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January 13, 2021

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-GA0005-21

Dear Ms. Volin:

This letter is the Attorney General's response to a petition filed by you under the Oregon Public Records Law, ORS 192.311 to 192.431. Your petition, which we received January 4, 2021,[1] asks the Attorney General to find that the Oregon State Bar (OSB) unreasonably denied your request that it waive its fees for furnishing to you all unauthorized practice of law (UPL) complaint files from 2020. 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 their actual costs for 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 general 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. 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).

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

In response to your request for the 2020 UPL complaint files, OSB provided you with a fee estimate of $215.97 to furnish the records. You requested OSB waive the fee because you believe disclosure to you is in the public's interest. OSB denied your fee waiver request and your petition followed. You assert that OSB unreasonably denied your request for a fee waiver and describe why you believe you are entitled to a public interest fee waiver. Specifically, you assert that these records relate to "apparently imminent antitrust litigation arising from the OSB's conduct."

We contacted OSB General Counsel Amber Hollister regarding your petition. She reiterated OSB's position, as recounted in several prior orders by this office, that you are not eligible for a public interest fee waiver under ORS 192.324(5) because disclosure to you would not primarily benefit the general public. *See* Public Records Order, Aug 31, 2019, Volin; and Public Records Order, Nov 22, 2019, Volin; Public Records Order, May 22, 2020, Volin. She also explained that OSB is not aware of any imminent antitrust litigation against OSB that would support the public interest you have identified in this instance.

Ms. Hollister also indicated that even if disclosure to you would primarily benefit the general public, OSB would exercise its discretion to deny your fee waiver request in this instance. She explained that, because you have submitted approximately 130 public records requests to OSB since June 2018, OSB has determined that it is generally necessary to seek reimbursement for the staff time and resources dedicated to processing your requests. In this instance, she explained, OSB has identified 42 responsive complaint files. She described each file as containing multiple documents that could amount to more than 100 pages, to include the complaint and related correspondence, documentation of the complainant's underlying legal matter, the investigator's report and supporting documentation, and correspondence between the complainant, OSB staff, the investigator and any related parties. Ms. Hollister explained that OSB must carefully review and redact exempt information from each file prior to disclosure because these complaint files often contain sensitive information that is exempt from disclosure under the public records law. OSB estimated that it will take approximately 4 hours of staff time and .5 hours of attorney time to locate, review, redact, and produce the 42 complaint files. Finally, she emphasized that the fee estimate is only an estimate, and that OSB will refund any overpayment if it is able to process your request more quickly than anticipated.

Because Ms. Hollister has indicated that OSB would exercise its discretion to deny your fee waiver 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). Instead, we evaluate whether OSB's fee waiver denial was reasonable under the totality of the circumstances. As we have observed, when making a fee waiver decision, agencies should consider the character of the public interest in the particular records, the extent to which the agency's fee impedes that public interest, and the extent to which a waiver would burden the public body. *See Manual* at 24. Relevant factors include how narrowly tailored the request is to a matter of public interest; the time and expense needed to fulfill the request; the volume of the records requested; the need to redact exempt material; whether the fee was avoidable; the requester's ability to pay the fee; and the aggregate effect of numerous public records requests upon the agency. *Id.* at 25.

Our evaluation of these factors leads us to conclude that OSB's refusal to waive its fee was not unreasonable in this instance. First, we find that the public interest you have identified – imminent anti-trust litigation against OSB – is not supported by the available record. The information you have provided does not demonstrate that such litigation is imminent and OSB represents that it is not aware of any such litigation. In any event, we have no reason to think that all or most of the records you have requested would have any real relevance to such litigation. You have not identified any other public interest in these files that would be impeded by OSB's fee, and we are not aware of any such interest among the general public. We also find that OSB has adequately described how its fee was calculated in relation to the volume of responsive records that must be reviewed for exempt material.[2] It does not appear that the costs OSB would incur to process your request, in terms of staff time and resources, are avoidable. Nor have you asserted that you are unable to pay the fee.[3] And, as we have previously noted, the nature, volume, frequency and aggregate effect of your numerous requests has caused the expenditure of significant OSB staff time and resources for which, Ms. Hollister has previously represented, the actual costs have greatly exceeded what OSB has sought to recover from you. *See* Public Records Order, May 22, 2020, Volin.

Under the totality of the circumstances, we conclude that the OSB did not unreasonably deny your request for a fee waiver in this instance and therefore respectfully deny your petition.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn/
c via e-mail only: Amber Hollister (OSB)

[2] You assert that the OSB has exaggerated the volume of records that must be reviewed in this instance and you provided records supporting your belief that the average UPL complaint file is only 14 pages. The records you asked us to review were disclosed by OSB in 2019 in response to your request for a subset of UPL complaint files; specifically, the UPL complaints filed with OSB over a three-month period and the letters to the complainants regarding the status or resolution of their complaints. After reviewing this subset of UPL complaint files, we find no basis to conclude that OSB has exaggerated the size of the complete complaint files that must be reviewed in this case. And notwithstanding your concern, if OSB's estimate proves to be too high, OSB has acknowledged that it must return any overpayment.

[3] In this regard, the available record suggests to us that you are able to pay OSB's processing fees. Specifically, records provided by you show that you paid more than $800.00 in public records processing fees to OSB in 2019 and the first half of 2020. This included $78.00 for the subset of UPL complaint files discussed in note 2.