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October 14, 2004

Sarah Jeans
3654 Village Ave #10
Eugene, OR 97402

Re: Petition for Review of Denial of Fee Waiver:
Department of State Police Records

Dear Ms. Jeans:

This letter is the Attorney General's order on your petition for review of the denial by the Department of State Police (OSP) of your request for a waiver of fees under the Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on October 7, 2004, states that you are unable to pay the required fees. For the reasons that follow, we respectfully deny your petition.

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 law also authorizes a public body to establish fees "reasonably calculated to reimburse it for its actual cost" in making records available. ORS 192.440(3). A public body may require pre-payment of estimated fees before acting on a request. ATTORNEY GENERAL'S PUBLIC RECORDS AND PUBLIC MEETINGS MANUAL (2004) at 14. ORS 192.440(4) authorizes a public body to waive fees if it determines that the waiver is in the public interest "because making the record available primarily benefits the general public." However, even if a public body determines that waiving fees is in the public interest, "the decision to waive or reduce fees is discretionary with the public body, although it must act reasonably." AG'S MANUAL at 18. Under ORS 192.440(5), "a person who believes that there has been an unreasonable denial of a fee waiver * * * may petition the Attorney General * * * in the same manner as a person petitions when inspection of a public record is denied."

We spoke with Cort Dokken, Risk Manager in OSP's Office of Professional Standards, about your petition. He told us that OSP had notified you that the total estimated fees to respond to your original request easily could have been in excess of $500, based on the amount of time that would have been needed to review and copy all the video and audio tapes you initially

requested. He also told us that you requested a fee waiver in a telephone conversation with him on September 3rd. In a letter dated September 10th, Mr. Dokken acknowledged that you had narrowed your request, and he provided you with a new cost estimate. His letter also stated that OSP would not waive its fees. In a letter dated September 27th, Mr. Dokken acknowledged receipt of $43.82 from you for specified records and notified you that the cost to provide all remaining materials would be $207.59. According to Mr. Dokken, you again asked about a fee waiver during the first week in October, and he reiterated that OSP would not waive its fees.

OSP had authority to waive fees for responding to your records request only if it determined that doing so was in the public interest "because making the record available primarily benefits the general public." ORS 192.440(4). We have concluded previously that "a personal benefit to be derived by the requester alone is insufficient to require a fee waiver." AG'S MANUAL at 17. One example of disclosure creating solely a personal, as opposed to public, benefit is where a requester seeks disclosure "relating solely to the requester in order to aid his or her defense against criminal prosecution." *Id.*

Mr. Dokken told us that you asked for the fee waiver solely based on your inability to pay. Your petition cites your inability to pay OSP's estimated fee and your personal interest in defending yourself in court.[1] You have not asserted that disclosure of the records you requested will serve the public interest, either in your communications with Mr. Dokken or in your petition.[2] While financial inability to pay is a factor for a public body to consider, standing alone it is an insufficient basis upon which to grant a fee waiver. AG'S MANUAL at 17.

Based on the information provided by your petition and by OSP, we do not identify a basis upon which OSP could have concluded that a waiver of fees met the public interest test. Accordingly, we deny your petition.

Sincerely,

Philip Schradle for

PETER D. SHEPHERD
Deputy Attorney General

PDS:AGS14560
c: Cort Dokken, OSP

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[1] Aside from reciting ORS 192.440, the main text of your petition states as follows:

> I am being denied access to my records by the OSP because of the fees that they say are required. This has gone since May of this year. I have paid $43.82. My income is less than $700 a month and my expenses equal that amount. My court date is October 22nd 2004. I believe I am being given the runaround and it is being made as hard as possible to keep me from defending myself. I request a fee waiver ORS below. Your immediate help will be appreciated.

[2] The public does have an interest in ensuring that indigent persons charged with crimes have access to discoverable materials relevant to those charges. We contacted the Reedsport Justice Court about the criminal charges you face in Douglas County. We understand that the discoverable materials are available for you at the Court.