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December 12, 2011

William Scott Baumhofer
7583 SW 74th Avenue #F1
Portland, Oregon 97223

BA0117-11

DeAnne Reyna
Manager, Tigard SPD
11515 SW Durham Road Suite E-5
Tigard, Oregon 97224-3476

Re: Petition for Review of Denial of Access to Records and Request for Fee Waiver

Dear Mr. Baumhofer and Ms. Reyna:

On December 5, 2011, we received Mr. Baumhofer's petition asking the Attorney General to determine that the Department of Human Services unreasonably denied his request for access to, and copies of, his records with that agency.[1] For the reasons below, we deny Mr. Baumhofer's petition, except as it pertains to the restriction placed by DHS disallowing Mr. Baumhofer's review of records previously reviewed by Mr. Baumhofer. We conclude that, apart from that restriction, DHS has provided Mr. Baumhofer with reasonable access to his records. We further conclude that DHS is not required to waive the fees associated with Mr. Baumhofer's inspection of records.

1. Denial of Request to Review Records

Mr. Baumhofer's petition is accompanied by copies of two Requests for Access to Records, one dated August 5, 2011, and the other dated November 28, 2011. He also provided a letter from DeAnne Reyna, the Manager of the Tigard Branch for DHS Services to Seniors and People with Disabilities, where the files in question are currently held. It appears from the materials that DHS has allowed Mr. Baumhofer several opportunities over the past two years to review his files and that he has taken advantage of those opportunities. It also appears that in

[1] At least that is what we understand the petition to seek. To the extent that Mr. Baumhofer is\requesting that we determine whether documents have been removed from his files, or for assistance in subpoenaing witnesses regarding his allegations that the files have been tampered with, those services are not within our authority on review of a public records request.

response to the most recent request DHS limited Mr. Baumhofer's inspection to only those documents that had been added to his file since Mr. Baumhofer's prior inspection in May 2011.

DHS has not argued that the records Mr. Baumhofer seeks to inspect can be withheld from his inspection pursuant to any statutory exemption from the disclosure requirements of Oregon's Public Records Law. We conclude that DHS cannot decline to permit inspection of public records on the basis that the requester inspected the same records previously. If Mr. Baumhofer is willing to pay the associated costs, DHS must allow reasonable access to inspect nonexempt public records.[2] If he requests to inspect them again at some later time, he is entitled to inspect them again, while DHS may charge the costs associated with the later inspection.

2. Denial of Fee Waiver

From Mr. Baumhofer's submissions, it appears that he may also be requesting review of DHS's denial of his request for a waiver of fees related to reviewing and copying the records. To the extent Mr. Baumhofer is raising that issue, we respectfully deny the 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 authorizes public bodies to "establish fees reasonably calculated to reimburse the public body for a public body's actual cost of making public records available." ORS 192.440(4)(a). The law also authorizes public bodies to waive or reduce fees under certain circumstances:

> The custodian of any public record may furnish copies without charge or at a substantially reduced fee 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). We cannot see how repeatedly making Mr. Baumhofer's files available for his personal inspection "primarily benefits the general public." As a consequence, we conclude that DHS lawfully declined to reduce or waive its fees.

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[2] This does not mean that DHS is required to permit Mr. Baumhofer to inspect his files whenever he appears at the office seeking to inspect them. As custodian of the files, DHS is entitled to take reasonable measures to protect them, including supervising Mr. Baumhofer's review of the documents. In this case, we understand that this necessity, combined with the limited availability of DHS staff and the repeated nature of Mr. Baumhofer's requests, mean that DHS cannot allow Mr. Baumhofer instant access to his files whenever he requests it.

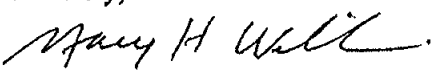
3. Request for Electronic Documents

Finally, Mr. Baumhofer appears to request that DHS provide an estimate of the cost of providing an electronic copy of his file on CD. The Tigard office where the files are kept does not have the equipment to provide an electronic copy of the file, and would have to ship the files outside for that purpose. Given the volume of records involved, we understand that the resulting cost would be significant. Mr. Baumhofer would be required to pay that cost. If he is willing to pay the cost, however, DHS states that it is willing to provide the requested electronic copy of the file. DHS informs us that it will provide a cost estimate within the next week. Because DHS states that it will provide a cost estimate, and because we have concluded that Mr. Baumhofer is not entitled to an order requiring DHS to waive its fees, Mr. Baumhofer's petition is respectfully denied in this regard.

4. Conclusion

In conclusion, DHS cannot withhold portions of Mr. Baumhofer's file from inspection based on his prior inspection of those portions. Within seven days, DHS must contact Mr. Baumhofer to arrange times at which the previously withheld portions of his file will be made available for inspection.[3] DHS may insist that Mr. Baumhofer pay the cost associated with that inspection. In all other respects, Mr. Baumhofer's petition is respectfully denied.

Sincerely,



MARY H. WILLIAMS
Deputy Attorney General

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c: Caroline Burnell, DHS

[3] In the alternative, DHS may announce within seven days its intention to seek relief in circuit court. ORS 192.450.