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June 16, 2004

Andrea R Meyer
American Civil Liberties Union of Oregon
P.O. Box 40585
Portland, OR 97240

Re: *Petition for Review of Denial of Fee Waiver*:
OLCC Records

Dear Ms. Meyer:

This letter is the Attorney General's order on your petition for review of the Oregon Liquor Control Commission's (OLCC's) response to your request for a waiver or reduction of fees for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on June 2, 2004, asks the Attorney General to "reconsider a reduction of the fee."[1] For the following reasons, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. ORS 192.440(3) authorizes a public body to establish fees reasonably calculated to reimburse it for its actual cost in making records available. OLCC has established fees through adoption of an administrative rule, which includes charges for copying and staff time. OAR 845-004-0020(4). Also, a public body may preliminarily estimate charges for responding to a records request and require prepayment of estimated charges in advance of producing records. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2004) (AG'S MANUAL) at 14.

[1] We appreciate your agreement to extend the time within which the law would have otherwise required us to respond to your petition.

You requested from the OLCC records regarding its Minor Entertainer rules, and you also requested a waiver of the fees associated with that request. In a letter dated May 28, 2004, OLCC, through Assistant Attorney General Charlie Ferrari, denied your request for a fee waiver, noting that its charge for staff time would be billed at the $13/hour rate

provided for by rule instead of the rate of $15/hour that was mistakenly quoted to you originally. In all, the OLCC charged you $216.15 for responding to your records request, with that charge breaking down as follows: 531 pages of copies ($0.25/page), 3.4 hours of staff time ($13.00/hour), and 0.4 hours of attorney time ($98.00/hour)."

Since you filed your petition, however, Merle Lindsay, Acting Deputy Director of OLCC, has informed us that on further review of this matter and taking into account the relevant factors, OLCC has determined it will grant a 25% reduction in the fee relating to your public records request. This will result in a reduction from $216.15 to $162.11. We will therefore address the propriety of that reduction in this order.

The Public Records Law authorizes a public body to waive or reduce fees if the public body "determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public." ORS 192.440(4). Relevant factors for making this determination include:

> [T]he requester's identity, the purpose for which the requester intends to use the information, the character of the information, whether the requested information is already in the public domain, and whether the requester can demonstrate the ability to disseminate the information to the public.

AG'S MANUAL at 17. The role of this office in responding to a petition for the denial of a fee waiver or reduction is to determine whether the public body acted unreasonably in its denial. ORS 192.440(5); AG'S MANUAL at 19.

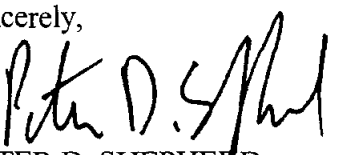
To meet the public interest test, the ACLU must demonstrate disclosure and dissemination of the requested documents "primarily benefit the general public." Your May 19th letter to AAG Ferrari states that the primary reason the ACLU has sought disclosure of the requested records is, in the event the OLCC consider the issue of minor entertainers in the future, the ACLU wants "to be able to disseminate the information obtained from the OLCC as far and wide as possible, particularly to those folks who by submitting the public comments that were the bulk of our public records request, indicated in interest in this issue." A subsidiary purpose stated in your letter is that disclosure makes the ACLU "better able to distribute to the public the specific concerns raised by individuals and groups (as there was never an opportunity to provide public testimony during this latter round of rulemaking)." Your letter notes that the ACLU

actions related to the OLCC's rules regarding minor entertainers is on behalf of the approximately 10,000 persons who comprise its membership in Oregon and the more than 20 plaintiffs involved in challenging the rules. Also, you note that, as part of its public education efforts, the ACLU is using its website, newsletter, "action alerts" and lobbying to do inform the general public with regard to OLCC's consideration of the minor entertainer issue.

Disclosure of the records might benefit the part of the public with a specific interest in rules that the OLCC might propose in the future. By the identity of the requester alone, it is clear that the interests in seeking the records are not "personal" in nature. Also, we recognize that the ACLU has taken steps in the past to inform a wider audience about the OLCC's consideration of the minor entertainer issue. Consequently, it appears that disclosure of the records would benefit the general public, and while the benefit is narrow in scope, it is sufficient to justify OLCC in granting some reduction of fees under ORS 192.440(4).

Given the comparatively constrained scope of the public interest served by the request, we do not find that OLCC's decision to grant a reduction of the fee instead of a complete waiver is unreasonable. Moreover, while the total fee is not large, we conclude that a 25 percent reduction is sufficiently substantial and is not unreasonable. *See* Public Records Order, April 7, 2000, Brownescombe (25 percent reduction of fee to $54.22 constituted a substantial reduction). Because we do not find that OLCC's ultimate disposition of your fee waive request is unreasonable, we respectfully deny your petition.

Sincerely,



PETER D. SHEPHERD
Deputy Attorney General

c: Judith Bracanovich, Oregon Liquor Control Commission

PDS:AGS14192