



MICHAEL D. SCHRUNK, District Attorney for Multnomah County

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October 22, 2001

Mel Holst
215 SW 14th St.
Gresham, OR 97080

Susan G. Bischoff
City of Gresham
City Attorney's Office
1333 NW Eastman Parkway
Gresham, OR 97030-3813

Re: Petition of Mel Holst received October 11, 2001 for a waiver of fees associated with the disclosure of certain records of the City of Gresham.

Dear Mr. Holst and Ms. Bischoff:

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Mel Holst requests the District Attorney to order the City of Gresham and its employees to waive the fees charged for the production of the following records:

[A]ll papers that pertain to the BARGER HEIGHTS DEVELOPMENT of o/a 1968-1972.

Mr. Holst recites that the records requested by petitioner would be provided (if any exist) subject to petitioner paying the city \$70 plus copying fees. Petitioner contends in his detailed submittal that such fees are unreasonable and argues that the public interest warrants a fee waiver.

Petitioner asserts that he (and/or the four or five other Barger Heights lot owners) should be excused from paying the research fee proposed by the City of Gresham

so that my heirs can document a defense should some future Gresham Administration attempt to re-charge them for STREET, STORM DRAIN, SEWER & WATER LINES when such construction has long been in & paid for. And NO NEW construction would be involved.

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October 22, 2001

Re: Petition of Mel Holst

Petitioner made his initial request orally to city staffers in late June. After several conversations, petitioner received written correspondence from Gresham City Attorney Susan Bischoff on July 20, 2001. Ms. Bischoff advised petitioner of the costs to research the material "even if no records are found." She estimated a research time of two hours at the rate of \$35 per hour. The copying costs of 50 cents for the first two pages, plus 15 cents per page for each additional page, were also noted. Ms. Bischoff requested a deposit of \$70.

On October 18, 2000, the City Attorney responded to the petition in the attached letter. Ms. Bischoff represents that petitioner has been provided copies of all "responsive documents that are readily accessible to city staff." She notes that the request itself is very broad and relates to a street project thirty years in the past. "In order to determine the existence of any additional materials, research of archived records is necessary." Ms. Bischoff argues that the matter only concerns the "personal financial interests" of petitioner, his heirs, and perhaps four or five other property owners in the affected area. The city has determined that "the records sought will not benefit the general public."

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, 1999, page 12.

According to Ms. Bischoff, petitioner has been provided all the available documents with little or no research or copying cost. The documents include "a variety of resolutions and/or council bills together with an assessment roll listing of properties affected by the Barger Heights Street and Development Project." (Letter of July 20, 2001). Further discovery of relevant documents (if any can be found) would necessitate archive research by city staff due to the breath of the request and the age of the original real estate project.

Petitioner does not appear to dispute the need for extensive research. Indeed, from our conversation with petitioner, his goal is to ferret out any and all documentation relating to the Barger Heights Development. In case of future litigation, such an exhaustive exploration of thirty-year old materials may prove to serve both the interests of petitioner and the City of Gresham. At this time however, the modest deposit of \$70 to satisfy petitioner's request does not seem unreasonable and reflects the "actual cost" in making the records available.

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). 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:

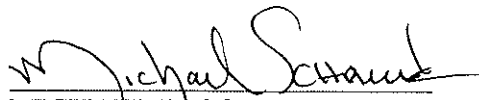
any financial hardship on the public body, the extent of time and expense and interference with the business of the public body, the volume of the records requested, the necessity to segregate exempt from non-exempt materials, and the extent to which an inspection of the records is insufficient for the public interest or for the particular needs of the requestor. Attorney General's Public Records Manual, 1999, page 16.

A distinction must be drawn between a request for records readily available for inspection or copying and those records that must be compiled (or created) in a special production. Petitioner has already been provided with all documents identified by city staff as responsive to petitioner's request. This has been accomplished at modest cost to the city and petitioner. The city does not accept petitioner's argument that the financial interest of petitioner, his heirs, and the other four or affected property owners is of sufficient public interest to justify a fee waiver. This office agrees with Ms. Bischoff that the "utilization of additional public funds and resources to respond to the request" would be improper. The City is entitled to be reimbursed for its extraordinary research costs together with any copying fees.

ORDER

Accordingly, it is ordered that the petition of petitioner Mel Holst for a waiver of fees for the production of records of the City of Gresham is denied.

Very truly yours,


MICHAEL D. SCHRUNK
District Attorney
Multnomah County



City of Gresham

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October 18, 2001

BY FAX AND REGULAR MAIL

Mr. John K. Hoover
Deputy District Attorney
600 Multnomah County Courthouse
Portland, OR 97204

RE: Mel Holst Public Records Petition

Dear John:

I am in receipt of your letter dated October 11 regarding the above noted public records request. After reviewing the 22 page petition and discussing the matter with you on the phone, I understand the issue is not that the city has refused to provide records, but rather, that we have declined to provide additional information at no cost to Mr. Holst.

I noted that my letter to Mr. Holst dated July 20, 2001 is included in the materials Mr. Holst provided to you. I believe the city's position on the issue of research costs is adequately stated. I have no recollection of the conversation Mr. Holst attributes to me wherein I purported to tell him that to secure a fee waiver, he would need to raise the issue with the mayor. As a practical matter, the mayor and council do not get involved in decisions about public records. Indeed, these types of issues are administrative in nature and fall under the city manager pursuant to our charter. With that said, I do recall Mr. Holst telling me that the mayor was a personal friend. It would not be unlike me to suggest to him that the mayor is my boss, and if the mayor tells me provide the information at no cost, that I would gladly do so. As an aside, at Mr. Holst's request, Mayor Becker did consider the fee waiver request. He concluded that because the information sought was not a matter of interest to the general public, a waiver was inappropriate and could create a precedent that the city could not justify.

As we discussed by phone, Mr. Holst's records request is very broad. He has been provided copies of all responsive documents that are readily accessible to city staff. While he paid 15 cents per page for a few of the documents provided, he was not charged for the research time or any documents that were provided through my office. The street project at issue in this matter occurred some thirty years ago. In order to determine the existence of any additional materials, research of archived records is necessary. Mr. Holst

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was asked to provide a very modest deposit (\$70) to cover the anticipated time associated with further research. He has declined to do so.

The public records act permits the city to recover the costs at issue here. As provided in the act, we also permit waiver of the costs associated with a records request when to make the records available primarily benefits the general public. It is the city's position that the records sought will not benefit the general public. To be sure, Mr. Holst himself indicates that he wants the records in an effort to ensure that his heirs are not charged various building permit or development charges should his property (and perhaps 4 or 5 additional lots in the city) be developed at some time in the future. From the city's perspective, although the matter may raise personal financial interests to Mr. Holst, it does not raise issues of interest to the public at large. Thus, utilization of additional public funds and resources to respond to the request is improper.

I note in Mr. Holst's petition that he also asks for your assistance in resolving what he asserts is a disagreement with the city. With all due respect to you and District Attorney Shrunk, to consider the underlying issues raised is beyond the jurisdiction of your office. I trust you will decline the invitation to offer Mr. Holst legal advice and simply render a decision on the merits.

Thank you for your attention. If you need further information, please let me hear from you. My direct phone line is 503-618-2456. I will look forward to receiving your decision.

Very truly yours,



Susan G. Bischoff

c: Bonnie Kraft