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) 378-6002

December 14, 2020

VIA EMAIL ONLY: dsupham58@gmail.com

Donald Scott Upham
3906 SW Altadena Ave
Portland, OR 97239

Re: Petition for Public Records Disclosure Order
Oregon Judicial Department
DOJ File No.: 198040-GA0118-20

Dear Mr. Upham:

This letter is the Attorney General's response to your petition for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition, which we received December 7, 2020, relates to a fee estimate provided to you by the Oregon Judicial Department (OJD) in response to a public records request. We interpret your petition as asking the Attorney General to find that the true purpose of OJD's fee estimate was to constructively deny your request. Your petition also suggests that you believe you are entitled to a waiver of fees in this instance. For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers the right to inspect public records in Oregon, unless such records are exempt under ORS 192.338, 192.345, or 192.355. ORS 192.314(1). Agencies may establish fees reasonably calculated to recover actual costs in making public records available, but may waive or reduce its 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). Any person who believes their request for a fee waiver or reduction was unreasonably denied by a state agency may petition the Attorney General for review. ORS 192.324(6). Although the Attorney General lacks authority to review the reasonableness of an agency's fees, the Attorney General may evaluate an agency's fees "where the true amount of the fee in comparison to the nature of the request suggests the true purpose of the fee is to constructively deny the request, rather than to recoup the agency's actual costs." *Attorney General's Public Records and Meetings Manual* at 22 (2019). The agency carries the burden to sustain its actions. ORS 192.411(1).

Your petition relates to your November 12, 2020 request to the Deschutes County Circuit Court for entries in the Oregon eCourt Case Information ("eCourt") system database that are not accessible by the parties in four separate cases. On December 1, 2020, the Trial Court Administrator (TCA), Jeff Hall, provided you with a fee estimate of $937.50 to furnish these records. Mr. Hall's response explained that the estimate is "partially based on work completed to date and the estimated amount of time to complete your request." The estimate was broken down further, as follows, with all services billable at $75.00 per hour:

> 9.0 hours – [Information Technology (IT)] Staff - develop, test and run scripts to locate comment fields. Determine which comment fields are not viewable in the register. Review referenced cases to confirm report accuracy.
>
> 0.5 hours - Legal Counsel - review for exemptions and discuss same with TCA.
>
> 3.0 hours - TCA - Locate and copy screen prints of document comments and non-docketed events in the case register, review all records for relevance and ability to release, prepare correspondence, compile and send final response.

Finally, Mr. Hall informed you that if the final cost to complete the request proves less than estimated, OJD will refund the difference to you.

Your petition asserts that the fee estimate is "tantamount to a denial and strong evidence of Hall's obvious hostility and bias" toward you. You take particular exception to Mr. Hall's estimate that it will take 9 hours for IT to conduct a search, contending that IT searches are conducted electronically and not manually. You also contend that Mr. Hall refused to discuss a waiver of fees.

In response to your petition, we contacted Tim Lewis, OJD Senior Assistant General Counsel. He explained that the majority of the entries you requested consists of notes and comments by OJD personnel that may appear in a number of different eCourt data fields. He indicated that the system OJD uses to access the eCourt database, called Odyssey, does not have a feature that enables OJD to conduct a comprehensive automated search for such entries. Therefore, he explained, IT staff familiar with the database have expended approximately 9 hours conducting a manual review of each case in eCourt to locate responsive entries. Mr. Lewis informed us that there is a "Notes" data field that can be exported relatively easily, and at a reduced cost, that contains entries that are not available to the parties through eCourt. However, he explained, the information in those entries would not encompass all of the information that you requested. Finally, Mr. Lewis indicated that OJD has not received a request for a fee waiver or reduction from you after providing you with its fee estimate.

Under the circumstances, we cannot conclude that the true purpose of OJD's fee estimate was to constructively deny your request. According to Mr. Lewis, the majority of the fee estimate seeks reimbursement for work that has already been performed. We have no reason to question his representation and there is no plausible explanation for why OJD would have expended such resources if it intended to deny you access to this information. Although OJD

cannot compel you to pay for this cost if you elect not to proceed with your request, OJD is otherwise entitled to recover its actual costs of furnishing the records you requested. *See* ORS 192.324(4)(a)-(c). Finally, because there is no indication in the record that you requested OJD waive or reduce the fee, we conclude that it is premature for us to evaluate your claim that OJD should waive its fee in this instance. *See* ORS 192.324(6) (Attorney General's authority is limited to reviewing claims that a request for a fee waiver or reduction was unreasonably denied). We therefore respectfully deny your petition.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn
c via email only: Tim Lewis (OJD)