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April 23, 2002

Ryan Frank, Staff Writer
The Oregonian
Washington County Bureau
10100 SW Park Way
Portland, OR 97225

Re: *Petition for Review of Denial of Fee Waiver:*
Oregon Department of Public Safety Standards and Training

Dear Mr. Frank:

This letter is the Attorney General's order on your petition for review of the Department of Public Safety Standards and Training's (DPSST) denial of your request for a wavier of fees under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on April 9, 2002, states that DPSST denied your request to waive fees totaling $26.10.[1] For the reasons that follow, we deny your petitioner.

Background

According to your petition, you sent two public records requests to Alan Scharn, Deputy Director, DPSST, requesting information about current and former police officers employed by the King City Police Department. Specifically, your petition states that you first requested information about officers who worked for the city since October 1, 1997 and that you additionally requested the same information about officers who worked for the city between January 1, 1990 and October 1, 1997. You provided us a copy of the March 5th email and Mr. Scharn provided us with a copy of the March 13th email in which you made your requests. In response to your requests, DPSST created and provided to you two documents that included information on approximately ten officers.

DPSST Authority To Charge Fees

[1] We appreciate your extending the time within which the law would have otherwise obligated us to respond.

You state in your petition that you did not ask DPSST to provide you with public records but with "information" that could have been provided over the telephone.[2] Your petition also states that a public body is not authorized "to charge for information, short of providing a public record." The Public Records Law does not provide a person with a right to demand "information" from a public body. With certain limitations and exceptions, a person has the right "to inspect any public record of a public body in this state[.]" ORS 192.420. For this reason the Public Records Law allows a public body to charge fees to reimburse it for its actual cost in making *records* available. ORS 192.440(3).

According to Mr. Scharn, DPSST staff had to sort through information contained in an electronic database to compile the information you requested, and the majority of the 60 minutes of staff time required to respond to the two requests at issue was spent on this task. The review of the database would have been required regardless of the form in which DPSST provided the requested information. There appears to have been little increase in the agency's costs resulting from DPSST's decision to provide you with the requested information through creating two new records, even though the agency was not obligated to do so. *See* ATTORNEY GENERAL'S PUBLIC RECORDS AND PUBLIC MEETINGS MANUAL (AG'S MANUAL) (2001) at 5 ("The Public Records Law does not impose on public bodies the duty to *create* public records"). DPSST was within its authority in charging you a total fee of $26.10 for the 30 minutes of staff time needed to respond to each request.

Reasonableness of DPSST's Denial

According to your petition, the records requests for which you requested a fee waiver were two in a series that you made to DPSST related to an investigation of former King City Police Chief Jim Brooks. We agree with your assessment that disclosure of information to the Oregonian in relation to the investigation of Mr. Brooks served the public interest. Therefore, DPSST's denial of your request for a waiver of fees is judged as to its reasonableness. Factors we consider in judging the reasonableness of a denial include (i) financial hardship on the agency from waiving the fee, (ii) the extent of time, expense and interference with the agency's business in responding to the records request, (iii) the volume of records requested, (iv) the need to segregate exempt from non-exempt material, and (v) the extent to which inspection of original records would have been insufficient to serve the public interest. AG'S MANUAL at 18.

We have no basis to believe that waiving a fee of $26.10 would pose a financial hardship on DPSST. Mr. Scharn told us that responding to your requests interfered with DPSST's business in that trying to meet your need for an expeditious response caused agency staff to delay other work. Mr. Scharn estimates that DPSST staff reviewed approximately 20 records on the database system to respond to your requests. With regard to the third and fourth factors, we note that DPSST maintains the records relevant to your requests in an electronic database. The screens containing the information you requested also disclose additional material. To determine whether it would have been possible for you to view the database screens at DPSST, or for DPSST to provide you with hard copy printouts of those screens, would have required the

[2] Your March 5th and 13th email requests to DPSST, however, both state that the requested information "may be sent by fax * * * or mailed" to you, implying that you anticipated receiving written records.

agency to determine whether any of the additional material on those screens was exempt from disclosure. This activity would have taken additional time and added to the agency's costs, and, consequently, to the fee charged for providing the records. By collating the information you requested into new documents, instead of providing the records in a form that made consideration of exemptions necessary, it appears that DPSST chose a cost-efficient method by which to respond to your requests.

While $26.10 is not a significant amount of money, it reflects the fact that DPSST staff spent 60 minutes responding to your two requests. Given that providing a quick response to your requests caused some interference with the agency's business, and that DPSST acted in a cost-effective manner that kept its fee minimal, we find DPSST's denial of your request to completely waive its fee of $26.10 reasonable. Mr. Scharn has agreed to reduce DPSST's fee of $26.10 to $20. We find this approximately 25 percent reduction of the combined fee for responding to your March 5th and 13th requests to be reasonable, and, therefore, respectfully deny your petition.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS10066
c: Alan Scharn, Deputy Director, DPSST