



Nathan Vasquez, Multnomah County District Attorney

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via email only

Ocean
oceanplot@gmail.com

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

Re: Petition of Ocean seeking a full fee waiver for provision of public records and order compelling inclusion of additional records within the request

Dear Ocean and Mr. Byrd:

On December 14, 2025, Ocean submitted a public records request to the City of Portland for:

the following records from January 1, 2019 to present, related to the Hazel Heights property operated by Central City Concern, located in the Hazelwood neighborhood of Portland: -- Contracts, grant agreements, or funding documents between the Portland Housing Bureau and Central City Concern relating to the Hazel Heights property. -- Compliance reports, audits, inspections, or evaluations of the Hazel Heights property. -- Records of complaints received by PHB regarding tenant safety, security, ADA compliance, or treatment of residents at the property. -- Communications between PHB and Central City Concern referencing safety concerns, security incidents, or compliance issues at the Hazel Heights property. -- Any corrective actions, enforcement measures, or notices of noncompliance issued relating to the property.

Ocean specified that they were an independent journalist and requested a public interest fee waiver. The City responded with a fee estimate of \$223.41 on December 23, 2025 for 4 hours of staff time. This included a 25% fee waiver based on its assessment of the relevant factors. Ocean further stated that as part of this request they wanted “any agreements executed in or after 2017 under the Stark Street Apartments project name” The City instructed Ocean to submit a new request for those documents as, in its view, this expanded to scope of the already-submitted request.

On January 5, 2026 Ocean petitioned this office, as permitted by ORS 192.324(6), seeking an order the City to grant a full fee waiver. Ocean additionally requests that I order the City to consider the specified 2017-present records as part of this request.

For the reasons discussed below, I 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.

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 (2024) at 20.

In reviewing an agency’s decision to deny a fee waiver, the district attorney may only determine whether the agency’s exercise of discretion was objectively reasonable; this office may not substitute its judgment for that of the agency. ORS 192.324(6). Even if this request advances the public interest, a public body is entitled to exercise its discretion to balance that interest against the burden on the body in fulfilling the request.

The City determined that petitioner “partially meet[s] the criteria that making the records available primarily benefits the general public,” and accordingly granted a 25% fee waiver. As factors in its decision the City points to the small size of petitioner’s audience and the burden on the City of reviewing and producing these materials.

The dispute then is whether the City acted unreasonably in declining to grant a full fee waiver as opposed to a partial waiver. *In Defense of Animals v. OHSU*, 199 Or App 160, 190 (2005) (“notwithstanding the legislature’s conferral of discretion on the public body, the public body’s decision whether to grant or deny a fee waiver or reduction must be reasonable. Reasonableness is an objective standard, under which we examine the totality of the circumstances presented”); *Petition of Bial*, MCDA PRO 24-33 (2024) (“Our role is not to select in the first instance which of multiple reasonable options this office believes best, but rather to evaluate whether or not the decision of the public body was among the reasonable options available. As *In Defense of Animals* instructs: the legislature has granted public bodies discretion, but their exercise of that discretion must be reasonable.”)

Ocean argues that the ability to “meaningfully disseminate” records does not appear anywhere in the fee waiver statutes. While literally true, the Attorney General has advised that this is a relevant consideration for public bodies in determining whether releasing particular records to a particular requestor primarily benefits the public at large, and to what extent. PUBLIC RECORDS AND MEETINGS MANUAL (2024) at 19 (“Regardless of how interested the public may be in the matter the requested records relate to, if the requester fails to demonstrate the ability to meaningfully disseminate the information, disclosure will not primarily benefit the public.”) I assume, without deciding, that petitioner’s posting of material to approximately 12,000 subscribers across various digital media platforms meets this standard.

On similar facts I recently concluded that granting a 20% fee waiver to an independent journalist was not an unreasonable balancing of the relevant factors. *Petition of Chatelle*, MCDA PRO 25-35 (2025) (balancing burden against interest for multiple months of emails relating to campus law enforcement and pro-Palestine student encampment). Applying the objective reasonableness standard of review in ORS 192.324(6), I likewise conclude that the City’s fee waiver decision here was within the range of legally permissible options under ORS 192.324(5). See also, *Petition of Raz*, MCDA PRO 23-93 (2023) (waiving 30% of fees for 9.7 hours to review 587 emails on the topic of police accountability was reasonable); *Petition of Cortright*, Att’y Gen. PRO (October 10, 2023) (20% fee waiver for 30 hours of work to locate and produce correspondence relating to a subcontractor on a high-profile freeway project was reasonable); *Petition of Darzen*, Att’y Gen. PRO (August 25, 2021) (noting state agency rules providing for at least a 20% fee waiver for requests in the public interest;¹ and ordering the same where public body had declined to waive any fees on request that furthered the public interest); *Petition of Brown for KXL 750*, MCDA PRO 04-10 (2004) (status as news media is not, in itself, sufficient to warrant a full fee waiver in every case).

B. Expansion of Request

Petitioner also takes issue with the City’s refusal to include additional records within the scope of their request. As quoted above, petitioner initially sought a collection of documents from 2019 to present. Subsequent to submitting the request, petitioner stated that they wanted the request to include “any agreements executed in or after 2017 under the Stark Street Apartments project name”

This question is not ripe for a decision. The City has issued a fee estimate, I have not overturned the City’s fee waiver decision, and petitioner has not paid the estimate. The City’s obligation to perform further work on this request is currently suspended. ORS 192.329(3)(a) (“If a public body has informed a requester of a fee permitted under ORS 192.324(4), the obligation of the public body to complete its response to the request is suspended until the requester has paid the fee, the fee has been waived by the public body pursuant to ORS 192.324(5) or the fee otherwise has been ordered waived.”) A determination of whether the Stark Street Apartments records are a “clarification” or an “expansion” of the original request would not change this.

ORDER

Accordingly, the petition is denied.

Regards,

NATHAN VASQUEZ
District Attorney
Multnomah County, Oregon

By: 

Adam Gibbs
General Counsel

26-01

¹ To be clear, the City of Portland is not a state agency, and the Department of Administrative Services rules do not apply to it. They are, nonetheless, a useful reference for the reasonableness of the City’s fee waiver decision.