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July 3, 2014

SENT VIA EMAIL ONLY

Alison Maynard
PO Box 140783
Gainesville FL 32614
dinophile@gmail.com

Re: Petition for Public Records Disclosure Order
Oregon State Bar
DOJ File No. 993001-GA0072-14

Dear Ms. Maynard:

This letter is the Attorney General's order in response to your petition asking our office to direct the Oregon State Bar (OSB) to waive its estimated fee for providing you with copies of nonexempt public records you requested. Specifically, you requested five categories of records:

1. All emails between [former OSB employee John Gleason] and any person employed by the Colorado Supreme Court, during Mr. Gleason's employment by the Oregon State Bar (as well as afterwards, if he still has access to his email account). These emails will have the extension @csc.state.co.us

2. All emails between Mr. Gleason and either Sylvia Stevens or Thomas Balmer.

3. A memo Mr. Gleason wrote "on his way out ... outlining his dim view of the Oregon bar's current disciplinary process and the bar's disciplinary lawyers." (The quotation comes from an article by Jeff Manning published on "oregonlive.com" on April 23, 2014).

4. Any materials produced in any investigation of Mr. Gleason (which may have been prompted by information I provided to the Oregon State Bar last fall) respecting his background or the "reforms" he implemented in the Colorado disciplinary process.

5. Any emails or letters produced by Mr. Gleason relating to his separation from employment with the Oregon State Bar.

Request of May 13, 2014. You requested a waiver of the fees associated with your request. OSB estimated that responding to your request would cost $8519.14 and refused your request for a waiver. Your petition followed. For the reasons that follow, it is respectfully denied.

The Oregon Public Records Law, ORS 192.410 to 192.505, provides that "[e]very person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.501 to 192.505." ORS 192.420(1). In making public records available, public bodies are authorized to "establish fees reasonably calculated to reimburse the public body for the public body's actual cost of making public records available." ORS 192.440(4)(a). A public body's fees may be waived or reduced "if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public." ORS 192.440(5). And, "[a] person who believes that there has been an unreasonable denial of a fee waiver or fee reduction may petition the Attorney General or the district attorney in the same manner as a person petitions when inspection of a public record is denied under ORS 192.410 to 192.505." ORS 192.440(6).

OSB denied your waiver request, concluding that making records available to you would not primarily benefit the public. We agree.

The ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2011) ("Manual") explains the public interest test:

> The Oregon Court of Appeals construed the public interest requirement for granting a fee waiver or reduction in a 2005 decision. It concluded that "[a] matter or action is commonly understood to be 'in the public interest' when it affects the community or society as a whole, in contrast to a concern or interest of a private individual or entity." In addition, it stated that "a matter or action 'primarily benefits the public,' * * * when its most important or significant utility or advantage accrues to the public." Therefore, the public interest test is satisfied "when the furnishing of the record has utility – indeed, its greatest utility – to the community or society as a whole."
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> * * * *

> [T]he public interest in the subject matter covered in the requested records is insufficient *when the requester fails to demonstrate the ability to disseminate the information to the public.*
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> * * * *
>
> In determining whether the requester has established a sufficient public interest, relevant factors include: the requester's identity, the purpose for which the requester intends to use the information, the character of the information, whether the requested information is already in the public domain, and whether the requester can demonstrate the ability to disseminate the information to the public.

MANUAL at 18-20 (emphasis added).

From your petition and the supporting materials you provided, we discern that you maintain a blog at http://therealcolorado.blogspot.com. Having reviewed your blog, we are not persuaded that you have any meaningful ability to disseminate information to the public. We note, for example, a post on your website indicating "I do not get any traffic on this site" and ascribing the lack of public interest to intentional manipulation of internet search engine results. http://therealcolorado.blogspot.com/2011/12/cockroach-david-lat.html (visited July 2, 2014). Your blog also indicates that you have taken a personal interest in Mr. Gleason, which is consistent with the text of your request to OSB. Many of the categories of records you request seem far more pertinent to that personal interest than to any public interest we can discern. Overall, we share OSB's assessment that any public interest that would be served by disclosure to you would be incidental, not primary. Because we cannot conclude that disclosure to you would "primarily benefit[] the general public," we must respectfully deny your petition.

Sincerely,

FRDERICK M. BOSS
Deputy Attorney General

cc via email only:
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