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December 8, 2023

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-GA0176-23

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 asks the Attorney General to order the Oregon State Bar (OSB) to produce certain records to you at a reduced cost, or for free. 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 v. OHSU*, 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).

Your petition stems from a request you submitted to OSB for "all emails *AND ALL OTHER COMMUNICATIONS* between attorney David Elkanich and employees of the bar" during a four-month period in 2021. Your initial request did not seek a waiver or reduction of

fees associated with processing your request and OSB responded by providing you with a fee estimate of $275.45. Based upon this estimate, you narrowed your request to those emails and communications that also contained the names of three other individuals. Again, your modified request did not seek a waiver or reduction of fees. OSB provided you with a reduced fee estimate of $139.73, which we understand reflects a partial waiver of OSB's estimated total costs in this instance.[1]

Thereafter, you submitted a request for a fee waiver or reduction. OSB responded by denying your request for a full waiver and noting that it had already reduced its fee. In support of its decision, OSB referenced other correspondence with you documenting why OSB does not believe your current request qualifies for a public interest fee waiver. OSB also explained its position that is reasonable for OSB to recover its costs in light of the aggregate impact of the approximately 166 record requests you have submitted since 2018. Finally, OSB incorporated by reference all of its prior correspondence with you over the last several years, as well as past orders from this office in which we conclude that, in those instances, OSB was not required to waive or reduce its fees.[2] Your appeal followed.

Your petition argues that OSB's denial is based upon a deliberate distortion of the aggregate number of public records requests you have made. You assert that OSB's position that your current request serves your personal interests instead of the public interest is outrageous and prejudicial. You also claim that disclosure in this instance will be in the public interest because:

> The requested records will likely demonstrate that David Elkanich and now-former bar General Counsel Amber Hollister had at least one irregular and improper conversation during the relevant time period, during which they concocted and entered into a scheme that may have constituted criminal public corruption. Their scheme was discovered shortly thereafter, and Mr. Elkanich was rapidly dismissed from his former firm * * * and Ms. Hollister was dismissed from the bar soon after that.

We contacted OSB Deputy General Counsel Nik Chourey regarding your petition. He explained OSB's position that you are not eligible for a public interest fee waiver in this instance because the accusations and representations in your public interest argument are baseless, lack any supporting evidence, and are deeply rooted in your personal and adversarial interests in multiple longstanding and unproven conspiracy theories. He also reiterated that OSB has already reduced its fee in this instance and is not seeking reimbursement for all of its actual costs. Finally, he indicated that even if disclosure to you would primarily benefit the general public,

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[1] Prior to filing this petition, we understand that you sought the assistance of the Public Records Advocate in resolving this fee dispute. As part of that process, OSB prepared an itemized fee estimate, which shows that OSB was seeking reimbursement only for 1.5 hours of attorney labor (at $93.15 per hour), and that OSB had effectively waived all other costs associated with processing your request, such as the labor cost of locating and compiling responsive records.

[2] *See, e.g.,* Public Records Orders, Aug 31, 2018, Volin; Nov 22, 2019, Volin; May 22, 2020, Volin; Jan 13, 2021, Volin; and Nov 18, 2022, Volin.

OSB would exercise its discretion to deny a fee waiver or any additional reduction of the fee in this instance.

On this record, we cannot conclude that disclosing the requested records to you will primarily benefit the general public, a necessary condition to be eligible for a public interest fee waiver or reduction. ORS 192.324(5). In reaching this conclusion, we find your very serious allegations of public corruption to be speculative at best, particularly given the lack of any supporting evidence[3] and the fact that you rely in part on the demonstrably false representation that Ms. Hollister and Mr. Elkanich were "dismissed" by their previous employers.[4] Under the circumstances, we do not find your corruption allegations to be credible and therefore cannot conclude that disclosure to you in this instance will inform the public interests you have identified. And because we have no other bases for concluding that disclosure to you will primarily benefit the general public, we conclude that your request does not qualify for a public interest fee waiver or reduction. It follows that OSB did not unreasonably deny your request for a fee waiver or reduction in this instance. We therefore respectfully deny your petition.

Sincerely,

Lisa M. Udland

Lisa M. Udland
Deputy Attorney General

ACF:pjn/
c via e-mail only: Nik Chourey (OSB)

[3] We would expect to see, at a minimum, a record of bar disciplinary proceedings against Ms. Hollister and Mr. Elkanich if such a corrupt scheme had in fact existed and been discovered by OSB. No such records exist.

[4] We have verified with OSB, Ms. Hollister, and Mr. Elkanich that neither was dismissed by their previous employer. OSB also denies any knowledge of the purported scheme that you assert was discovered shortly before Ms. Hollister moved to a new job.