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November 22, 2019

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-GA0142-19

Dear Ms. Volin:

This letter is the Attorney General's response to your November 7, 2019 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 disclose certain exhibits referenced in Client Security Fund claim summaries that were presented to the OSB Board of Governors for approval. 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). 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 160, 189 (2005). Even if waiving or reducing the fee is in the public interest, agencies have discretion whether or not to grant such waivers or reductions. An agency's decision to deny a fee waiver or reduction must be reasonable under the totality of the circumstances. *Id.* at 190. Factors relevant to a fee-waiver decision include (a) how narrowly tailored the request is to a matter of public interest; (b) the time and expense needed to fulfill the request; (c) the volume of the records requested; (d) the need to segregate exempt from

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

nonexempt materials; (e) whether the fee was avoidable; (f) the ability of the requester to pay the fee; and (g) the aggregate effect of numerous public records requests upon the public body. *Attorney General's Public Records and Meetings Manual* at 25 (2019) ("*Manual*"). Any person who believes there has been an unreasonable denial fee waiver or reduction by a state agency may petition the Attorney General for review. ORS 192.324(6).

We contacted OSB General Counsel Amber Hollister regarding your petition. As background, she explained that OSB maintains the Client Security Fund (CSF) to help reimburse clients who lose money or property as the result of dishonest conduct by their lawyer. Claims of $5,000.00 or more must be approved by the Board of Governors (the "Board"). To assist the Board, OSB's staff typically prepares claim summaries that describe the findings of the CSF investigation and convey the CSF Committee's recommendations to the Board. Ms. Hollister explained that CSF investigative reports and select exhibits from those reports are presented to the Board as attachments to the claim summaries. OSB routinely includes the CSF claim summaries, with attachments, in the Board's meeting agendas, which are available to the public on OSB's website.

In this instance, on October 27, 2019, you requested exhibits related to various CSF claims against former attorney Lori Deveny that you believed were missing from the claim summaries presented to the Board. Your initial request explained your belief that such exhibits are historically found in the Board's agendas posted on OSB's website, but that in this case nearly all of the exhibits were missing. OSB acknowledged your request on October 30, 2019. OSB explained that your concern that exhibits were missing reflected a misunderstanding because OSB has never posted full CSF claim files and exhibits with the Board's agendas. Thereafter, on November 6, 2019, OSB sent you a fee estimate of $254.95 to process your request. Your petition followed.

Your petition asks us to order OSB to disclose the exhibits to you at no cost. On the record before us, it does not appear that you ever requested a fee waiver from OSB. Ordinarily we would deny your petition as premature because our authority to review your appeal is contingent upon OSB having denied a request for a fee reduction or waiver. *See* ORS 192.326(6). However, Ms. Hollister explained to us that OSB presumed that you were seeking a fee waiver. And she indicated that OSB would have not have granted a fee waiver in this case if you had made a formal request. Under the circumstances, we conclude it is appropriate to consider your petition at this time.

Your petition explains why you believe you are eligible for a public interest fee waiver. You publish on the website Medium and claim to have a large readership focused narrowly on matters of the OSB, law, ethics, and the judiciary. You assert there is considerable public concern regarding the OSB's handling of Ms. Deveny's case, and you believe you are the only member of the media following this particular story. Next, you argue that OSB's denial was unreasonable under the circumstances because the exhibits you requested are the sort of materials "OSB usually includes" in the Board agendas that are routinely made available for free on OSB's website. You also claim OSB's denial was unreasonable because you believe OSB expended more time and resources to remove the exhibits from the claim summaries in this case

than it would have taken to just post the summaries "as they usually do, with exhibits." In short, you believe OSB's denial was unreasonable because the fee was avoidable in this instance.

In response to your petition, Ms. Hollister explained OSB's position that the premise of your argument is incorrect. She explained that the exhibits you requested were not missing from the claim summaries posted on OSB's website because they were never included with the claim summaries presented to the Board. She explained that, in general, only the most pertinent exhibits from the CSF investigative reports are included with the claim summaries presented to the Board. And in this case, she indicated, all of the exhibits included with the claim were made available to the public on OSB's website. She also explained that, despite your contention, the exhibits you requested are not easily available and are not the sorts of records routinely provided to the public.

Ms. Hollister also described the work required to process your request. She explained that the data for each CSF claim file is stored in a proprietary database called Aptify, from which each exhibit must be separately downloaded and moved to another server for review and production. She explained that OSB identified 29 CSF claims responsive to your request, and estimated that it would take five hours to locate, download and move the exhibits, at a cost of $106.50. Then, she explained, an attorney will need to review the exhibits and redact any exempt information, such as sensitive claimant financial and health information. OSB estimated this review will take at least one and a half hours, at a cost of $148.45. Ms. Hollister also explained that, contrary to your belief, the exhibits were not removed from the claim summaries before they were presented to the Board. In other words, she explained, the work required to process your request – and the fee associated with that work – was not avoidable.

Regarding your request for a fee waiver, Ms. Hollister explained OSB's position that disclosure to you will not primarily benefit the general public because your blog on Medium is not an effective tool for disseminating information to the general public. In support of OSB's contention, Ms. Hollister observed that your blog has only 178 followers nationally and that the Medium platform has no journalistic standards or requirement that contributors be credentialed journalists. She also noted your strong private interests in obtaining records from OSB generally, evidenced by your threats to sue OSB and your involvement in a civil case relating to the custodianship of Ms. Deveny's law practice.

Next, Ms. Hollister explained that even if disclosure to you would primarily benefit the general public, OSB would exercise its discretion to deny your request. She informed us that you have submitted 89 public records requests to OSB since June 2018, including 18 pending requests. She explained that OSB has invested significant time and effort in responding to your various inquiries and that processing this request will demand significant staff resources.

Because Ms. Hollister has indicated that OSB would exercise its discretion to deny your request, we do not need to address the threshold issue of whether you are eligible for a public interest fee waiver under ORS 192.324(5). And under the circumstances, we cannot conclude that OSB abused its discretion by refusing to waive its fee. Your principal argument is that you believe the exhibits should have been posted online, thereby making OSB's fee avoidable in this

case. We note that we have no authority to review OSB's processes or decisions regarding which records are, or are not, made available to the public on its website. And in light of Ms. Hollister's description of how CSF claim summaries are prepared and presented to the Board, we cannot conclude that fee should have been avoidable in this instance. This, combined with the aggregate effect of your numerous requests, suggests that OSB's denial was not unreasonable.

We also observe that OSB has published to its website a significant amount of information regarding the CSF claims against Ms. Deveny, including the claim summaries and investigative reports that were presented to the Board. As a result, we think that any public interest in the particular exhibits you seek is significantly diminished, and the marginal value of disclosing them would not justify the burden the bar would incur if we ordered it to waive the fee. We also find that the amount of the fee appears reasonable in relation to the amount of work OSB estimates is required to process your request. Under the circumstances, we cannot conclude that OSB's fee will impede the public's interest in learning about the CSF claims against Ms. Deveny.

For the foregoing reasons, we conclude that OSB did not unreasonably deny your request for a fee waiver. We therefore respectfully deny your petition.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn/DM9958153
c via email only: Amber Hollister, OSB