



MIKE SCHMIDT, District Attorney for Multnomah County

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March 1, 2023

VIA EMAIL ONLY

Patrick Cashman
pcashman20@gmail.com

Trevor Byrd
trevor.byrd@portlandoregon.gov

Re: Petition of Patrick Cashman seeking a public records fee waiver from the City of Portland

Dear Mr. Cashman and Mr. Byrd:

On February 9, 2023, petitioner, Patrick Cashman, made a public records request to the City of Portland for, “every application in full as received by the city for job number 2022-01472 Position—Independent District Commission.” The City provided petitioner with a fee estimate of \$1,352.43 to cover its costs to review the approximately 1,128 pages of application materials for exempt material. Petitioner then requested a public interest fee waiver, which the City denied.

For the reasons discussed below, we find that the City did not abuse its discretion in denying the requested fee waiver.

DISCUSSION

A. Fee Waivers – ORS 192.324

ORS 192.324(5) provides that:

The custodian of any 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.

ORS 192.324(6) provides that:

A person who believes that there has been an unreasonable denial of a fee waiver or fee reduction may petition the Attorney General or the district attorney in the same manner as a person petitions when inspection of a public record is denied under ORS 192.311 to 192.478. The Attorney General, the district attorney and the court have the same authority in instances when a fee waiver or reduction is denied as it has when inspection of a public record is denied.

An agency evaluating a requested fee waiver faces a two-step analysis. First, would making the records available primarily benefit the general public, that is, is it in the public interest? Second, if the request is in the public interest, the agency must then exercise its reasonable discretion to decide whether or not it will waive or “substantially reduce” the fees.

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. ORS 192.324(5).

Petitioner asserts that release of these records will show "what the grading method was, what were the standards, what the answers were, who the graders were, what the graders recorded, etc." He further states that he intends to disseminate these records to reporters and neighborhood associations and post them publicly on the website "muckrock.com."¹

The City responds that the criteria used to select commissioners is already freely available online, that the applications themselves inform none of the interests specifically identified by petitioner, that petitioner has not demonstrated an ability to meaningfully disseminate the requested records to the general public, that spending 24 hours of staff time in service of these ends is a substantial burden on the City, and lastly that the cumulative effect of petitioner's 700 public records request over the last two years and the 90 fee waivers it has already granted to him also weighs against granting a waiver.

The district attorney does not have the authority under the public records law to assess the accuracy of a public body's fee estimate. See, e.g., *Petition of Mayes*, Att'y Gen. PRO (3/29/2000); *Petition of Merrick*, MCDA PRO 17-35 (2017); *Petition of Babcock*, MCDA PRO 15-22 (2015). We do have the authority to decide if a public body has unreasonably denied a fee waiver. ORS 192.324(5).

On this record we do not find the City's decision unreasonable. The City could reasonably conclude that, even assuming a marginal public interest in the records beyond the information already freely available, the outsized number of records requests from petitioner, and the significant burden of dedicating over 24 hours of staff time to process this particular request, did not justify granting a waiver in this case. See, *Petition of Wood*, MCDA PRO 18-50 (2018) (finding decision to deny fee waiver for request on a topic of public interest not unreasonable where fulfilling the request would take 17 hours of staff time); ATTORNEY GENERAL'S PUBLIC RECORDS MANUAL (2019) at 25 (consideration of aggregate effect of records requests from single individual proper in fee waiver analysis).

ORDER

Accordingly, the petition is denied.

Very truly yours,



MIKE SCHMIDT
District Attorney
Multnomah County, Oregon

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¹ Muckrock.com is a website that facilitates making public records requests to many governmental agencies across the country and serves as a public repository for records requestors to post the fruits of their records requests for others to access.