



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

April 10, 2023

VIA EMAIL ONLY

Liani Reyna
cougar1225@yahoo.com

Trevor Byrd
Deputy City Attorney
Trevor.Byrd@portlandoregon.gov

Re: Petition of Liani Reyna seeking access to investigative reports from an officer-involved shooting investigation.

Dear Ms. Reyna and Mr. Byrd:

On March 27, 2023, petitioner, Liani Reyna, submitted a public records petition to this office requesting that we order the City of Portland to waive the balance of its fees for completing its response to a November 12, 2022, public records request for records relating to its investigation of a 2001 officer-involved shooting. Petitioner has already paid for and received certain records responsive to her request. In this petition she requests that we order the City to produce the remaining responsive records without charge based on its significant delay in responding to her request and the public interest in the underlying records.

The procedural history of the City's response to this request is tortured. Indeed, the City's attorney acknowledges "the difficulty and frustration caused by the City in processing this request" noting that there "were misunderstood emails, completely missed emails, multiple estimates, 'refunds,' and lack of communication for long periods of time all present in this request." We appreciate counsel's candor in acknowledging the deficiencies present here, and concur with his characterizations of the record.

While we need not detail every back-and-forth that got this request to where it sits today, a broad procedural overview is necessary to explain our decision. In response to petitioner's request the City provided an initial estimate of \$12.50 to locate and produce up to 10 pages of police records as permitted by ORS 192.324(4). Petitioner promptly paid this fee on November 12, 2022. Thirteen weeks later, on February 13, 2023 the City produced the first 10 responsive pages, those covered by the \$12.50 payment, and quoted an additional \$163 for production of the remaining pages. Petitioner paid the additional costs, the City produced the written records, and neither they nor the associated fees are at issue in this appeal.

What remains at issue is an additional \$52.50 the City estimated for production of audio recordings from the investigation. Due to technical issues on the City's part, and despite multiple attempts to resolve the issue with the City prior to appealing to this office, petitioner was unable to make payment on this invoice. On March 27, 2023, a few hours after petitioner submitted this appeal, the City corrected the error that had been blocking attempts to pay this portion of the fee. The City also determined it had underestimated the costs for converting the audio cassettes to

digital format for production and stated its true costs for the work involved was approximately \$150. In light of the frustration it acknowledges its various responses have caused, the City further stated that it would waive recovery of its costs in excess of the initial estimate.

Although initially willing to pay the \$52.50 fee petitioner now requests this office to order the City to waive the \$52.50 given its delay and miscommunications throughout this process. The petition submitted to this office begins: "I am writing to file a petition to receive public records which have been unreasonably delayed for 135 days, approximately 19 weeks."

Looking only at the period between petitioner's initial payment on November 12, 2022, and the City's next communication with her on February 13, 2023, a period of 13 weeks, we find that this constituted undue delay under ORS 192.329(1) on this record. Further, the acknowledged deficiencies in the City's response throughout its processing of this request warrant an exercise of our remedial authority under ORS 192.407(1)(a) and (3)(c). As such, we need not determine whether or not the City abused its discretion in denying petitioner's request for a public interest fee waiver.

ORDER

Pursuant to ORS 192.407(1)(a) and (3)(c) the City of Portland is ordered to waive the \$52.50 fee and produce the non-exempt portions of the audio recordings without further cost to petitioner.

Regards,

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

MIKE SCHMIDT
District Attorney
Multnomah County, Oregon

Notice to Public Agency

Pursuant to ORS 192.411(2), 192.415, and 192.431(3) your agency may become liable to pay petitioner's attorney's fees in any court action arising from this public records petition (regardless whether petitioner prevails on the merits of disclosure in court) if you do not comply with this order and also fail to issue within seven days formal notice of your intent to initiate court action to contest this order, or fail to file such court action within seven additional days thereafter.