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December 18, 2015

SENT VIA EMAIL ONLY

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Charles J Hill
Oregon Board of Psychologist Examiners
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RE: Petition for Public Records Disclosure Order
Oregon Board of Psychologist Examiners (OBPE)
DOJ File No. 122001-GA0165-15

Dear Mr. Harbaugh and Mr. Hill,

This letter is the Attorney General's order in response to Mr. Harbaugh's petition under the Oregon Public Records Law, ORS 192.410 to 192.505. Mr. Harbaugh sought certain public records from OBPE on November 19, 2015:

a) A document showing the rule that OPBE hearings before and ALJ are closed [to the public].
b) A copy of the "Board's Notice of Rights and Procedures"
c) A document showing that the "Board's Notice of Rights and Procedures" or the document in a) was adopted in accordance with the relevant ORS on the adoption of rules for the OBPE.

Mr. Harbaugh explained that his request stems from his interest in a high-profile disciplinary matter before OBPE.

Mr. Harbaugh subsequently sent emails to Mr. Hill on December 4, and to OBPE's assigned counsel, Warren Foote, on December 5, asking that OPBE respond to his request. Mr. Harbaugh filed his petition on December 9, stating that he had received no response to his

Harbaugh filed his petition on December 9, stating that he had received no response to his request in the nearly three weeks since it had been made. He asked our office to treat that lack of response as a denial of his request.

The day after his petition was filed, OBPE sent Mr. Harbaugh a response indicating that it does not possess any records responsive to the first request, and would provide him with records responsive to the second and third requests upon receipt of payment in the amount of $2.75. Mr. Harbaugh subsequently asked that OBPE waive that fee, asserting that disclosing the records to him would be in the public interest because the disclosure would primarily benefit the public. OBPE has informed us that it will not waive the fee. Professor Harbaugh, meanwhile, acknowledges that OBPE's response addresses his initial petition, but asks that we treat his petition as one seeking a fee waiver under ORS 192.440(6):

> 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. The Attorney General, the district attorney and the court have the same authority in instances when a fee waiver or reduction is denied as it has when inspection of a public record is denied.

Our office is statutorily obliged to rule on this dispute over $2.75.

We order the fee waived. Frankly, we suspect that the cost of processing a payment from Mr. Harbaugh in that amount would exceed the amount of the payment. Certainly the cost to OBPE of having this office draft this order has well exceeded that amount. Of course, there are reasons why a public body may believe it is reasonable to insist on payment even of small fees. Such insistence may not be unreasonable in every case. In this particular case, however, Mr. Harbaugh's request was expressly related – perhaps tangentially – to a matter of admitted public interest. And that request received no response whatsoever for three weeks, despite its specificity and apparent simplicity, and despite Mr. Harbaugh's attempts to follow up on it. Those facts, when weighed against the trivial burden waiver might impose on OBPE, persuade us that OBPE has acted unreasonably in insisting on such a small payment under the circumstances. *See generally*, ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2014) at 22-23 (noting that reasonableness takes all relevant factors into account and listing typically relevant factors).

OBPE has seven days within which to comply with this order. Or it may announce that it intends to institute court proceedings. ORS 192.450(2).

Sincerely,

Frederick M. Boss

FREDERICK M. BOSS
Deputy Attorney General

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