HARDY MYERS
ATTORNEY GENERAL

PETER D. SHEPHERD
DEPUTY ATTORNEY GENERAL



DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97301-4096
Telephone: (503) 378-4400
TTY: (503) 378-5938

June 20, 2001

Paul B. Meadowbrook
285 Liberty St. NE, Suite 360
Salem, OR 97301

Re: Petition for Disclosure of Records and Review of Fee
Department of Aviation

Dear Mr. Meadowbrook:

This letter is the Attorney General's order on your petition for disclosure of records and review of fees under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition,[1] which we received on June 13, 2001, asks the Attorney General to direct the Department of Aviation (department) to make available certain records referenced in an attached invoice "for the stated labor charges which are reflected in the .25 per page charge." The attached invoice refers to Public Records request for Mark Dery, Joseph State Airport Land Acquisition and Construction Project. Although your petition is not altogether clear, it appears both to seek the disclosure of records and to challenge the fee charged for staff time as excessive. For the reasons that follow, we respectfully deny your petition.

1. Background

As part of your representation of Mark Dery, you asked the department to permit your representative, Jack Healy, to examine certain records in the department's possession. According to Rebecca Jasso, a department Finance Technician, two department staff persons (Sandy Hansen, Office Manager, and Doris Travis, Support Staff Secretary) assisted Mr. Healy on five separate occasions between January 18 and 28, 2000, by locating pertinent information and bringing files for his inspection; agency staff persons subsequently spent time making copies of the records requested by Mr. Healy. Ms. Jasso states that the copies of the requested documents were mailed to you and signed for by someone in your office on February 14, 2000. The invoice attached to your petition, dated February 11, 2000, lists the department's charges for

[1] Your petition was filed on behalf of your client, Mark Dery.

the costs of making the records available to you as $255.00 for 17 hours of staff time (not including the first half-hour), $57.75 for copying 231 pages of documents, $4.32 for four drawings, and $6.95 for postage. You have contested the amount billed by the agency for staff time. Ms. Jasso informs us that you have not paid any of the charges to date.

2. Disclosure of Records

At your request, the department permitted Mr. Healy to inspect its records, making available department staff to locate and bring files to Mr. Healy for his review. Additionally, the department made copies of specific records identified by Mr. Healy and sent the requested copies to you. Those copies were delivered to your office on February 14, 2000. Because you have not been denied either access to or copies of public records, the Attorney General lacks authority to order disclosure. *See* ORS 192.450(1). Accordingly, your petition for disclosure is denied.

3. Amount of Fee

The Public Records Law confers a right to access to any public record of a public body in Oregon, subject to certain exemptions and limitations and subject to fees imposed by the public body for the cost of providing the record. ORS 192.420. Any fee imposed by a public body must be "reasonably calculated to reimburse it for its actual cost in making such records available including costs for summarizing, compiling or tailoring such record, either in organization or media, to meet the person's request." ORS 192.440(3). That "actual cost" may include a charge for time spent by agency staff in locating the requested records and supervising a person's inspection of original documents in order to protect the records, as well as copying the records. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1999) at 12.

Ann Crook, the department Director, informs us that the agency's fee schedule is established based upon the actual cost of hourly staff time and copying costs. Ms. Jasso states that the staff time shown on the invoice reflect the actual hours spent by agency staff on your records request, less one half-hour for which the agency did not charge.

The Public Records Law contains two specific provisions for petitioning the Attorney general. ORS 192.450(1) provides that "any person denied the right to inspect or receive a copy of any public record of a state agency may petition the Attorney General to review the public record to determine if it may be withheld from public inspection." ORS 192.440(5) provides that "a person who believes that there has been an unreasonable denial of a fee waiver or fee reduction may petition the Attorney General * * * in the same manner" as for the denial of a record. There is no provision authorizing a person to petition the Attorney General to review an agency's fees established under ORS 192.440(3). Moreover, although ORS 192.470(2) requires an agency to provide to the Attorney General a copy of the records that are the subject of the petition so that the Attorney General may determine whether those records should be make available for inspection, no provision requires an agency to provide to the Attorney General, or authorizes the Attorney General to demand, the financial or other data that justifies the agencies' fees. Without such information, the Attorney General has no basis for determining whether those fees represent the agency's actual costs. *See* Public Records Order, March 29, 2000,

Mayes (denying for lack of jurisdiction a petition seeking written explanation and justification of charges or waiver of fees).

We conclude therefore that the Public Records Law does not give the Attorney General the authority to review the fees charged by the department for records and services, particularly when those records and services have been provided to you. Accordingly, to the extent your petition challenges the fees charged by the department, we deny your petition for lack of jurisdiction.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS07993
cc: Ann Crook, Director, Department of Aviation
[redacted]