



**MICHAEL D. SCHRUNK**, District Attorney for Multnomah County

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March 2, 2010

Joyce Boles  
818 SW Third Avenue, #66  
Portland, OR 97204

Shelley Marchesi  
Director, Public Affairs  
Housing Authority of Portland  
135 SW Ash Street  
Portland, OR 97204

Re: Petition of Joyce Boles received February 22, 2010 for a waiver of fees associated with the disclosure of certain records of the Housing Authority of Portland

Dear Ms. Boles and Ms. Marchesi:

On this public records petition, ORS 192.410 et. seq., petitioner Joyce Boles requests the District Attorney to order the Housing Authority of Portland (HAP) to waive the fees charged for the production of the following records:

**All documents relating to petitioner's tenancy at Dawson Park Apartments since September 15, 2008.**

**All documents in HAP records with petitioner's name anywhere on them.**

Donna Kelley, HAP Asset Manager, estimated the cost to fulfill the first request to be "\$150 for copying (600 pages at \$0.25 per page) and \$75 for staff time to redact confidential information from the documents you requested." The revised request was estimated to be "\$200 for copying (800 pages at \$0.25 per page) and \$75 for staff time to redact confidential information from those documents."

Petitioner notes that her request "was limited to easily obtained records that will not take much time, except for HAP's assiduous redactions, ever mindful as it is of the most beastly management company practices." Petitioner maintains that the public interest is established by her intention "to build a newspaper/website called 'The Voice of the Poor,' which will expose and humiliate persons making money from abusing the poor."

In a February 25, 2010 letter response, HAP Public Affairs Director Shelley Marchesi maintains that their cost estimate for the request is reasonable. The fees are based "on the actual costs of such requests and also are in line with several other agencies we researched at the time we established our current public records policy."

Ms. Marchesi rejected the public interest argument of petitioner "based on past experience where media articles she said were under development did not materialize." Ms. Marchesi indicated HAP "would have to see the newspaper or website at least in embryonic form to believe they in fact will be created."

### DISCUSSION

The Public Records Law expressly authorizes a public body to establish fees "reasonably calculated to reimburse it for its actual cost in making such records available." ORS 192.440(4)(a). The public body is permitted to include in its fees "costs for summarizing, compiling or tailoring the public records, either in organization or media, to meet the person's request." ORS 192.440(4)(a).

Petitioner asserts that there should be no fee. Petitioner does not appear to dispute the amount of the fees as calculated by HAP consistent with its published Public Records Policies and Procedures (provided to petitioner by Ms. Kelley as an enclosure with her December 2, 2009 letter). Without some evidence of overcharging, this office is not in a position to question the fees established by HAP to copy and redact either the 600-page or 800-page request.

The public agency may provide the records without charge or at a 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 192.440(5). The Attorney General has recognized that even if making the record available is in the public interest, a public body may still deny a fee waiver or reduction if warranted by certain factors:

...any financial hardship on the public body, the extent of time and expense and interference with the business of the public body, the volume of the records requested, the necessity to segregate exempt from non-exempt materials, and the extent to which an inspection of the records is insufficient for the public interest or for the particular needs of the requestor. Attorney General's Public Records Manual, 2008, page 21.

Petitioner has offered no justification for a waiver of fees beyond the fact that she intends to build a newspaper/website which presumably would operate in the public interest. Without more, providing the (voluminous) requested materials which relate solely to petitioner herself would require a fee waiver every time an individual made such a request. That is not reasonable. It is not the basis for a fee waiver here.

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The Attorney General has noted that “a mere allegation that the public body has treated the individual oppressively, absent a broader public interest, does not satisfy the public interest standard.” Attorney General's Public Records Manual, 2008, page 19. The ability to disseminate the information to the public also must be demonstrated. Attorney General's Public Records Manual, 2008, page 19.

It would benefit petitioner to establish and publish a newspaper/website and then seek targeted (and limited) materials from the Housing Authority. A project apparently separate from the “Voice of the Poor” is an online newsletter, The “*NE Reformer*.” According to petitioner, this publication is intended to represent the “more than 30,000 HAP tenants whose lives are made miserable by the ongoing brutal behavior of HAP subcontracting housing managers.” This is certainly a worthy project. Formation of such a public interest media outlet would, at least, put petitioner in a position to seek a fee reduction or waiver from the Housing Authority.

ORDER

Accordingly, it is ordered that the petition of Joyce Boles for a waiver of fees for the production of records of the Housing Authority of Portland is denied.

Very truly yours,

  
MICHAEL D. SCHRUNK  
District Attorney