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February 21, 2012

Georgina Crawford
21215 SW Baler Way
Sherwood, OR 97140

Re: Petition for Review of Denial of Fee Waiver
Department of State Police Records
DOJ File No. 257001-GA0017-12

Dear Ms. Crawford:

This letter is the Attorney General's order on your petition for review of the denial by the Department of State Police (OSP) 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 February 13, 2012, states that you believe the imposition of a fee penalizes you for seeking to prepare a defense to a citation issued to you on October 18, 2011. 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 (2008) at 15. ORS 192.440(4) authorizes a public body to waive fees if it determines that the waiver is in the public interest "because making the record available primarily benefits the general public." However, even if a public body determines that the waiver 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 20. Under ORS 192.440(5), "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."

We spoke with Cecily Brown, OSP Central Records Supervisor, about your petition. Ms. Brown told us that on December 2, 2011, you made a written request for the following information:

- All records and/or reports pertaining to citation E 901274.
- OSP policy relating to training and certification for OSP officers in the use of radar or other equipment to determine vehicle speed.
- The make and model of any equipment, radar or otherwise, that Officer B. Taylor may have used to determine the alleged speed of your vehicle, along with a copy of the user's manual for the piece of equipment.
- Current certification and training records for Officer B. Taylor relating to the use of that equipment.
- Calibration records for that equipment.
- Any diagrams, sketches, or recordings in the possession of OSP relating to citation E 901274.
- Any other evidence OSP plans to present in support of the citation.

OSP staff responded to you inquiry on December 21, 2011, telling you that the following fees were required before the records you requested could be released: $25 for officer notes; $10 for calibration certification; and $30 for video recording.

Ms. Brown told us that you made a request by phone for a fee waiver on the ground that the fees amounted to half of what the fine would be for the citation, and that requiring the fees would unfairly penalize you twice. Ms. Brown told you that a request for a fee waiver must be made in writing. On January 8, 2012, you submitted a written request for a fee waiver that did not state any reason for granting a waiver.

On January 30, 2012, Ms. Brown reviewed your request and did not find a compelling reason to waive the fees. Ms. Brown explained:

> Our fees for records have been 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, in accordance with ORS 192.440(4)(a). These fees and the procedures for making records available are published on the internet at http://www.oregon.gov/OSP/PRR/.

OSP had authority to waive fees for responding to your records request only if it determined that doing so was in the public interest "because making the record available primarily benefits the general public." ORS 192.440(4). We have concluded previously that "a personal benefit to be derived by the requested alone is insufficient to require a fee waiver." AG'S MANUAL at 19. One example of disclosure creating solely a personal, as opposed to public, benefit is where a requester seeks disclosure "relating solely to the requester in order to aid his or her defense against criminal prosecution." *Id.*

Your petition cites your personal interest in defending yourself in court. You have not asserted that disclosure of the records you requested will serve the public interest, either in your communications with Ms. Brown or in your petition. That is an insufficient basis upon which to grant a fee waiver. AG'S MANUAL at 19.

Based on the information provided in your petition and by OSP, we do not identify a basis upon which OSP could have concluded that a waiver of fees met the public interest test. Accordingly, we deny your petition.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

MHW:smg/3235559-v1
cc: Cecily Brown, OSP