



ROD UNDERHILL, District Attorney for Multnomah County

600 County Courthouse • Portland, Oregon 97204 • 503 988-3162 • FAX 503 988-3643
www.mcda.us

February 24, 2020

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

Jenifer Johnston
Sr. Deputy City Attorney
Portland City Attorney's Office
1221 S.W. Fourth Avenue, Suite 430
Portland, Oregon 97204

Re: Petition of Alan Kessler seeking screen captures of various GovQA interface screens

Dear Mr. Kessler and Ms. Johnston:

In his public records petition, dated February 11, 2020 petitioner, Alan Kessler, has appealed the denial of a public records request he made of the City of Portland for "screenshots of each page of the GovQA interface related to public records."

GovQA is the software that the City uses, under contract, to manage public records requests it receives. The City denied petitioner's request arguing that it does not possess the screenshots at issue and cannot be required to create them. Alternatively, the City further argues that the screenshots at issue, if it did create them, would be exempt from disclosure for a number of reasons. Because we agree with the City's first argument, we do not reach the merits of its substantive claims of exemption.

DISCUSSION

A. Creation of New Records

ORS 192.311(7) defines a "writing" as

handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings.

The public records law requires a public body to make available for inspection any writing in its possession that is not exempt from disclosure.

The legislature appears to have contemplated that software could be considered a "writing" under this definition, as it has enacted a specific exemption in ORS 192.345(15) for computer programs. But petitioner has not requested the GovQA software, he has requested that the City create screen captures of various views within GovQA and provide those to him. If the

City had already created such a screenshot, such a record would be subject to the public records law and presumptively disclosable unless the City established the applicability of an exemption.

The underlying software may be a writing but, assuming it is, it is exempt from disclosure under ORS 192.345(15). This section provides that “computer programs developed or purchased by or for any public body for its own use” are exempt from disclosure. The section goes on to state that the following related items are not exempt under this section “the original data;”¹ “analysis, compilations and other manipulated forms of the original data;” or “formulas which would be used if the manipulated forms of the original data were to be produced manually.” ORS 192.345(15)(a)–(c). None of the (a)–(c) carve-outs address the user interface of the software, thus we conclude that the user interface is part of the “computer program” for purposes of this section.

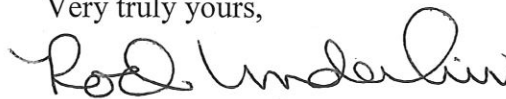
Petitioner’s request is, really, for a map of the user interface of GovQA. The user interface exists in City’s possession as the software itself, and this software is exempt from disclosure as described above. Under the public records law petitioner may not avoid this conclusion by asking the City to create screenshots of the user interface. A screenshot is the internal computer equivalent of a photograph, which is expressly included in the definition of “writing.” Requiring the City to create a screenshot of a particular view of its software would be akin to a requirement that it take a photograph of the arrangement of a particular employee’s workspace, something we do not read the public records law to require.

Having concluded that the computer program at issue is exempt and that the City is not required to create new records to separately document the program’s interface, we do not address the City’s alternative arguments relating to trade secrets under ORS 646.461(4) and 192.345(2).

ORDER

Accordingly, the petition is denied.

Very truly yours,



ROD UNDERHILL
District Attorney
Multnomah County, Oregon

20-06

¹ “Original data” expressly includes “numbers, text, voice, graphics and images.” In the context used, data refers to inputs to software and not to images or graphics that are generated by the software or transient representations that appear on a computer monitor. A particular view of a user interface is not in any sense “data;” to construe it otherwise would negate the exemption.