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March 13, 2009

Mr. Robert Fernandez
SID #5907786
3920 East Ashwood Road
Madras, Oregon 97741

Re: Petition for Review of Denial of Fee Waiver:
Department of State Police Records

Dear Mr. Fernandez:

On March 6, 2009, the Attorney General received correspondence from you dated March 4, 2009. Your letter is "[a petition] under the * * * Oregon Public Records Law * * * of the denial of [your] request for records."[1] Your petition states that you believe you are entitled to a copy of the requested record "free of any costs." This letter is the Attorney General's order with respect to your petition. 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 also authorizes a public body to establish fees "reasonably calculated to reimburse it for its actual cost" in making records available. ORS 192.440(4)(a). A public body may require pre-payment of estimated fees before acting on a request. ATTORNEY GENERAL'S PUBLIC RECORDS AND PUBLIC MEETINGS MANUAL (2008) (MANUAL) at 15. ORS 192.440(5) authorizes a public body to waive fees if it determines that the waiver is in the public interest. However, even if a public body determines that waiving fees is in the public interest, "the decision to waive or reduce fees is discretionary with the public body, although it must act reasonably." MANUAL at 20. Under ORS 192.440(6), "[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."

[1] Your letter also states that it is an appeal under "the Privacy Act" and "Freedom of Information Act." The Attorney General's authority to review public records decisions by state agencies arises under the Oregon Public Records Law, ORS 192.410 to 192.505. *See* ORS 192.450.

The record you are seeking is an investigative report that you requested from the Department of State Police (OSP). In your petition, you state that OSP responded by informing you that there would be a fee of $10, and that you would need to provided them with the "time of the report."

On March 11, 2009, Senior Assistant Attorney General Herbert Lovejoy spoke with Cecily Brown, the OSP Criminal Records Supervisor, about your petition. Ms. Brown informed Mr. Lovejoy that OSP notified you, by letter dated February 25, 2009, that OSP has received your records request but requires additional information to complete a search for the requested record. That response is not a denial of your request for records; instead, OSP has asked you to provide it with information that will enable OSP to respond to your request. OSP also informed you that the fee for providing the record would be $10. But informing you of the amount of a public records fee is not the same as denying a request that the fee be waived. Ms. Brown informed Mr. Lovejoy that OSP has not considered or denied any request for a fee waiver made by you.

Under the circumstances, you are not a "person denied the right to inspect or to receive a copy of any public record of a state agency" under ORS 192.450. Nor has there been any "denial of a fee waiver" under ORS 192.440(6). As a result, your petition is respectfully denied as premature.

Sincerely,

DAVID E. LEITH
Assistant Attorney General

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