Kelly Carlson

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

January 4, 2006

Daniel J. Stotter
Bromley Newton LLP
627 Country Club Road, Suite 200
Eugene, OR 97401

Re: Petition for Review of Denial of Fee Waiver:
University of Oregon Records

Dear Mr. Stotter:

This letter is the Attorney General's order on your petition for review of the denial by the University of Oregon (the University) of the Westmoreland Tenants Council's (WTC) request for a complete waiver of fees under the Public Records Law, ORS 192.410 to 192.505. The University estimated that the actual cost of responding to your request would be $2,967.00, and offered a partial waiver of $1,000 of the actual cost. Your petition, which we received on December 29, 2005, requests a complete waiver of the estimated cost.[1] 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(3). A public body may require pre-payment of estimated fees before acting on a request. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2004) at 14. ORS 192.440(4) authorizes a public body to waive fees if it determines that the waiver is in the public interest "because making the record available primarily benefits the general public." 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

[1] In your petition, you also challenge the University's estimate of $2,967.00 as the actual cost of responding to the request. However, the Attorney General lacks jurisdiction to review an agency's calculation of the actual cost of making records available. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2004) at 15.

body, although it must act reasonably." AG'S MANUAL at 18. 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."

On November 16, 2005 WTC asked for the right to inspect six categories of documents.[2] The public records request was accompanied by a request to waive all fees because the sale of the Westmoreland housing complex is "an issue of significant importance to the public concerning the availability of affordable student housing, and matters of public fiscal responsibility by the University of Oregon as to its use of public housing resources, and related fiscal issues." The WTC also stated that it needed the records to meaningfully participate in the meetings of the Board of Higher Education and to inform other interested parties regarding the proposed sale of the Westmoreland housing complex. The WTC also stated that as a voluntary student group it did not have the money to be able to pay for the records.

As noted above, Randolph Geller, on behalf of the University, responded to the WTC request on November 20, 2005 and stated that the actual cost of responding to the request would be $2,967.00 and that the University would grant a partial waiver of $1,000 of the actual cost. He explained that "the actual cost is high because of the broad scope and vagueness of [the] request," but that the cost would likely decrease if the WTC refined and narrowed its request. You filed this petition on WTC's behalf requesting a full fee waiver.

The University has authority to waive fees for responding to the WTC records request only if it determines that doing so is in the public interest "because making the record available primarily benefits the general public." ORS 192.440(4). In *In Defense of Animals v. OHSU*, 199 Or App 160 (2005), the court interpreted this requirement as meaning "the furnishing of the record has utility – indeed, its greatest utility – to the community or society as a whole." *Id.* at 189. If the concern or interest is only that of a private individual or entity, the test is not met. And while financial inability to pay is a factor for a public body to consider, standing alone it is an insufficient basis upon which to grant a fee waiver. AG'S MANUAL at 17.

Here, the University at least tacitly acknowledges that WTC satisfies the public interest test for purposes of this request. Because the agency already has made a public interest determination, we need not review the agency's decision in this regard. *See* Public Records Order, August 4, 2000, Brownscombe. The only issue we must address is whether the University acted unreasonably in offering a fee reduction rather than a complete waiver of the fee. We have explained that "ORS 192.440(4) does not require a public body to grant a complete fee waiver, even if the public interest test is met," but that "the decision to waive or

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[2] There might be some question whether WTC is entitled to use the Public Records Law to obtain records from the University. The WTC is created by administrative rule, OAR 571-022-0027, and is given authority to recommend policy positions through its resident members on the Family Housing Board. It therefore possesses at least some of the characteristics of a public body. We have concluded that "a public body may not use the Public Records Law to obtain records from another public body." AG'S MANUAL at 1. The University has not challenged WTC's capacity in this regard, however, and we need not address the issue on our own authority.

reduce fees is discretionary with the public body, although it must act reasonably." AG's MANUAL at 18.

We note that the identity of the requester in this case suggests that that the interests at stake are at least partly "personal" in nature. Disclosure of the records might, however, benefit the part of the public with a specific interest in the availability of student housing. Given the comparatively constrained scope of the public interest served by the request, we do not find that University's decision to grant a reduction of the fee amounting to just over 1/3 of the calculated actual cost - instead of a complete waiver of the fee - is unreasonable.

Because we do not find that the University's ultimate disposition of WTC's fee waiver request is unreasonable, we respectfully deny your petition.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

PDS:AGS16805
c: Randolph Geller, Director of Policy and Legal Affairs