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May 12, 2021

VIA E-MAIL ONLY: dfery@yahoo.com

Debbie Fery
296 Richmond Ave SE
Salem, OR 97301

Re: Petition for Public Interest Fee Waiver
Teacher Standards and Practices Commission
DOJ File No.: 584001-GA0049-21

Dear Ms. Fery:

This letter is the Attorney General's response to your petition under the Oregon Public Records Law, ORS 192.311 to 192.431. Your petition asks the Attorney General to order the Teacher Standards and Practices Commission (TSPC) to waive its $750.00 fee to produce a list of the school districts that have sponsored applicants for a Restricted Substitute Teaching License since 2017. For the reasons discussed below, 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). 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 also establish fees reasonably calculated to recover actual costs in making public records available, but "may furnish copies without charge or 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 action. ORS 192.411(1).

Your petition stems from a records request seeking, in relevant part, a spreadsheet of current Restricted Substitute Teaching Licensees that includes: (a) licensees' first and last names; (b) licensees' email addresses; (c) date each license was issued; (d) date each license expires; and (e) the sponsoring school district for each licensee. TSPC disclosed a spreadsheet to you containing data responsive to parts (a)-(d) of your request. TSPC informed you that it does

not maintain a list of sponsoring school districts for each licensee and that this data is not maintained in its licensee database. TSPC informed you that it could compile such a list, but that it would require a manual search of approximately 2,700 application files. TSPC estimated that it would take approximately 50 hours to prepare that list, at an estimated cost of $750.00. Your appeal followed. Because you believe TSPC should be maintaining sponsoring school district data in its database, you assert that this cost was avoidable and that TSPC should provide the data to you for free.

In response to your petition, we contacted Trent Danowski, TSPC Deputy Director. He informed us that TSPC maintains electronic copies of the school district sponsorship letter for Restricted Substitute Teacher Licenses in each applicant's file. He explained that TSPC's eLicensing database was not designed to import data from those letters into a searchable field within the database. Therefore, he explained, TSPC has always conducted manual reviews of those letters when evaluating license applications. Regarding the list you requested, Mr. Danowski explained that TSPC does not maintain such a list, but that a list could be compiled from a manual review of the school district sponsorship letters. He also reiterated TSPC's position that the $750.00 fee is to reimburse TSPC for the costs of creating the list, work that TSPC has, in its discretion, offered to perform in this instance.

As noted above, we have long opined that 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. Similarly, our authority does not extend to evaluating how agencies create, maintain, or retrieve their records – at least, not unless the effect of such processes is to deny access to public records.

In this instance, Mr. Danowski has informed us that TSPC does not maintain the list you seek, and we have no reason to second-guess his representation. We also observe that, although you have not requested the sponsorship letters themselves, they are public records available for your inspection and from which you can compile the data you seek. Thus, we cannot conclude that the omission of this data from TSPC's eLicensing database has denied you access to the data. Although TSPC has offered to manually compile a list from the sponsorship letters, TSPC is not required to do so in this instance. And because we have no authority to compel TSPC to create the list you have specifically requested, we cannot compel TSPC to waive the fees associated with TSPC's offer to create it. We therefore respectfully deny your petition.

Sincerely,



Frederick M. Boss
Deputy Attorney General

FMB:pjn
c via e-mail only: Trent Danowski (TSPC)