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October 3, 2000

Donald R. Bowmer
1060 Washington Street, No. 4
Eugene, OR 97401

Re: Petition for Review of Denial of Fee Waiver
Oregon Commission for the Blind Records

Dear Mr. Bowmer:

In a postscript to a letter to the Attorney General dated September 20, 2000, you asked for the Attorney General's assistance "in requiring the OCB [Oregon Commission for the Blind] to release my file." Based on the information available to us from the attachments to your letter and from speaking with the OCB, we consider your request to the Attorney General to be a petition for review of the OCB's denial of your request to waive the fee for a public records request under the Oregon Public Records Law, ORS 192.410 to 192.505. For the reasons below, we respectfully deny your petition.

1. Your request to OCB

In reviewing the attachments to your letter, we learned the following regarding your records request to OCB. On August 10 and 18, you submitted written requests to OCB for a "complete copy" of your client file. On August 24, Charles E. Young, OCB Administrator, informed you in writing that OCB would charge $26.50 for providing you with the requested records, which represents a charge of $.10 per page for each of the 265 pages that comprises your OCB file. Young's letter states that the OCB would send a copy of your file upon receipt of payment. Finally, on August 31, 2000, M.L. Church of the Lane County Law and Advocacy Center wrote to the OCB on your behalf requesting a waiver of the $26.50 fee.

Charles Young has provided us with a copy of the OCB's response to M.L. Church's fee waiver request submitted on your behalf. On September 1, 2000, Young wrote to Church explaining that, although within its authority, the OCB was not charging you for costs associated with processing your request due to your financial situation. The OCB concluded that the fee of $26.50 originally conveyed to you was reasonable in light of your request and your financial

situation. Young also stated that the OCB would provide you with up to 20 pages of copies free of charge if you could specify a particular type of information you want to obtain from your OCB file.[1]

2. Fee Waiver

The Public Records Law confers a right to inspect 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." ORS 192.440(3). An agency that has established fees for public records requests 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." ORS 192.440(4). ORS 192.440(4) does not require a fee waiver, but places the discretion to make this decision with the agency.

Under ORS 192.440(5), "[a] person who believes that there has been an unreasonable denial of a fee waiver * * * may petition the Attorney General * * * in the same manner as a person petitions when inspection of a public record is denied." In reviewing an agency's complete or partial denial of a fee waiver, we consider (a) whether a waiver is prohibited by law, (b) whether the "public interest" test is met, and (c) whether the agency's decision was "unreasonable." ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1999) (AG MANUAL) at 13; Public Records Order, March 10, 2000, Suo and Mayes; Public Records Order, November 10, 1994, Pittman; Public Records Order, May 19, 1993, Smith.

a. Waiver Prohibition

Although ORS 192.440(4) allows a public body to waive its fees for furnishing public records when it determines that it is in the public interest to do so, some public bodies cannot waive fees for making records available even if the provisions of ORS 192.440(4) are met. If a public body's sole funding for a particular program is from funds that are constitutionally, statutorily or otherwise legally dedicated, the public body in responding to a public records request, may not charge fees that are lower than its actual costs. MANUAL at 14. The OCB is organized and operates under ORS chapter 346. We do not believe that the provisions therein prohibit the OCB from waiving or reducing fees for a public records request.

b. "Public Interest" Test

The next question is whether it is in the public interest to make the information available. A state agency may waive or reduce fees for a public records request if making the records

[1] Under OAR 585-001-0008, the OCB may reduce or waive a public records fee when "[p]ayment would make extreme financial hardship upon requester." Young's September 1 letter indicates that the OCB applied this rule in its decision to charge you for only copying costs and not for processing. In addition, the OCB has offered to provide a limited number of pages to you free of charge. That the OCB decided to reduce rather than completely waive its fee is not inconsistent with its rule.

available primarily benefits the general public. Factors to consider under the public interest test include the requestor's identity, the purpose for which the information will be used, the nature of the information, whether the information already is in the public domain, and whether the requestor can demonstrate the ability to disseminate the information to the public. While the requestor's inability to pay is also a factor, the inability to pay is not a sufficient basis by itself for a fee waiver. MANUAL at 14-15.

From your petition, we are unable to conclude that making your OCB file available to you would primarily benefit the general public. Neither your petition nor the attached materials explain the purpose for which you will use the requested information. Your letter to the Attorney General explains your desire to seek amendments to state law, but does not explain how disclosure of your OCB file relates to that effort. If there is a public purpose related to your public records request, you have not demonstrated your ability to disseminate the requested information to the public. While we appreciate your financial constraints, a fee waiver may not be granted due solely to the requestor's inability to pay. Because you have demonstrated no intent or capability of disseminating the requested information to the public, we do not reach the issue of the reasonableness of the OCB's denial of your waiver request.

For the foregoing reasons, we respectfully deny your petition.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

GMC:KBC/GEN63046
c: Charles Young, OCB Administrator