



MIKE SCHMIDT, District Attorney for Multnomah County

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January 11, 2022

Patrick Cashman
3024 S.W. Iowa Street
Portland, Oregon 97239

Hope Whitney
General Counsel – Prosper Portland
220 N.W. Second Avenue, Suite 200,
Portland, Oregon 97209

Re: Petition of Patrick Cashman seeking records from Prosper Portland

Dear Mr. Cashman and Ms. Whitney:

Mr. Cashman has petitioned this office requesting that we order Prosper Portland to release to him: "...the final, as-submitted to the US Department of Defense, 'redevelopment plan' prepared by the Local Redevelopment Authority for the SFC Jerome Sears Reserve Center at 2731 SW Multnomah Blvd[.]" Mr. Cashman had made a public records request for this document, to which Prosper Portland responded that, having searched for the record, it did not possess it.

Mr. Cashman argues that, under the applicable laws and regulations Prosper Portland (then known as the Portland Development Commission) should have it because at the relevant time it was the local redevelopment authority, and thus had obligations under the federal Defense Base Closure and Realignment Act of 1990 (P.L. 100-526). Prosper Portland responds by again asserting it does not have the requested record, and explaining the legal process that resulted in the transfer of relevant records and responsibilities from the Portland Development Corporation to the Portland Housing Bureau in 2010. Prosper Portland suggests that, if anyone has this record, it is the Portland Housing Bureau.

For purposes of this order we need not, and do not, resolve whether or not Prosper Portland was legally required to have retained the redevelopment plan at issue here despite Portland Housing Bureau's assumption of responsibilities in this area. Mr. Cashman argues that Prosper Portland is the custodian of this record, notwithstanding that it no longer possesses it, because it originally created it. See, ORS 192.311(2) (defining "custodian" as "a public body mandated, directly or indirectly, to create, maintain, care for or control a public record") and 192.311(5) (defining "public record" to include "any writing that contains information relating to the conduct of the public's business, [...] prepared, owned, used or retained by a public body[.]")

For purposes of our authority to order records produced under ORS 192.415(1)(a), we have previously held that the sole relevant question is current possession of a record.

Although [petitioner] is correct that the definition of a "public record" includes any record "prepared, owned, used or retained by a public body," and these videos

were indeed prepared by [the public body], that is not the totality of the analysis to compel disclosure. A public body must presently be the actual or constructive custodian of a record in order to be required to produce that record for review.

Petition of PETA, MCDA PRO 19-03 (2019). See also, *Petition of Apanel*, MCDA PRO 17-57 (2017) (“the public records law does not require agencies to produce records they do not possess.”)

Prosper Portland has responded to petitioner, in writing, that it has searched for the requested record and does not possess it. This completes its response to this public records request pursuant to ORS 192.329(2)(d). Prosper Portland has also pointed petitioner to the likely custodian of the record he’s seeking: the Portland Housing Bureau.

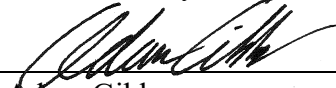
I cannot order Prosper Portland to provide a record it does not possess.

ORDER

Accordingly, the petition is denied.

Regards,

MIKE SCHMIDT
District Attorney
Multnomah County, Oregon

By: 
Adam Gibbs
Sr. Deputy District Attorney