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July 29, 2008

Richard L. Koenig
PO Box 5755
Portland, Oregon [97228]

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

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. Your petition, which we received July 22, 2008, states that you asked for training materials in the possession of the Department of Public Safety Standards and Training (DPSST), but that your request has been ignored. You provided a copy of a letter from Marilyn Lorance, dated July 14, 2008, responding to your request for public records. We have also obtained from DPSST prior correspondence between you and DPSST that relates to the subject of your petition.

For the reasons that follow, we respectfully deny your petition as premature. DPSST has not denied your request.

Background

In a letter dated June 17, 2008, you asked DPSST for "information which a law enforcement officer needs, in order to complete an incident report" for the crimes of "simulating legal process" and "official misconduct in the first degree." (Letter from R. Koenig to J. Minnis, dated June 17, 2008, at 1). Your letter also requested a waiver of fees based upon your belief that making the information "generally available" is in the public interest. (*Id.*).

On June 24, 2008, Marilyn Lorance of DPSST replied to your request, identifying three parts of the Basic Police curriculum in response to your inquiry. (Letter from M. Lorance to R. Koenig, dated June 24, 2008). Ms. Lorance denied your request to waive the fee on the ground that you had not demonstrated that providing the records to you would primarily benefit the public. She informed you that DPSST would provide the records you selected upon payment of the fee.

On July 7, 2008, you wrote to Ms. Lorance with a second related public records request. (Letter from R. Koenig to M. Lorance, dated July 7, 2008, at 2 and 3). In this request, you stated:

> I recently explored the online list of DPSST courses at the Academy. I found the list to be so fascinating that I now believe that in order to adequately comprehend the culture of law enforcement, I should visit your facility and spend several days inspecting these records. Please provide information on how to most appropriately interface with my public servants at the Academy.

(*Id.* at 3). You also provided information in support of your request for a fee waiver. You described two encounters that you had – one with an officer of the Oregon State Police and one with the Multnomah County Sheriff's Office – that led you to believe that officers needed additional training. (*Id.*).

In response, Ms. Lorance asked you to clarify your request, mentioning two "online list[s]," neither of which reflect specific DPSST course offerings. (Letter from M. Lorance to R. Koenig, dated July 14, 2008). She indicated that without clarification, DPSST could not identify the records you sought to inspect. And she indicated that, depending on the intended meaning of your records request, DPSST may not possess responsive records, because your understanding of the nature of the on-line list was incorrect. Nevertheless, Ms. Lorance invited you to identify particular subject areas of interest from the on-line lists so that she could provide an estimate for making pertinent records available to you. Ms Lorance did not respond to your request for a fee waiver.

Your petition for a Public Records Order followed. The petition states that Ms. Lorance's letter of July 14, 2008 failed to address your public records request.

DPSST has not denied your request for public records.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to some exceptions and limitations. ORS 192.420. A custodian of public records must provide "proper and reasonable opportunities for inspection and examination" of the records. ORS 192.430. The custodian is allowed a "reasonable" time to respond to a request for public records.

Neither of Ms. Lorance's letters denies your request to inspect public records. The first letter (which is not the subject of your petition) specifically grants your request, subject to payment of fees. The second letter (which is the subject of your petition) asks you to clarify your request so that DPSST may respond. We conclude that DPSST has not denied your request for public records, but rather has asked for reasonable clarification. As a result, this office lacks authority to order disclosure, and we therefore deny your petition as premature.

DPSST will reconsider your request for a waiver of fees.

The petition also refers to your request for a fee waiver and to DPSST's failure to reconsider your first request. DPSST did not understand that you intended the July 7, 2008, letter as a request to reconsider the prior decision. Rather Ms. Lorance understood your July 7 letter as a request for the waiver of fees associated with the new second request. She informs us that DPSST would respond to the waiver request as they understood it after receiving clarification regarding the documents you sought.

Based on the clarification contained in your petition to our office, we have asked DPSST to give further consideration to its denial of your original waiver request, which was communicated to you by Ms. Lorance's letter of June 24, 2008. DPSST has agreed to do so. You should be hearing from DPSST separately on that matter.

Conclusion

With respect to your July 7 request for records, we conclude that DPSST has sought a reasonable clarification from you and has not denied your request. Your petition with respect to that request is denied as premature. With respect to your request that DPSST waive its fees, that request is also denied as premature. As the request for fee waiver relates to the July 7 request, DPSST need not respond to the fee waiver request prior to receiving information sufficient to permit DPSST to identify responsive documents. As the waiver request relates to your initial records request, DPSST has agreed to revisit its determination in light of the information you provided, after DPSST's initial decision, asserting a public interest in disclosing the records to you. For those reasons, your petition is respectfully denied.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

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c: Marilyn Lorance, DPSST