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November 1, 2004

Chris Brown  
Associate Producer  
750 KXL  
0234 SW Bancroft  
Portland, OR 97239

John S. Thomas  
Deputy County Attorney  
Office of Multnomah County Attorney  
501 SE Hawthorne, Suite 500  
Portland, OR 97214

Re: Petition of Chris Brown for KXL 750 received October 25, 2004 for a waiver of fees associated with the disclosure of certain records of Multnomah County

Dear Mr. Brown and Mr. Thomas:

#### BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Chris Brown requests the District Attorney to order the Multnomah County Elections Office to waive the fees charged for the production of the following records:

**[V]oter registration records in Multnomah County, provided on disc media in spreadsheet form.**

Mr. Brown, Associate Producer at Radio KXL 750, argued for a fee waiver “as we are a news organization requesting the information for use in matters of public interest.” He pointed out that the only parties that could obtain the records without a fee were the two major campaign headquarters in the county.

Deputy County Attorney Thomas replied to the petition on behalf on John Kaufman, Director of Elections, in a letter dated October 29. He pointed out that ORS 297.945 “requires the county clerk to collect a fee when the clerk provides a list of electors.” Mr. Thomas also noted that KXL offered no justification for a waiver of fees.

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(3). The public body is permitted to include in its fees "costs for summarizing, compiling or tailoring [a] record, either in organization or media, to meet the person's request." ORS 192.440(3).

Petitioner does not appear to dispute the amount of the fee or argue that KXL is without the necessary funds. Without some evidence of overcharging, this office is not in a position to question the fees established by the Elections Office to make a list of electors available to any member of the public.

The public agency may provide the records without charge or at a 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." ORS 192.440(4). 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, 2004, page 18.

Petitioner has offered no justification for a waiver of fees beyond the fact that it is a news organization, which presumably operates in the public interest. Without more, providing the requested materials to one news organization would require a fee waiver every time any news organization made such a request. That is not reasonable.

ORDER

Accordingly, it is ordered that the petition of Chris Brown for a waiver of fees for the production of records of the Multnomah County Elections Office is denied.

Very truly yours,

  
MICHAEL D. SCHRUNK  
District Attorney