



MIKE SCHMIDT, District Attorney for Multnomah County

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

December 16, 2021

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

Jenny Madkour
Multnomah County Attorney
501 S.E. Hawthorne Boulevard, Suite 500
Portland, Oregon 97214

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

Dear Mr. Gary and Ms. Madkour:

Petitioner William Gary, on behalf of People for Portland, has petitioned this office seeking an order compelling Multnomah County to grant a full, or increased, 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 the County seeking records in multiple categories relating to houselessness and governmental responses thereto including: funds spend under an Intergovernmental Agreement with the City of Portland; reports from the Joint Office of Homeless Services; shelter bed locations and occupancy rates; contractors receiving funds to provide relevant services; and county commissioner text messages relating to homelessness issues.

The County indicated it would provide the records upon receipt of \$1,820 in fees pursuant to ORS 192.324(4). The County also denied petitioner's request for an additional fee waiver on the grounds that the \$1,820 quote already incorporated a reduction from the County's true costs in reviewing and producing the records. Petitioner paid those fees and all responsive records have been provided.

Petitioner now appeals and argues that the County's decision with respect to the fees was unreasonable. We conclude that the County's decision to grant what amounts to a 66% fee reduction was not unreasonable and 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.

In justifying the County's decision to grant only a partial waiver of fees, counsel for the County writes:

The public records request in this matter was complicated and vast in scope, resulting in tens of thousands of records, emails, and text messages. Collecting these materials required five elected officials and their Chiefs of Staff, three Information Technologies and security staff, and County Attorney staff dedicate more than 75 hours to research, review and respond to Petitioner's requests. Notwithstanding these significant efforts, Petitioners were only charged for 26 hours at \$70.00 per hour.

The public interest in governmental responses to homelessness is undeniable. The County acknowledged as much by performing over 50 hours of work on this request at no cost to petitioner. This amounts to approximately a 66% 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* we cannot find that granting of such a substantial reduction in fees constituted an abuse of the County's discretion.

ORDER

Accordingly, the petition is denied.

Very truly yours,



MIKE SCHMIDT
District Attorney
Multnomah County, Oregon

21-60

¹ The County does not indicate the hourly rate that could have been charged for the 50 hours of uncompensated time, nor the hourly rate in excess of \$70 it could have charged for the time billed at \$70. We are unable to determine with precision the dollar value of the fee waiver, but it is clear on this record that a substantial fee waiver was granted.