[2] and the entire database, which TriMet asserts is exempt.

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[1] The sufficiency of this query in terms of specificity is not challenged by TriMet and is not at issue in this petition.

[2] While, with some work, TriMet likely could create a record listing all the data fields in the SIP database, the relevant question for purposes of responding to a public records request is if it already possesses such a record, which it has said it does not. With respect to the format in which records must be produced, we have previously held that, "[w]e do not interpret 'available' to mean 'capable of being created.'" *Petition of Kessler*, MCDA PRO 18-35 (2018). That rationale applies equally here. Such a request is analytically no different than an agency being asked to list each employee in a department, or the make and model of each vehicle in its motor pool. Such a record may already exist, and if it does must be disclosed, but the body need not create it specifically to respond to a public records request.

It appears that this matter could readily be resolve to everyone's satisfaction by petitioner submitting a public records request for data responsive to the same query made by OPB, but with the time period expanded from 60 days to whatever petitioner wants.[3] TriMet would then be able to run that query, generate a report, and provide it. TriMet has told petitioner and this office that it will do this.

As to the only of these requests that TriMet has actually denied, the request for the full database in its native format, we agree with TriMet that it is exempt from disclosure under ORS 192.345(15). This section exempts "Computer programs developed or purchased by or for any public body for its own use." To be clear, this exemption does not exempt the *data* contained in that database, however to provide the database in its native format would require the production of the software used to access that data for it to be of any utility. Since petitioner's purposes in seeking this data appear to be satisfied by TriMet running a custom query for him, and because TriMet has agreed that it will do this, further analysis of this exemption is unnecessary to resolve this matter.

ORDER

Accordingly, to the extent that petitioner seeks a full copy of the SIP database, the petition is denied. To the extent that petitioner wants TriMet to run a query against the database, TriMet is willing to do that, petitioner just needs to provide the parameters for the query.

Very truly yours,
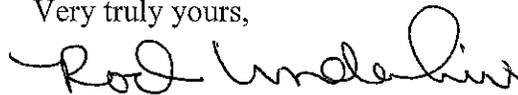
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[3] It does not appear that petitioner previously had the benefit of seeing precisely what OPB had requested in order to get their response, but having been copied on TriMet's submission to this office he now has access to that information.