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via email only

Jan L. Kahn
jan.kahn.pdx@gmail.com

Joyce Y. Wan
Senior Metro Attorney
joyce.wan@oregonmetro.gov

Re: Petition of Jan L. Kahn concerning Metro's denial of a public interest fee waiver

Dear Ms. Kahn and Ms. Wan:

On June 8, 2026, Ms. Kahn submitted a public records request to Metro for nine categories of records concerning the Central Household Hazardous Waste (CHHW) facility, where she works as a variable hour Hazardous Waste Technician, and she refined the request to its current form on July 1, 2026. On July 5, 2026, Metro issued a fee estimate of \$6,476.80, consisting of administrative, attorney, and manager labor to locate, compile, and review the responsive records. Ms. Kahn submitted Metro's fee waiver request form on July 24, 2026. Metro denied the waiver on July 29, 2026, concluding that the request "does not serve a public interest and is strictly related to a personal matter."

Ms. Kahn petitioned this office on August 3, 2026, as permitted by ORS 192.324(6), requesting an order that Metro's decision not to waive the fee in this case is unreasonable. She argues that the requested records bear on operational safety at a publicly funded hazardous waste facility, on how Metro managers conduct workplace investigations, and on Metro's compliance with civil rights and medical accommodation laws. She further argues that Metro's own written policy exempts requests connected to litigation from fees and that the estimate is in any event so large as to be a constructive denial. Metro responds that the records pertain to Ms. Kahn's own employment and her stated intent to litigate against Metro, and that its estimate reflects the actual cost of responding to the 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.

A fee waiver serves the public interest only when “the furnishing of the record has utility—indeed, its greatest utility—to the community or society as a whole,” as distinct from “a concern or interest of a private individual or entity.” *In Defense of Animals v. OHSU*, 199 Or App 160, 188-89 (2005). On review, I must determine whether Metro’s exercise of discretion was objectively reasonable.¹ *Id.* at 190 (“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”); *Petition of Bial*, MCDA PRO 24-33 (2024) (“the legislature has granted public bodies discretion, but their exercise of that discretion must be reasonable.”)

The records Ms. Kahn seeks are, by the terms of her own request, records about Ms. Kahn. The request seeks incident reports “involving, mentioning, or submitted by Jan Kahn”; facility maintenance requests “submitted by or involving Jan Kahn”; the recording, transcript, and chat log of her own June 24, 2025 performance review meeting; union correspondence “regarding complaints, friction points, or investigations involving Jan L. Kahn”; and communications between her supervisor and Metro Human Resources “regarding Jan L. Kahn’s medical accommodation disclosures, requested accommodations, performance tracking logs,” and the August 15, 2025 Letter of Reprimand issued to her. July 1, 2026 Amended Public Records Request.

The remaining categories (the work schedules for her facility and the internal discussion of the performance feedback process used with variable hour employees) concern the conditions of her own employment. “That a requestor seeks records pertaining to themselves, their family, or their business is strong, and usually dispositive, evidence that the interest advanced by release is primarily a private interest.” *Petition of Capone*, MCDA PRO 25-53 (2025). See also, *Petition of Ash*, MCDA PRO 24-05 (2024) (Metro reasonably denied a fee waiver to a requestor who sought the communications, disciplinary records, and ADA request records of their own employment).

Ms. Kahn told Metro that “this public records request is being conducted directly as part of the administrative litigation and discovery process for two active civil rights cases before BOLI.” July 29, 2026 Kahn Email to Metro. Her petition repeats the point. Petition, § III.2. The intent to use records in the requestor’s own litigation, anticipated or pending, does not create a public interest in disclosure. Indeed, it confirms that the interest advanced is a private one. *Petition of Fleisher*, MCDA PRO 26-53 (2026) (“That a requester seeks records concerning a dispute at his own residence, for use in his own anticipated litigation, is strong and usually dispositive evidence that the interest advanced by release is a private one.”) *Petition of DeMonaco-Davin*, MCDA PRO 26-51 (2026) (“A request whose primary use is to advance the requester’s own dispute with the agency is the paradigm of ‘a concern or interest of a private individual,’ not a benefit to the general public.”)

Describing the request as one about safety oversight at a publicly funded hazardous waste facility does not supply the missing public benefit. The safety records the request identifies are limited to incident reports involving, mentioning, or submitted by Ms. Kahn. Nearly any employee’s dispute with a public employer could be recast as bearing on workplace safety,

¹ Metro quotes *Petition of Wilson*, MCDA PRO 18-48 (2018), for the proposition that the standard of review for a fee waiver request is an “abuse of discretion” standard. Orders of this office said the same for many years. In *Bial* we recognized that this statement, quoted from previous orders this office issued, was in error. The correct standard of review is “objective reasonableness.”

management accountability, or civil rights compliance. The standard requires more than a generalized invocation of oversight; it requires that the records' greatest utility run to the community as a whole. *In Defense of Animals*, 199 Or App at 189. An allegation that the public body has treated the requestor herself unlawfully does not establish that interest. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2024) at 19 ("If a requester seeks records relating to the 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.")

Applying the objective reasonableness standard of review in ORS 192.324(6), I conclude that Metro's denial of the fee waiver was within the range of legally permissible options.

B. Metro's "Level 1" Policy

Ms. Kahn separately argues that no fee may be charged at all: Metro's public records policy defines a "Level 1 Request" to include "[i]nformation requested in the course of a litigation or discovery process" and states that "Level 1 requests are not subject to fees." Metro Public Records Requests Policy and Procedures (Sept. 2024), p. 2 (Petition Ex. F). That is not what that policy means. Regardless, assessing Metro's compliance with its own policies is outside my narrow authority under the public records law.

C. Fee Estimate – ORS 192.324(4)

Ms. Kahn asks in the alternative that I order Metro to reduce the estimate to "actual, reasonable clerical fees," describing \$6,476.80, and its \$4,510.88 manager labor component, as a constructive denial of access.

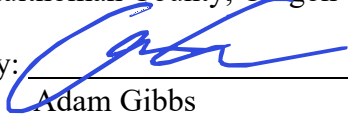
Under ORS 192.324(6) I may review the reasonableness of the denial of a fee waiver or reduction; I may not determine whether a fee estimate accurately states the cost to produce the records. *Petition of Kessler*, MCDA PRO 23-156 (2023) ("the Attorney General determined that there is no statutory authority for their office, or by extension the district attorney, to review the factual accuracy or reasonableness of a public body's fee estimate.") The fee estimate is not so grossly disproportionate to the work involved in gathering the records that would be responsive to this nine-item request as to announce that its true purpose is to deny access.

ORDER

Accordingly, the petition is denied.

Regards,

NATHAN VASQUEZ
District Attorney
Multnomah County, Oregon

By: 
Adam Gibbs
General Counsel