ELLEN F. ROSENBLUM
ATTORNEY GENERAL

FREDERICK M. BOSS
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
Justice Building
1162 Court Street NE
Salem, Oregon 97301-4096
Telephone: (503) 378-4400

August 31, 2018

VIA E-MAIL ONLY: sllvolin@gmail.com

Stephanie Volin
29 South Valley Road
West Orange, NJ 07052

Re: Petition for Public Records Fee Waiver
Oregon State Bar
DOJ File No.: 993001-GA0051-18

Dear Ms. Volin:

This letter is the Attorney General's response to your August 21, 2018 petition under the Oregon Public Records Law, ORS 192.311 to 192.431.[1] Your petition asks the Attorney General to order the Oregon State Bar (OSB) to waive its fees to produce certain records requested by you in eight separate public records requests. For the reasons discussed below, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exemptions and limitations. ORS 192.314(1). Agencies may establish fees reasonably calculated to recover actual costs in making public records available, but "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 192.324(4)–(5). Even if waiving or reducing the fee is in the public interest, agencies have discretion whether or not to grant such waivers or reductions. *See In Defense of Animals v. OHSU*, 199 Or App 160, 189 (2005). An agency's decision to deny a fee waiver or reduction must be reasonable under the totality of the circumstances. *Id.* at 190. Any person denied a fee waiver or reduction by a state agency may petition the Attorney General for review.

[1] Thank you for granting an extension on the deadline to issue this order.

Your petition explains that you submitted 15 public records requests to the bar between June 10 and August 13, 2018. Your first seven requests were narrowly focused on records that mention you or your partner, bar complaints and disciplinary records relating to four attorneys, and information about client referrals to two attorneys by the bar's Modest Means Program. You requested a waiver for two of those requests, noting that you write for two online sites – Medium and the Good Men Project. One fee waiver request was denied and one was granted.[2] The bar's fee estimates for these initial requests ranged from $18.50 to $135.04, and you indicate you intend to pay those estimates that have not been waived by the bar.

You submitted eight more public records requests between August 1 and August 13, 2018, most of which are broader in scope. Collectively, those requests seek all communications (e-mail, facsimile, mail) referencing any one of 35 specific individuals (or their representatives) between OSB employees, the Professional Liability Fund, the Professional Review Board, various media outlets, and several private citizens. You requested a fee waiver for each of these new requests, noting that disclosure "will contribute significantly" to the public's understanding of the professional misconduct of former Oregon attorney Megan Perry and "related matters, including but not limited to the general situation at the Oregon State Bar." The bar responded to you on August 15, 2018, denying your requests for a fee waiver. The bar indicated that the fee associated with each of your new requests was likely to exceed $200, and suggested you narrow your individual requests to reduce the associated fees. The bar has since refined its estimates; one request is now estimated to cost around $60, but the others remain over (some of them well over) $200.

You now ask the Attorney General to order OSB to waive the fees associated with each of your most recent requests. You argue that you should be granted a fee waiver because you believe the bar mishandled Ms. Perry's case (and possibly others) and that the bar's fee estimate is designed to conceal its negligence from you. You contend that uncovering the breadth of OSB's negligence is, by definition, in the public's interest. You also allege that charging you more than $200 for each request is "ludicrous, conspiratorial, and retaliatory."

Under the Oregon Public Records Law, public bodies considering a request for a fee waiver must first determine whether making the records available primarily benefits the general public. *See* ORS 192.324(5). The furnishing of public records primarily benefits the public when its greatest utility is to the community or society as a whole. *See In Defense of Animals*, 199 Or App at 189. Pertinent factors 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* at 23 (2014) ("*Manual*"). ORS 192.324(5) does not require a public body to grant a fee waiver even if the public interest test is met. *Id.*

---

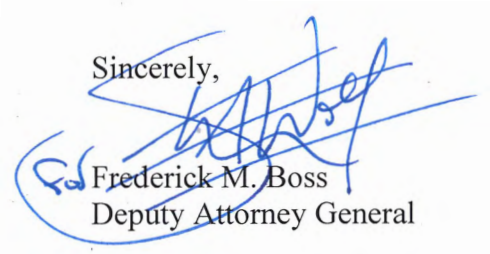
[2] The bar denied your request for a fee waiver for records mentioning you or your partner and provided you a fee estimate of $135.04. You are not appealing this denial or the bar's fee estimate. Regarding your second request for a fee waiver for records related to the Modest Means Program, the bar initially told you that it did not have any responsive records; thus, there was no fee estimate. When the bar subsequently located responsive information, it provided it to you without charge.

We contacted OSB General Counsel Amber Hollister. She acknowledges a public interest in attorney misconduct, and explains that the bar has coordinated with state and local media serving the communities potentially affected by Ms. Perry's misconduct. But with respect to your requests, the bar takes the position that fulfilling your requests will primarily serve your personal interests, and not those of the general public. Ms. Hollister informs us that your partner, who claims to be a victim of Ms. Perry's misconduct, has served a litigation hold on the bar to preserve all records related to Ms. Perry's cases, suggesting that your requests are directly related to that litigation threat. The bar also suggests that the online sites for which you write are not effective tools to disseminate information about Ms. Perry's case to the general public.

We do not address those arguments because Ms. Hollister further informs us that, even if making these records available primarily benefits the general public, the bar would exercise its discretion to deny your fee waiver requests. She notes that your broad requests will require significant staff time to process. The bar's preliminary search of archived e-mails disclosed nearly 15,000 documents, comprised of at least 45,000 pages. Ms. Hollister estimates it will take at least 200 hours to review and redact the archived e-mails. The bar will also have to search its electronic files, paper records, and individual computers for responsive records. In total, Ms. Hollister estimates it will take at least 250 hours of staff time to locate, review and produce records responsive to your requests. Given that many of your requests seek every single document pertaining to various people (and, occasionally, unspecified representatives of entities), that estimate seems realistic.

Under the circumstances, we cannot say that OSB's refusal to waive its fees was unreasonable. The record convincingly demonstrates that responding to your eight requests will place a significant burden on the bar. The breadth of your requests, and your unwillingness to work with the bar to narrow them, means that much time may be spent compiling and reviewing records completely unrelated to any matter of public interest – or, indeed, to any of the matters about which you are concerned. As a result, we think that any public interest in the disclosure you are requesting is significantly diminished, and cannot justify the burden the bar would incur if we ordered it to waive its fees for these broad requests. *See Manual* at 23 (describing factors relevant to assessing the reasonableness of fee waiver decisions). Therefore, we must respectfully deny your petition.

Sincerely,



Frederick M. Boss
Deputy Attorney General

FMB:nog/DM9142832
c via email only: Amber Hollister, OSB