



MIKE SCHMIDT, District Attorney for Multnomah County

1200 SW First Ave, Suite 5200 • Portland, Oregon 97204 • 503 988-3162 • FAX 503 988-3643
www.mcda.us

August 12, 2022

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

Jonathan Strauhull
Assistant County Attorney
501 S.E. Hawthorne Boulevard, Suite 500
Portland, Oregon 97214

Re: Petition of Patrick Cashman seeking a fee waiver from Multnomah County

Dear Mr. Cashman and Mr. Strauhull:

Mr. Cashman has petitioned this office, as authorized by ORS 192.415, requesting that we order Multnomah County to reduce the fee it quoted to complete a public records request. The public records request at issue is for:

The contract and all prior to and afterwards communication discussing negotiation of, agreement to, execution of, assessment of, termination of the same for the move of squatters from the Old Town squat to the deed violating Sgt Jerome Sears squat. Include all vendors working on your behalf and at your behest in your search.

The County states that it has located over 10,000 email conversations potentially responsive to this request and estimates it will take significant time to process the records and review for potentially exempt materials. The County initially estimated \$2,840 to cover the costs of staff time to conduct the review. The County states that it inquired if petitioner was willing to narrow the scope of his request to reduce the costs, but petitioner did not agree to such a reduction. Regardless, the county granted a \$1,000 fee reduction. Petitioner appeals, arguing that these costs are arbitrary and intended to prevent the public from reviewing the County's work.

For the reasons discussed below, 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.

To the extent petitioner challenges the fee in this case as arbitrary and not accurately representing the County's true cost in responding to his request, this is not a claim that the Public Records Law allows the district attorney or Attorney General to consider. See, *Petition of Mayes*, Att'y Gen. PRO (3/29/2000) (finding that "the Public Records Law does not give the Attorney General the authority to review the fees charged by a state agency and to determine whether or not these fees in fact represent the agency's actual cost of making the records available.") *Petition of Babcock*, MCDA PRO 15-22 (2015) (holding that *Mayes* applies equally to district attorney review).

While a fee estimate could be so disproportionate to the work involved as to "announce that the true purpose of the fee quote is to deny access to records," this is not such a case. *Petition of Wright*, MCDA PRO 16-29 (2016). A fee estimate of around \$3,000 to review 10,000 documents is consistent with similar estimates that we have reviewed in matters involving expansive requests. See, for example, *Wright* (\$16,000 in fees to review 9,000 emails and three years of text messages from seven phones); *Petition of Sarich*, MCDA PRO 19-40 (2019) (\$3,000 in fees to cover review of 14,588 pages of records); *Petition of Buchal*, MCDA PRO 18-18 (2018) (\$8,552 in fees to review 17,200 emails).

We turn then to the County's decision to grant only a partial fee waiver. The fee waiver statute sets out a two-step analysis. First, the public body must determine if access to the record would primarily benefit the general public. If yes, then the body may elect to waive its fees. *Petition of Brosseau*, MCDA PRO 17-21 (2017). The Attorney General has advised that in exercising its discretion on the second step an agency should 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 (hereafter "MANUAL").

In reviewing an agency's fee waiver determination, the district attorney may only determine whether or not the agency acted within the permissible bounds of discretion; we may not substitute our judgment for that of the agency. ORS 192.324(6).

Issues of houselessness in our community are of significant public interest. However, this in itself does not entitle a requestor to a full waiver of fees. An agency is within the bounds of its discretion to elect to reduce a fee rather than eliminate it for a burdensome request. Here the County has granted a fee reduction of 35%. As we noted in a similar case: "given the limited information provided to [the agency] to assess the fee waiver request, the breadth of the request, and the lack of any attempt to work with [the agency] to focus or limit the scope of the request we cannot say that [the agency's] decision to deny a fee waiver was an abuse of its discretion." *Petition of Wilson*, 18-48 (2018).

In the specific area of governmental responses to houselessness, we have affirmed a similar decision to offer a substantial reduction in fees instead of a full waiver. *Petition of Gary*, MCDA PRO 21-59 (2021) (decision not to fully waive fees in request by policy advocacy group not an abuse of discretion where substantial reduction was offered instead). Having considered the nature and magnitude of this request as well as the prior decisions cited above, we conclude

Page 3
August 12, 2022
Petition of Cashman

that Multnomah County did not abuse its discretion in deciding to grant a partial fee waiver to petitioner in this matter.

ORDER

Accordingly, the petition is denied.

Regards,

A handwritten signature in blue ink, appearing to read "Mike Schmidt", with a stylized flourish at the end.

MIKE SCHMIDT
District Attorney
Multnomah County, Oregon

22-32