DAVE [illegible]MAYER
ATTORNEY GENERAL

JACK [illegible]OAL
DEPUTY ATTOR[illegible] GENERAL

fee waiver

DEPARTMENT OF JUSTICE

Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400

July 8, 1991

Jim Marr
KPTV 12
735 S.W. 20th Place
P.O. Box 3401
Portland, Oregon 97208

Don Rees
KGW TV
1501 S.W. Jefferson Street
Portland, Oregon 97201

Re: **Petition for Review of Denial of Fee Waiver; Children's Services Division Records**

Dear Messrs. Marr and Rees:

This letter is the Attorney General's order on your petitions for review of the Children's Services Division's (CSD) denial of your requests for a waiver of fees under the Oregon Public Records Law, ORS 192.410 to 192.505. CSD agreed to make available portions of its file pertaining to Michael Lee Henry and asked that you pay a portion of its cost of responding to the public records requests for Mr. Henry's file. You asked CSD to waive all fees, pursuant to ORS 192.440(4), on the ground that release of the records is in the public interest. CSD has waived part, but not all, of its fee. For the reasons below we find that the agency's denial of a complete waiver was not unreasonable and, therefore, respectfully deny your petitions. We uphold the agency's charge of $312 to each of you for its costs of complying with your public records requests.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. See ORS 192.420. The Public Records Law also authorizes a public agency to establish fees "reasonably calculated to reimburse it for its actual cost in making records available." ORS 192.440(2).

ORS 192.440(4), enacted in 1989, allows agencies to furnish copies "without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction is in the public interest because making the record available primarily benefits the general public." A person who believes that a state agency has unreasonably denied a fee waiver or reduction may petition the Attorney General to review the agency's decision. ORS 192.440(5). You have petitioned the Attorney General under this provision.

We agree with your contention that a fee waiver or reduction is in the public interest. Both the nature of the information and your organizations' ability to disseminate the information to the public in a meaningful form lead to this conclusion. See Attorney General's Public Records and Meetings Manual 7-9 (1989) (Manual) (citing Larson v. C.I.A., 843 F2d 1481 (DC Cir 1988); McClellan Ecological Seepage Situation v. Carlucci, 835 F2d 1282 (9th Cir 1987)). Satisfying this test, however, does not entitle your organizations, as a matter of law, to a complete fee waiver. ORS 192.440(4) also permits an agency merely to reduce, rather than entirely waive, its fee.

Here, CSD incurred at least $837.51 in costs in complying with your extensive records requests. That figure includes $18.72 in photocopy costs, and $818.79 in costs for this office's review of the records to determine which portions must be excised. CSD has not sought to charge you, as it could (see Davis v. Walker, ___ Or App ___, ___ P2d ___ (July 3, 1991) (slip op at 3-4)) for its own staff time in locating and editing the records. Thus, the fee it seeks to charge each of your organizations not only excludes permissible charges, but represents a reduction of over 25 percent of the fees it otherwise lawfully could recover.[1]

In the Manual, we noted that the potential financial hardship on an agency that would arise from granting a fee waiver is pertinent to the reasonableness of the agency's decision. Manual at 8. Here, in view of CSD's substantial costs in complying with your requests, its decision not to seek reimbursement for certain of its recoverable costs, and its agreement to further reduce its fee by over 25 percent, we conclude that its denial of a complete fee waiver was not unreasonable.

For these reasons, we respectfully deny your petitions for complete waiver of fees.

Sincerely,

PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

PLA:NS:RDW
bjs/2122G
c: Pat Melius, Assistant to the Administrator, CSD

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[1] CSD also incurred approximately $2,200 in additional costs for legal advice from this office concerning issues arising from your records requests. The agency does not seek to recover these costs from your organizations.