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October 23, 2006

Daniel J. Stotter, Attorney at Law
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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 (UO) of your request for a waiver of fees under the Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on October 17, 2006, states that the UO has used the imposition of a fee to deny your clients access to the records that they have requested. 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 PUBLIC MEETINGS MANUAL (2005) at 13. ORS 192.440(4) authorizes a public body to waive fees if it determines that waiving fees 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 body, although it must act reasonably." AG'S MANUAL at 18-19. Under ORS 192.440(4), "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."

UO has estimated that it will cost approximately $1,661.06 to respond to your client's request for records. Letter from Deputy General Counsel Randolph Geller,

September 15, 2006. UO has agreed to waive 25 percent of the actual cost. *Id.* Based upon UO's decision to waive part of the actual cost, we infer that UO has already determined that the request would primarily benefit the general public and we do not review that determination.

As we understand it, the petition seeks either a full waiver or a determination that the fee established by UO is unreasonable. No statute gives us authority to review the reasonableness of a fee estimate.[1] *See* ORS 192.440(5) (AG may review "denial of a fee waiver or fee reduction"). We therefore turn to the issue of whether the decision to waive 25 percent of the fee was reasonable.

We have concluded that fee reductions of approximately 25 percent are not unreasonable. AG'S MANUAL at 19. Your petition reveals nothing particularly unique about this request for a fee waiver that suggests a different analysis is required here.

Accordingly, based upon the information provided by your petition and by the attachments, we do not identify a basis upon which to conclude that UO unreasonably denied the request for a fee waiver.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS18650

[1] The petition asserts in response to the amount of the fee estimate that none of the records requested raise any "confidential or privacy issues." We note that several members of the Family Housing Board of UO are students, by designation in the applicable rule. OAR 577-022-0025. It seems reasonable to review the records to or from members of the Housing Board to determine whether any specific student names or information appears there, for purposes of ensuring compliance with the federal Family Educational Rights and Privacy Act, 20 USC § 1232g.