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SENT VIA EMAIL ONLY

Professor William T. Harbaugh
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Re: Petition for Review of Denial of Fee Waiver
University of Oregon Records

Dear Professor Harbaugh,

This letter is the Attorney General's order in response to your petition for an order requiring the University of Oregon (UO) to waive an estimated public records fee of $24.91. That estimate was provided in response to your request for the following:

> Any employment contracts between UO and Dave Frohnmayer, in effect from 5/15/2010 to the present. I already have the one attached, dated 8/6/2010. Apparently there are two other contracts, one for one summer month, and other for 2 weeks, both of which were signed retroactively. Perhaps there are others.
>
> I also request any documents describing what work Mr. Frohnmayer did for UO for the periods covered by those contracts or any contracts other than that attached (for which the work requirement is well-explained).

In making your request, you sought a waiver of the fees:

> The Oregonian and the RG have both published multiple stories on unusual OUS compensation contracts in recent years. The SOS audit division is preparing a report which apparently flags issues with Mr. Frohnmayer's sabbatical pay and with these contracts. Obviously retroactive contracts for summer pay are a pretty unusual, perhaps unique deal for a professor, particularly a retired one. So I think many other people on campus have a legitimate interest in what * * * has been going on here * * *.

UO denied the fee waiver request, stating that "your request does not meet the public interest test." In response to your petition, UO argues that, even if the public interest would permit UO to waive its fees, UO reasonably declined to do so.

Under Oregon's Public Records Law, ORS 192.410 to 192.505, any person has a right to inspect a public record of any public body in Oregon, subject only to express exemptions and limitations. ORS 192.420(1). In responding to public records requests, a public body "may establish fees reasonably calculated to reimburse the public body for the public body's actual cost of making public records available, including costs for summarizing, compiling or tailoring the public records, either in organization or media, to meet the person's request." ORS 192.440(4)(a). However, the law also authorizes a public body to "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). A denial of a fee waiver request can be appealed on the basis that the denial was unreasonable. ORS 192.440(5).

We need not resolve whether UO is correct that your request does not sufficiently serve the public interest, because we agree with UO's position that, under the totality of the circumstances, UO's decision was reasonable regardless. A public body may deny a waiver request, even if the public interest standard would permit a waiver, so long as its decision is not unreasonable under the totality of the circumstances presented. *In Defense of Animals v. OHSU*, 199 Or App 160, 189–90 (2005) ("[E]ven if the public body determines that the requestor meets [the public interest] test, the public body is not required to grant the fee waiver or reduction. Rather, it "may" do so; that is, the public body has discretion whether or not to grant a fee waiver or reduction.")

UO cites the sheer volume of public records requests you make as the primary support for the reasonableness of insisting on the relatively modest fee assessed in this case. We have previously accepted that this is a relevant consideration in weighing your requests for fee waivers, and we continue to believe that is correct. Other relevant factors we have identified include "(1) the character of the public interest in the particular disclosure, (2) the extent to which the fee impedes that public interest, and (3) the extent to which a waiver would burden the public body." ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2011) at 21. We think that the public is generally interested in contracts explaining expenditures of public bodies' funds, and may be particularly interested in such contracts when they are made with high-profile public officials and subsequently become relevant to an inquiry by the Secretary of State's office. But the fee in this case does not appear to be a significant impediment to that public interest. Moreover, we understand that the Secretary of State's office already has the contracts you are requesting. Although waiving this specific fee would not particularly burden UO, UO is correct that you make numerous public records requests. On balance, we cannot conclude that UO's refusal to waive its fee in this case was unreasonable, and we respectfully deny your petition.

Sincerely,



MARY H. WILLIAMS
Deputy Attorney General

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c: Elizabeth Denecke, UO