



MIKE SCHMIDT, District Attorney for Multnomah County

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December 16, 2021

William Gary
Harrang Long Gary Rudnick P.C.
1050 S.W. Sixth Avenue, Suite 1600
Portland, Oregon 97204

Shane Abma
Office of the Metro Attorney
600 N.E. Grand Avenue
Portland, Oregon 97232

Re: Petition of William Gary, on behalf of People for Portland, seeking a fee waiver from Metro

Dear Mr. Gary and Mr. Abma:

Petitioner William Gary, on behalf of People for Portland, has petitioned this office seeking an order compelling Metro to grant a waiver of fees in response to a public records request.

On September 28, 2021 counsel for People for Portland made a public records request to Metro seeking two categories of records relating to the Supportive Housing Tax and, broadly, two years of financial records showing amounts paid to individual contractors for services related to houselessness.

Metro provided petitioner with a fee estimate of \$618 to produce these records. People for Portland then requested a fee waiver pursuant to ORS 192.324(5). Metro responded that it was not charging for producing two categories of records (an intergovernmental agreement and documentation of amounts paid to the City of Portland for collection of the Supportive Housing Tax), denied the waiver as to the financial records, and maintained its \$618 fee. People for Portland paid the fee, the records were produced, and this appeal ensued. During the pendency of this appeal, after consideration of full briefing from petitioner, Metro agreed to grant a 50% fee reduction and refund the overpayment to People for Portland.

Because we agree that this constitutes a “substantial reduction” of Metro’s fee, and that Metro’s decision to grant this was not unreasonable given all the circumstances, we deny the petition.

DISCUSSION

A. Fee Waiver – ORS 192.324(5)

ORS 192.324(5) provides that,

The custodian of a public record may furnish copies without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public.

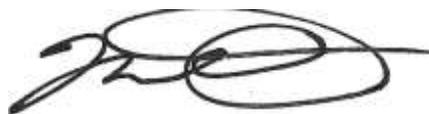
The parties are in agreement as to the framework governing our review of this matter. First, the standard of review is abuse of discretion. That is, we may only determine whether or not a public body acted within the permissible bounds of discretion and may not substitute our judgment for that of the agency. See, *Petition of Kessler*, MCDA PRO 21-27 (2021). Second, in evaluating the public body's exercise of discretion we consider, "(1) the character of the public interest in the particular disclosure, (2) the extent to which the fee impedes that public interest, and (3) the extent to which a waiver would burden the public body." PUBLIC RECORDS AND MEETINGS MANUAL (2019) at 24.

The public interest in governmental responses to houselessness is undeniable. Metro acknowledges as much by granting a 50% reduction in the fees that could have been assessed had the request not met criteria for a public interest waiver or reduction.¹ Considering all the factors outlined in *Kessler* and the Manual we cannot find that granting of such a substantial reduction in fees constituted an abuse of Metro's discretion.

ORDER

Accordingly, the petition is denied.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mike Schmidt", with a long horizontal stroke extending to the right.

MIKE SCHMIDT
District Attorney
Multnomah County, Oregon

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¹ It is unclear on this record how much time was taken to locate and provide the two categories of records that were produced free of charge. In any event, the total reduction granted is in excess of 50%.