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December 14, 2020

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-GA0116-20

Dear Ms. Volin:

This letter is the Attorney General's response to a petition filed by you on December 2, 2020[1] under the Oregon Public Records Law, ORS 192.311 to 192.431. Your petition asks us to find that the Oregon State Bar (OSB) unreasonably denied your request to waive its $58.70 fee estimate to process your request for a copy of the 2020 Client Security Fund (CSF) spreadsheet. Your petition also asks us to review the fee estimate because you believe there are several problems with how it was calculated. 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). However, the Public Records Law does not require agencies to create new records in response to a records request. *See Attorney General's Public Records and Meetings Manual* at 7 (2019). 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). Any person denied a fee waiver or reduction by a state agency may petition the Attorney General for review. ORS 192.324(6). The agency carries the burden to sustain its actions. ORS 192.411(1).

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

Your petition explains that CSF spreadsheets used to be included in the Board of Governors ("Board") meeting agendas and were publicly available on OSB's website. According to your petition, OSB has not included CSF spreadsheets with the Board's agendas since May 2020, which is why you submitted the records request at issue here. You also note that in 2019, you requested CSF spreadsheets for 2010-2019, and OSB only charged you $20.37 for those ten spreadsheets. From this, you reason that the cost of the single spreadsheet you have requested must be around $2, a *de minimis* amount that you assert that OSB should waive. You also argue that OSB's $58.70 fee estimate to disclose a single spreadsheet, combined with OSB's denial of your request for a fee waiver, is evidence that you are being treated unfairly.

We contacted Amber Hollister, OSB General Counsel, regarding your petition. She explained that the Board changed the process for reviewing the CSF budget earlier this year. In lieu of preparing CSF spreadsheets like those previously submitted to the Board, OSB's Chief Financial Officer now prepares a memorandum for the Board's review and posts that memorandum to OSB's website. Ms. Hollister explained that, because OSB no longer prepares the CSF spreadsheet you are accustomed to seeing, the $58.70 fee estimate reflects the cost to prepare a new spreadsheet in response to your request.

As noted above, the Public Records Law does not require the creation of new records. And we cannot order an agency to disclose records that it does not have. It follows that when considering an appeal of a denial of a fee waiver, our authority is limited to evaluating an agency's fees for disclosing public records that are currently in the custody of the agency; it does not extend to evaluating any fees associated with an agency's offer to create new records. In this instance, Ms. Hollister has advised us that OSB no longer prepares or maintains the CSF spreadsheet that used to be available on OSB's website. Although OSB has offered to prepare a spreadsheet from other available records, OSB is not required to do so in this instance. And because we have no authority to compel OSB to create the spreadsheet, we cannot compel OSB to waive the fees associated with its offer to create them. We therefore respectfully deny your petition.

Sincerely,

Frederick M. Boss
Deputy Attorney General

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