JOHN R. KROGER
ATTORNEY GENERAL

MARY H. WILLIAMS
DEPUTY ATTORNEY GENERAL



DEPARTMENT OF JUSTICE

1162 Court Street NE
Justice Building
Salem, Oregon 97301-4096
Telephone: (503) 378-4400

March 24, 2009

Robert Butler
Butler Brokers Inc.
824 SW 18th Ave.
Portland, OR 97205

Re: Petition for Public Records Disclosure Order:
Department of Public Safety Standards and Training Records

Dear Mr. Butler:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. We received your petition on March 17, 2009. In it, you ask the Attorney General to direct the Department of Public Safety Standards and Training (DPSST) to "provide one copy of the Basic Police Training Manual." You acknowledge that DPSST has offered to provide you with a copy of the training manual upon receipt of $443.50. But you ask us to "consider this as such a[n] unreasonable charge to purchase the manual that it [constitutes] unreasonable obstruction [of access to] a public record."

For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. The law requires generally that the custodian of public records furnish proper and reasonable opportunities for inspection, copying, or both, of the record in the office of the custodian. ORS 192.430. Any person denied the right to inspect or to 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 192.450(1).

The Public Records Law also expressly authorizes a public body to charge fees "reasonably calculated to reimburse the public body for the public body's actual cost of making public records available." ORS 192.440(3)(a). "Actual cost" may include a charge for the time spent by the public body's staff in locating the requested records, reviewing records in order to

separate out or redact exempt material, supervising a person's inspection of original documents in order to protect the records, copying the records, and the cost spent by the public body's attorney reviewing, redacting, and segregating the records at the public body's request. ORS 192.440(3). A public body may require prepayment of its estimated charges before taking further action on a request. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2008) ("MANUAL") at 15.

In general, the Attorney General does not have authority to review the reasonableness of an agency's public records fees, or determine whether those fees accurately reflect the actual cost to the agency of providing access to its public records. MANUAL at 16-17. The Attorney General's authority to enforce the inspection provisions of the Public Records Law may, however, require the Attorney General to review a fee that appears to be grossly excessive under circumstances suggesting that the true purpose of the fee is to deny access to records.

Because $443.50 seems like a very large sum to charge for a training manual that is regularly produced and provided to trainees, we contacted DPSST for more information about the basis for its fee estimate. DPSST explained that it does not have on hand a spare copy of the training manual, and that the materials that make up the training manual are stored in separate digital folders that allow each topic to be updated independently of the others. When a training course is held, the updated materials are gathered and training manuals are produced based on the number of students who need copies. Your request, however, did not coincide with a scheduled production of the manual. As a result, to provide you with a copy of the training manual requires DPSST staff to gather, print and assemble a single copy of the 887 page document. For documents of ten or more pages, DPSST's estimated per-page cost for that service is fifty cents per page. OAR 259-025-0000(5)(b).

In light of DPSST's explanation, we cannot view these circumstances as suggesting that the true purpose of the fee is to deny your access to records. Consequently, we must decline your invitation to view DPSST's estimated fee as an "unreasonable obstruction" to your access to public records. It follows that your petition must be respectfully denied. You are not a person "denied the right to inspect or to receive a copy of any public record of a state agency," ORS 192.450(1).[1]

Having resolved your petition, we report that DPSST informed us that it remains willing to work with you to provide specific sections of the training manual that may be most relevant to your particular needs. According to your February 5, 2009 letter to Andrew Bentz, the chair of the Board of Safety Standards and Training, you seek the information "for work * * * on a legislation proposal for the current session" of the Oregon Legislature. DPSST understands from earlier requests that your interests may primarily relate to portions of the training manual pertaining to traffic stops. If that is the case, DPSST believes that the applicable fee for providing such material would be a very small fraction of the total estimated fee for the entire

[1] Nor has DPSST denied a request that it waive or reduce its estimated fees, as it does not appear that you made such a request. See ORS 192.440(6).

manual. You are free to contact DPSST if you would like to pursue a more limited document production, or prepay DPSST's estimate for producing the entire manual.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

DM1332987