



MIKE SCHMIDT, District Attorney for Multnomah County

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November 2, 2022

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

Re: Petition of Patrick Cashman seeking records from the City of Portland

Dear Mr. Cashman:

You petitioned this office requesting that we order the City of Portland to provide you with: "...all deliverables provided to the City by contractor Black and Beyond the Binary Collective in satisfaction of their contract to provide training adorably called; 'We Keep Us Safe' throughout 2022."

The City's initial response to your request was that it was not required to answer questions about its operations, that you had not requested a specific document, and closed your request. An exchange ensued where you pointed to a contract with the City that specifies certain obligations for the vendor and again said you wanted the deliverables. The City responded indicating that the relevant contract did specify that the training sessions were to be recorded, but that, as it had similarly responded to five prior public records requests made by you for that video and other materials from the training, the City did not possess records responsive to your request beyond a single annual report, which it has provided to you.¹ This appeal ensued.

In its response to this appeal, the City again points out that regardless of what the contract does or does not say, factually it does not possess any additional records it believes responsive to your request. The City has invited you to be more specific if there is a particular record or type of record you think is responsive to your request that the City might have but, absent such additional clarification, it has conducted a reasonable search and has provided you with everything it has.

¹ The City wrote to you on October 24, 2022:

In response you have asked in 5 different requests for the video of the training session "We Keep Us Safe" and other material related to that session. In response to these request, the City stated that it did not have that material. In response to the closed request C221237-032522, you asserted on March 30, 2022 that "The video of the training is a deliverable of the contract. Look again. From the grant: "These events will be open to the public, accessible, and recorded to be later shared on social media." First, if that session had been recorded it does not necessarily mean that that City would take custody of a recording because it did not. Second, the City decided to not require recording as part of this contract. You have now made 2 requests for deliverables from the contract with "Black and Beyond the Binary" The City has asked you to identify a document or records you want because the City does not have a contract with Black and Beyond the Binary but with SEUL. The City does not have a recording of the "We Keep Us Safe" training.

This office has consistently held that “where a public body asserts that it does not possess any public records responsive to a request we are not equipped or empowered to evaluate that determination.” *Petition of Alan Kessler*, MCDA PRO 18-28 (2018), citing *Petition of Monahan for Willamette Week*, MCDA PRO 16-25 (2016) at n.4. See also, *Petition of Apanel*, MCDA PRO 17-57 (2017) (“We do not have the jurisdiction to determine if an agency is required by law to possess a particular record. [...] the city has not denied a public records request in this case because the public records law does not require agencies to produce records they do not possess.”)

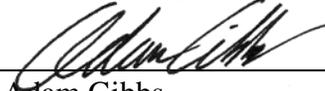
Your request presents the same issue as the orders cited above. The City has completed its response to your request to the extent it seeks video and other training materials by asserting it is not the custodian of responsive records. To the extent that you believe your request includes some other category of records, it has requested clarification. These are permissible responses under ORS 192.329.

ORDER

Accordingly, the petition is denied.

Regards,

MIKE SCHMIDT
District Attorney
Multnomah County, Oregon

By: 
Adam Gibbs
Sr. Deputy District Attorney

Cc: Jenifer Johnston, City of Portland

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