



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

600 County Courthouse • Portland, Oregon 97204 • (503) 248-3162 • FAX (503) 248-3643

June 12, 2002

David A. Bahr  
Bahr & Strotter Law Offices, PC  
259 East Fifth Avenue, Suite 200  
Eugene, OR 97401

Jens Schmidt  
Harrang Long Gary & Rudnick PC  
101 East Broadway  
Eugene, OR 97401-3114

Re: Petition of David Bahr on behalf of In Defense of Animals (IDA) dated October 11, 2001, tolled October 17, 2001 and reactivated May 30, 2002 to disclose certain records of the Oregon Health Sciences University (OHSU)

Dear Mr. Bahr and Mr. Schmidt:

#### BACKGROUND

On August 13, 1998, Sheri Speede, DVM, on behalf of IDA requested Susan Smith, DVM, of the Oregon Regional Primate Research Center to produce the following records (one of eight items):

**Daily logs pertaining to primate care from August 1995  
to the present.**

Bryan Ogden, DVM, responded to Dr. Speede who, in turn, further clarified the IDA requests. Then, in a letter dated October 27, 1998, Arthur Hall, DVM, advised Dr. Speede that the daily logs "total approximately 75,000 pages. The cost will be \$12,585.40 (including labor, page, and postal charges)." Dr. Speede responded in a November 17, 1998 letter to Dr. Hall that regarding "the daily logs pertaining to primate care from August 1998 [sic] to the present, IDA declined to pay the \$12,585.40 for duplication of those documents and I request instead an opportunity to view those documents where they are stored."

Page 2  
June 12, 2002  
Re: Petition of David Bahr

On February 10, 1999, Dr. Ogden advised Meg Miller, Outreach Coordinator for IDA, that

[t]he records which we offered to print and send for \$12,585.40 are clinical records maintained in electronic files. Since I gave Dr. Speede that estimate, I have been advised that this data base contains some proprietary information which would need to be redacted. I am assessing the extent and cost of redacting and will respond once I have a better understanding of the data at issue.

Ms. Miller wrote Dr. Ogden on March 25, 1999 complaining about the "exorbitant fees" charged by OHSU and requested an explanation for "these abusive cost increases." With respect to the daily logs, Ms. Miller asked for "a date and time when Dr. Speede may come to your office to inspect these documents in person prior to their reproduction." Dr. Ogden replied on May 27, 1999 and discussed and rejected a fee waiver with respect to seven other items. Dr. Ogden was "still waiting for additional information" with respect to the daily logs.

On November 5, 1999, Dr. Speede wrote an extensive letter regarding the history of the request for the daily logs (and one other item). Dr. Speede clarified her request that IDA wanted to review

the primate care logs. In some facilities these are referred to as daily health logs. These should have nothing to do with experimental data or protocols of a proprietary nature. If the center is not checking the monkeys daily and providing medical care as needed, or if records of the care are not being kept, I would like to be informed that this is the case. If you do have these records, I would like to be given the opportunity to review them and make copies selectively. Please make a final determination on this issue.

Dr. Ogden responded on December 21, 1999 by providing a copy of the "OHSU policy concerning public records and fee waivers." A petition to this office by IDA Outreach Coordinator Laurie Lown followed on June 29, 2000 requesting an order "requiring OHSU and its employees to grant IDA a fee waiver for items requested by IDA on August 13, 1998." With respect to the daily logs, the petition noted that the request "was declined by IDA for payment of \$12,585 because of the astronomical costs involved" and noted that OHSU denied Dr. Speede's request to view the documents. "Though IDA had conceded rather than appealing this denial we would like it clearly understood that we disagree both with the

Page 3

June 12, 2002

Re: Petition of David Bahr

outlandish fees and our right for on site viewing.” With the matter unresolved, the District Attorney’ s Order (PR Order 00-16) did not deal with this particular public records request.

In its October 11, 2001 petition, IDA sought review of

**OHSU’ s refusal to allow IDA to inspect daily logs pertaining to primate care without a prior payment of \$12,585.40. The logs at issue were created by OHSU dating from August 1995 to the present.**

IDA pointed out that OHSU has never responded to IDA’ s request to be allowed to inspect the daily logs in person “ rather than cause OHSU to expend the time and incur the costs associated with copying the 75,000 pages which OHSU alleges are responsive” to the request. The parties subsequently agreed to postpone the District Attorney review of this petition pending efforts to discuss and clarify the issues.

On December 7, 2001, OHSU provided to petitioner six pages of sample screen prints less the redaction of certain veterinarian and company names as well as medications used in the primate care. On May 16, 2002, petitioner related that attempts to resolve their disagreement had been unsuccessful. Petitioner restated its purpose in reviewing these materials was to "ensure that OHSU is operating in full compliance with all applicable animal health and safety rules and regulations. This is precisely the sort of information which allow proper oversight of OHSU’ s performance of the public’ s business.”

