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March 6, 2017

VIA EMAIL ONLY: artupdx@gmail.com

Michael O'Connor
940 NW Naito Parkway L11
Portland, OR 97209

Re: Petition for Public Records Disclosure Order
Oregon Employment Department
DOJ File No.: 471090-GA0070-17

Dear Mr. O'Connor:

This letter is the Attorney General's order responding to your February 27, 2017, petition for fee waiver under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition asks the Attorney General to order the Oregon Employment Department (OED) to produce the following records for no cost: "the suppressed data in the QCEW for Oregon Statewide and Portland MSA from 2000 to current in the highest NAICS numerical code you can while still protecting employer establishments' personal information."

We respectfully deny your petition because OED's denial of your fee waiver request was reasonable under the totality of the circumstances: OED would need to spend seven hours of staff time to compile the customized report you seek and to comply with federal regulations restricting the release of certain information.

The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exemptions contained in ORS 192.501 to 192.505. *See* ORS 192.420(1). Public bodies are generally permitted to charge requesters for the actual cost to fulfill a records request. ORS 192.440(4)(a). However, a public body has discretion to waive or reduce its fees if doing so "is in the public interest because making the record available primarily benefits the general public." ORS 192.440(5). To determine whether disclosure is in the public interest, we typically look to factors such as the requester's identity, how the records will be used, and whether the requester can demonstrate the ability to disseminate the information to the public. *Attorney General's Public Records & Meetings Manual* 21–22 (2014).

If disclosure is in the public interest, "the public body's decision whether to grant or deny a fee waiver or reduction must be reasonable" under the totality of the circumstances. *In Defense of Animals v. OHSU*, 199 Or App 160, 189–90 (2005). The reasonableness of a denial typically depends on the following factors: 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 waiver or reduction would burden the public body. *Public Records Manual* 23. Any person denied a fee waiver or reduction by a state agency may petition the Attorney General to review that denial. ORS 192.440(6).

Here, we are dealing with data gathered by OED on wages and employment for use in the federal Bureau of Labor Statistics' Quarterly Census of Employment and Wages (QCEW). Your petition shows that OED quoted you a cost of $182 to fulfill your records request for certain suppressed QCEW data, based on seven hours of research staff time (at $28/hour, with the first half hour waived). This QCEW data is suppressed because it might reveal information about the wages and employment of an individual employer. *See* ORS 657.665(1) (OED information is generally confidential); 20 CFR § 603.4(b) (states must keep confidential this data about individual employers or information that "could foreseeably be combined with other publicly available information to reveal" such data). In practice, OED complies with these confidentiality requirements by not publicly reporting information for industries containing a small number of employers, or where 80% of the data for an industry comes from one employer.

You contend that you are entitled to fee waiver because you will publish this data on your website http://creativeor.org, which tracks Oregon's creative industries. Your petition shows that OED denied your request because any public interest in disclosing this data would be outweighed by "the cost of re-directing staff away from their normal duties." We therefore must decide whether disclosing this data to you is in the public interest and, if so, whether OED's denial of your fee waiver request was reasonable under the totality of the circumstances.

We spoke with Dave Yamaka, manager of the Workforce and Economic Research Division's Surveys Group at OED. He told us that both OED and the Bureau of Labor Statistics make various QCEW data publicly available at their websites. He explained that you are, in effect, asking OED to create a customized report that would require going back through 15 years of data. Preparing this report for you would also involve ensuring that no data potentially revealing confidential employer information would be disclosed.

We will assume that disclosing this data to you for use on a publicly available website tracking economic activity in Oregon's creative industries is in the public interest. But based on the totality of the circumstances, we find that OED's denial of your fee waiver was reasonable. We first note that non-suppressed QCEW data is already publicly available, and disclosing the requested data would require OED to spend seven hours of staff time creating a customized report for you. In addition, there is no evidence that the cost of $182 would deter your access to 15 years of this data. Therefore, there is a high burden on OED in fulfilling your request, with an uncertain effect on your access to this data.

Because OED's denial of your fee waiver request was reasonable under the totality of the circumstances, we respectfully deny your petition.

Sincerely,

Frederick M. Boss
Deputy Attorney General

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