



**MIKE SCHMIDT**, District Attorney for Multnomah County

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February 5, 2021

Liani Reyna  
2282 Vermont Lane  
Naples, FL 34120

Jenifer Johnston  
Portland Office of City Attorney  
1221 SW 4<sup>th</sup> Avenue, Suite 430  
Portland, OR 97204

Re: Petition of Liani Reyna challenging the City of Portland's response to a request for a draft memorandum

Dear Ms. Reyna and Ms. Johnston:

Petitioner, Liani Reyna, has filed an appeal with this office asking us to order the City of Portland to disclose a record as part of a public records request from 2019.

Petitioner's initial request from October 2019 was quite broad, asking for "all documents and correspondence referencing Liani Reyna." In December 2019 petitioner asked this office to order the City to respond to this request. While that petition was pending with our office, the City responded to the underlying request, proposed search terms, and drafted a fee estimate for searching emails and text messages. Ms. Reyna objected to the fact that this estimate did not include searches for documents outside texts and emails.<sup>1</sup>

On December 6, 2019, the City followed up with another description of the search parameters it could conduct for relevant documents, again limited to emails and texts, which included the following language, "If this search is incorrect or you would like to make changes, please notify us immediately. If you do not make changes, paying the estimate is confirmation of these proposed search parameters." In a later message, the City clarified, "Please note that this estimate is purely for searching for and collecting emails and text messages." The City ultimately delivered these text messages and emails per its search parameters and then closed out the underlying request.

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<sup>1</sup> It is common for individuals to present broadly worded requests for public records from an agency and for that agency to respond with a request for clarification or engage in a conversation intended to apply the agency's knowledge of its own records to more narrowly tailor a request. Often a literal interpretation of a request would require an immense amount of work to comb through all possible records repositories for potentially responsive documents. Because agencies can properly pass the costs for this work on to requesters, it is in both parties' interests to communicate and negotiate how a request can be tailored to limit unnecessary work and cost in producing the requested information. From the standpoint of system efficiency, we appreciate and endorse such discussion and compromise.

Were the message history in GovQA, the software the City uses to manage records requests, on this request the only record of communication between the parties, we would agree with the City that 1) the initial broad request had been narrowed, 2) the fee payment by petitioner constituted an acceptance of that narrowed request which the City could reasonably rely on, and 3) that it then complied with the request as narrowed.

However in this particular case, contemporaneous with the communications within the City's GovQA request management system, the counsel for the City was also submitting briefing to this office as part of the litigation of that appeal. On December 6, 2019 counsel for the City emailed this office and petitioner and stated "The City has provided you with an initial estimate for searches and will provide an updated estimate for searching additional locations. I think this resolves the issues you raised in your appeal." Three days later in the more formal briefing submitted to this office, the City stated: "*As to the other records* sought by petitioner, the City explained that it was continuing to work on providing an estimate and would send [petitioner] that estimate soon." MCDA PRO 19-60, City's Response Brief (Dec. 9, 2019) (emphasis added).

We relied on these representations when we wrote in our order denying the 19-60 petition, "[the Portland Police Bureau] has now responded to her request, set out a plan to progress through the various categories of records that need to be searched, and quoted a fee for the *initial portion of that work.*" (emphasis added).

Taken together this indicates to us that the fee that petitioner paid was for completion of the first "bucket" to be searched, not for the entirety of the request and, accordingly, further estimates should have been forthcoming for other categories of documents.

That does not, however, ultimately resolve the question here. Petitioner has requested a copy of a very specific document that, based on her review of the emails provided to her she believes exists. This document may or may not exist and may or may not be responsive to the overarching request. The petition in this case does not ask this office to find that the City has unduly delayed its response to her 2019 request (which the city prematurely closed).

So, although we find that the City did not properly process the original request, the remedy sought here, ordered disclosure of a single document, is also not fitting to the posture of this case. Routinely, a broad document request will cause a requester to identify other discrete documents that he or she wants. That requestor can then submit a new request for those records.

That leaves petitioner with one of two options: 1) a petition seeking to compel the City to reopen the original request and proceed with quoting fees for other categories of records beyond texts and emails would likely be granted,<sup>2</sup> or 2) a new, narrow request for the specific document at issue could be made.

Having today issued our ninth and tenth orders in the last three years involving petitioner's pursuit of records relating to the same general topic from the City of Portland, we frankly expect the parties to move on from this dispute absent some extraordinary development.

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<sup>2</sup> The City has copied this office on communication to petitioner indicating that it is in the process of doing just this, so any request for that relief would likely be moot.

We have no interest in further tying up the machinery of public records review to police the minutia of broad requests on this topic of personal interest. An obvious compromise would be for the City to provide the specifically requested memorandum to petitioner, which we would encourage to be at no additional cost, and both parties to agree that this completes the City's response to the October 23, 2019 request, without prejudice to petitioner making additional records requests for specific documents if she so desires in the future.

That said, we lack the authority in this posture to order that. As to the specific document requested, a public records request for it has not been made to the City so a request for that memorandum has not been denied and, accordingly, we must deny the petition at this time.

**ORDER**

As to the specific issue presented in this petition, the petition is denied.

Very truly yours,

A handwritten signature in blue ink that reads "Mike Schmidt". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

MIKE SCHMIDT  
District Attorney  
Multnomah County, Oregon