In a June 6, 2002 response to the reinstated petition, OHSU notes that as of October 1998, the estimated 75,000 pages of printout would

require “ 21 hours to print, with five hours of staff time simply to handle the printing, boxing and mailing of the information. The request would also require an hour of programming time by one of the OHSU computer staff. Mailing the records would require an estimated 30 boxes. OHSU charges \$.15 per page for copying, and \$39.0 per hour for clerical time. With postage, the total estimate of the actual costs associated with IDA’ s request for the daily logs was \$12,585.40.<sup>1</sup>

---

<sup>1</sup> OHSU now estimates that the professional cost to review the records for redaction purposes would add approximately \$53,750 to the cost together with another \$97,500 for clerical time to produce the redacted documents.

Page 4

June 12, 2002

Re: Petition of David Bahr

OHSU agrees that "the public has an interest in the health and well-being of animals under the Primate Center's care. IDA's request would appear to meet this portion of the public interest test, even though OHSU is skeptical that IDA will not manipulate the information and disseminate only portions of the data that fits its cause." OHSU recites certain factors justifying the exercise of discretion in the denial of a fee waiver: "financial hardship, time and expense and interference with normal business, the volume of information requested, the necessity of redacting exempt information, and the extent to which inspection of the records is insufficient." OHSU notes the sheer size and cost of a response and that IDA's request would interfere with the ordinary business of the Primate Center. Redaction would be necessary "whether OHSU sent the records to IDA or whether IDA were to inspect the records at the Primate Center. Reviewing the requested material in the database is not an option due to the exempt material."

Petitioner argues in reply that OHSU has "failed to provide the necessary documentation to support its contention that those costs are 'reasonably calculated to reimburse it for its actual costs' as required by ORS 192.440(3)." Petitioner continues to seek an on site review.

## DISCUSSION

### **I. Actual cost.**

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).

"Actual cost" may include a charge for the time spent by the public body's staff in locating the requested records and "a public body may preliminarily estimate charges for responding to a records request and require prepayment of the estimated charges before acting on the request." Attorney General's Public Records Manual, 2001, page 13.

IDA has sought an inspection of the electronic database as an alternative to receiving copies of the daily logs. OHSU has provided redacted samples of the logs presumably as they would appear on the computer screens. There is no indication that this effort has moved the parties toward an accommodation of each other's interests. The demand in the petition is still for the daily logs from 1995 to present, approximately 75,000 pages, and the cost remains at \$12,585.40. The only change is the estimated \$150,000 additional costs for redaction of certain information.

The Attorney General has spoken with respect to the term "reasonable." Attorney General's Public Records Manual, 2001, page 12-13:

The statutory right to inspect public records encompasses a right to examine original records, and inspection of original documents ordinarily should be allowed if requested. But the right to inspect does *not* include a right to rummage through file cabinets, file folders or electronic files, and a public body may adopt administrative measures to supervise original document review. Nor does the right to examine original records require inspection of an original document that contains some information that is exempt from disclosure. In such a case, a public body acts reasonably if it furnishes a copy of the original, with the exempt material blanked out. Furthermore, a public body's rule or determination under ORS 192.430 that copies will be furnished in lieu of inspection of original documents would be valid if "necessary for the protection of the records and to prevent interference with the regular discharge of the [agency's] duties."

This office concludes that the charge of about 17 cents a copy for the daily logs is not unreasonable and reflects the actual cost for programming, printing and mailing the voluminous documents to IDA. The alternative, on site inspection, does not appear viable unless and until the exemption issues related to OHSU's efforts to protect the identities of the veterinarians, companies and medications are resolved in a separate petition.

## II. Public interest.

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). In our July 28, 2000 order denying a fee waiver for production of other records to IDA, this office spoke to the competing public interests involved here. At that time, we commented on the lack of effective communication and the need for compromise.<sup>2</sup>

OHSU concedes that IDA is acting in the public interest in seeking reassurance that primates in the care of the Primate Center are receiving appropriate medical care. If petitioner had modified its request to seek production of a manageable amount of material, say 750

---

<sup>2</sup> One suggested compromise would be for IDA to identify the minimum number of electronic screens and information on those screens necessary to carry out its monitoring functions. Perhaps the records could then be produced once a month (on a random date chosen by IDA) with minimal redaction and cost.

Page 6  
June 12, 2002  
Re: Petition of David Bahr

documents instead of 75,000, perhaps this office would be in a position to find there was an abuse of discretion. That has not happened. OHSU cannot be expected to expend in excess of \$12,000 of its limited resources to satisfy the continued demands for an extraordinary number of public records.

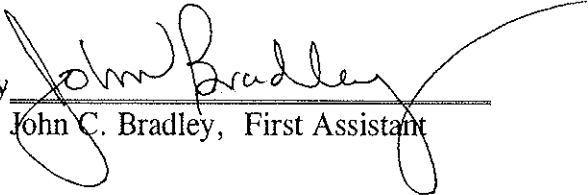
ORDER

Accordingly, it is ordered that the petition of petitioner David Bahr on behalf of IDA for a waiver of fees for the production of records of OHSU is denied.

Very truly yours,

MICHAEL D. SCHRUNK

District Attorney  
Multnomah County

By   
John C. Bradley, First Assistant