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November 19, 2010

Lee van der Voo
1824 N Cramer St
Portland, OR 97217

Patrick Braatz
Executive Director
Oregon Board of Dentistry
1600 SW 4th Ave., Ste. 770
Portland, OR 97201

Re: Petition for Fee Waiver:
Oregon Board of Dentistry

Dear Ms. van der Voo and Mr. Braatz:

On November 4, 2010, we received Ms. van der Voo's petition claiming that the Oregon Board of Dentistry (OBD) had unreasonably denied her request for a fee waiver. The records at issue were the subject of a prior petition from Ms. van der Voo seeking records relating to a 2010 complaint by employees alleging sexual conduct in the workplace by Dr. Terry Isom. On October 19, 2010, the Attorney General granted Ms. van der Voo's petition in part and denied it in part:

> [W]e conclude that the records Ms. van der Voo requests are subject to disclosure to the extent they relate to allegations of sexual conduct in the workplace. We therefore grant her petition with respect to information related to such allegations, though we deny the petition with respect to a single witness letter. We order the Board to provide Ms. van der Voo with the remaining information in its 2010 file related to the allegations of inappropriate sexual conduct in the workplace, redacted to not disclose the identities of the complainants and witnesses. We deny Ms. van der Voo's petition insofar as it seeks information unrelated to the allegations of sexual conduct in the workplace.

Public Records Order, October 19, 2010, van der Voo.

On November 2, 2010, OBD sent Ms. van der Voo a letter stating that the redacted records were available to be released to her. The letter noted that OBD could assess a fee reasonably calculated to reimburse it for the actual cost of complying with the disclosure order under ORS 192.440(4). Attached to the letter was a statement of costs for providing the records, including $26.00 for copying costs, $25.00 for OBD staff time, $561.70 for redaction of the documents, and $2.41 for postage.

Ms. van der Voo's petition states that she requested a waiver of fees from OBD, explaining that disclosure is in the public interest and that the October 19, 2010 PRO findings support that claim. Mr. Braatz, Executive Director, OBD, verbally denied a waiver, stating that OBD would not consider a fee waiver.

On November 3, 2010, Ms. van der Voo paid the fee and requested that we treat her petition as amended to reflect that her appeal is for reimbursement rather than for a fee waiver. Her payment did not render her petition moot, because the Attorney General has the power to order public agencies to return fees in cases where the refusal to waive the fee was unreasonable. *See* Public Records Order, March 13, 2008, Harbaugh.

We spoke with Mr. Braatz, who stated that, in fact, he cannot grant or deny Ms. van der Voo's fee waiver request without guidance from the board. The board will not meet until December 17, 2010, but will consider Ms. van der Voo's fee waiver request at that time.

Though Ms. van der Voo reasonably understood that her request had been denied, the fact that the board will now consider the request renders her petition moot. As a result, we respectfully deny her petition. If Ms. van der Voo disagrees with the decision ultimately reached by OBD under the applicable standard,[1] she may again petition our office to review OBD's determination.

Sincerely,

DAVID E. LEITH
Associate Attorney General

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[1] "A public body has discretion whether or not to grant a fee waiver or reduction" even if the waiver would be in the public interest. *In Defense of Animals v. Oregon Health Sciences University*, 199 Or App 160, 189 (2005). Even so, "the public body's discretion must be exercised within the range of lawful options available to it under the relevant law." *Id.* Specifically, the applicable standard of "reasonableness" is "an objective standard" that requires an examination of "the totality of the circumstances presented." *Id.* at 190. Those circumstances include (1) the character of the public interest in the particular disclosure; (2) the extent to which the fee impedes the public interest; and (3) the extent to which a waiver would burden the agency. Public Records Order, September 11, 2009, Wright. That is, is the "cost" of imposing the fee (impeded transparency) justified by the "benefit" of collecting the fee? Some relevant factors are discussed in the ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2010) § I.D.6.b.(2), http://www.doj.state.or.us/public_records/manual/public_records.shtml#d