



MIKE SCHMIDT, District Attorney for Multnomah County

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May 11, 2021

Jeff Merrick
7891 S.E. 15th Avenue
Portland, Oregon 97202

Brett Mersereau
2100 N.E. Broadway, #119
Portland, Oregon 97232

Re: Petition of Jeff Merrick seeking an order requiring the Riverdale School District to provide a more prompt response to a public records request

Dear Mr. Merrick and Mr. Mersereau:

Petitioner, Jeff Merrick, has asked this office to order the Riverdale School District (Riverdale) to fulfill his client's public records request more promptly. Petitioner made a multi-part public records request of Riverdale on February 12, 2021. On February 24, 2021 Riverdale acknowledged the request and indicated that a fee estimate would be forthcoming. On April 6, 2021 Riverdale provided a fee estimate for the entire request, calculated at an hourly rate of \$75. On April 26, 2021 petitioner indicated that his client wished to proceed with only one part of the February 12, 2021 request, specifically:

4. Records regarding Riverdale's actual and projected Revenues, Expenses and Ending Fund Balance for the fiscal year ending June 30, 2020 created or conveyed between May 1, 2020 and December 1, 2020.

He further narrowed the scope by indicating that the only subset of responsive records he sought were those between May 1, 2020 and June 30, 2020 and constrained the request to emails in two specific email boxes.

On April 28, 2021 petitioner's client tendered payment sufficient to cover 2.6 hours of work and requested that work proceed.¹ Riverdale responded on May 4, 2021 that it would complete the work by the 15th business day after Riverdale received payment.²

An election at which multiple seats on the Riverdale School Board are being contested is occurring on May 18, 2021. Petitioner, believing responsive records might be relevant to that

¹ This posture is somewhat unusual in that Riverdale has provided no estimate for how long it believes responding to this narrowed request will take. Rather, petitioner has advanced payment based on the hourly rate put forth by Riverdale and requested that that much work proceed with the expectation that this will be in excess of what is required to fulfill his request.

² Riverdale initially stated it would respond by May 20, 2021, but during communication relating to this petition it became clear that this was a counting error and Riverdale's intention was to indicate the fifteenth business day from April 28, 2021. Counsel clarified that in an email to this office and petitioner that this would be May 19, 2021.

election, petitioned this office under ORS 192.407 and requests we order Riverdale to respond more promptly.

As discussed below, we grant the petition and order Riverdale to complete its response, or as much of it as can be completed in the 2.6 hours that have been paid for, by 5:00 pm Friday, May 14, 2021.

DISCUSSION

A. Unreasonable Delay – ORS 192.407

i. The district attorney's authority to review timeliness petitions

A public body is required to complete its response to a public records request, or provide an estimate of when it will do so, “as soon as reasonably possible but not later than 10 business days after the date by which a public body is required to acknowledge receipt of a request.” ORS 192.329(5). A public body must acknowledge a public records request five business days after receipt. ORS 192.324(2). Read together, these statutes provide an outside limit of 15 business days from receipt of a public records request to responding, absent circumstances giving rise to a exceptions not at issue here.

This fifteen-day timeline is tolled by the public body issuing a fee estimate or good faith request for clarification. ORS 192.329(3) and (4) respectively. Here, the request was received on February 12, 2021 and Riverdale responded on April 6, 2021 with the issuance of a fee estimate.³ By our count, 36 business days had elapsed. The clock began to run again on April 28, 2021 with the receipt of payment and direction to proceed on only a portion of the initial request.

On May 4, 2021 Riverdale stated it intended to completed its response on May 20, 2021, which would be 52 business days (not counting the period during which fees were estimated, but not paid) after receipt of the original request and 16 business days after receipt of payment.

Because Riverdale did not complete its response, or provide an estimate of when it would, within 15 business days of receipt of the original request, we have jurisdiction under ORS 192.407(1)(a), which grants us authority to review “[t]he failure of a public body to provide the response required by ORS 192.329 within the prescribed period.”

However, even assuming, as counsel urges, that we treat April 26, 2021 as the initiation of a new public records request for purposes of the ORS 192.329 timeline, we still have jurisdiction based on the May 4, 2021 estimate of time to completion. ORS 192.407(1)(b) grants us authority to review the reasonableness of “[a]n estimate of time provided by a public body pursuant to ORS 192.329, if the person believes that the estimated time frame for the response is unreasonably long and will result in undue delay of disclosure.”

³ We have not been provided with any additional communications during this period relevant to the statutory timelines, so the analysis that follows presumes there were none.

ii. Reasonableness of timing

Riverdale informs us that it is a small district and its front office at present has only three staff other than the superintendent. These staff are unusually busy with the work involved in managing the unprecedented upheaval of the pandemic.

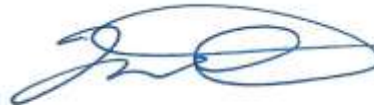
We are not unsympathetic to those concerns, but we have been provided no information to suggest that these competing duties have hard deadlines, or will otherwise be somehow less pressing after the upcoming election. While a delay of one or two days will rarely be of substantial significance to a public records request, there are situations where that is not the case. Records of potential relevance to an imminent election present such a situation.

Riverdale has not established that it is exempt from the ordinary timelines under ORS 192.329(6). Whether we consider this matter under ORS 192.407(1)(a) or ORS 192.407(1)(b) we conclude that Riverdale can reasonably complete, and as such must complete, its response to this request by close of business this coming Friday. This will allow Riverdale three full business days to perform, at most, 2.6 hours of work while still allowing time for relevant use of any information contained in the records by petitioner.

ORDER

Accordingly, the petition is granted. Pursuant to ORS 192.407(3)(a), Riverdale shall complete its response to this request, or as much of it as can be completed in 2.6 hours, no later than May 14, 2021 at 5:00 pm.

Very truly yours,



MIKE SCHMIDT
District Attorney
Multnomah County, Oregon