



MIKE SCHMIDT, District Attorney for Multnomah County

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February 7, 2023

VIA EMAIL ONLY

Dan Hagan
danhaganlycos@gmail.com

Re: Petition of Dan Hagan seeking review of a denial of a fee waiver

Dear Mr. Hagan:

You submitted a petition to this office challenging TriMet's decision to deny your request for a public records request fee waiver. ORS 192.324(6) provides this office with authority to determine whether or not a public body acted unreasonably in denying a public records fee waiver.

In this case you had asked TriMet to produce the recording of a phone call between yourself and TriMet customer service from December 12, 2022. You further told TriMet that release to you would serve the public interest because you intended to post the recording on YouTube, where it would be freely available. As such, you argued that TriMet should have waived the \$20.20 that it has estimated it will cost to locate and provide you with the recording. TriMet disagreed and declined to waive the estimated fee.

TriMet states that it appropriately denied the fee waiver in this case because release of the recording to you would not primarily benefit the general public as required by ORS 192.324(5).¹ Our standard of review in fee waiver cases is "abuse of discretion." *Petition of Sarich*, MCDA PRO 19-40 (2019) ("In reviewing an agency's decision to deny a fee waiver, 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.")

Your case presents a situation we have previously considered on multiple occasions: a person believes that a public body has acted incorrectly towards them and wishes to publicize that fact by obtaining the recording of the interaction at issue. Following the guidance of the Attorney General, in each case we have concluded that the public body did not abuse its discretion in denying the requested fee waiver. See, *Petition of Kessler*, MCDA PRO 22-42 (2022) ("it was within the permissible bounds of discretion for [the City] to conclude that a requestor seeking records relating to them personally is not in the public interest"); *Petition of Shore*, MCDA PRO 17-53 (2017) (request relating to a "discrete incident involving [requestor] and the public agency" was a "quintessential personal interest request"); ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2019) at 23 ("If a requestor seeks records relating to the

¹ ORS 192.324(5) provides that, "[t]he 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."

Page 2
February 7, 2023
Petition of Hagan

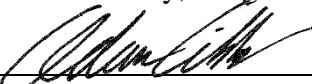
requester, a mere allegation that the public body has treated the individual oppressively, absent a broader public interest, does not satisfy the public interest standard.”)

As in *Kessler* and *Shore*, it was not unreasonable for TriMet to have concluded that release of records concerning your own interactions with their staff would not primarily benefit the general public.

Accordingly, I must deny your petition.

Regards,

MIKE SCHMIDT
District Attorney
Multnomah County, Oregon

By: 
Adam Gibbs
Sr. Deputy District Attorney

23-09