



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

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October 17, 2000

Nigel Jacquiss  
Willamette Week  
822 SW 10<sup>th</sup> Avenue  
Portland, OR 97205

Bruce Samson  
General Counsel  
Portland Public Schools  
501 North Dixon Street  
PO Box 3107  
Portland, OR 97208-3107

Re: Petition of Nigel Jacquiss on behalf of Willamette Week received October 10, 2000 to lose certain records of the Portland Pubic Schools (the District)

Dear Mr. Jacquiss and Mr. Samson:

#### BACKGROUND

In July 2000, petitioner Nigel Jacquiss on behalf of Willamette Week verbally requested District spokesperson Patty Farrell and acting Human Resources Director Steve Goldschmidt to produce a list of all Portland Public School employees. On August 25, petitioner renewed his request in writing with the District's new Communications Director, Renee Neidermeyer, for the names of all Portland Public schools employees, including middle names or initial, date of hire, job title and date of birth. Petitioner requested in his e-mail correspondence "that the district waive the cost of producing the requested information."

After a series of telephone calls, petitioner and the District agreed on the production of a list of employees' names without a unique identifier, subject to the District later providing additional identifiers if necessary to eliminate confusion about identity. There is no indication that either petitioner or the District further broached the subject of cost or a fee waiver.

In his petition, Mr. Jacquiss states that the records requested by petitioner have been prepared and are available subject to Willamette Week producing a check for \$125. This petition is limited to evaluation of petitioner's contention that the public interest warrants a fee waiver.

Petitioner takes the following position with respect to the fee proposed by the District:

**My editor and I believe that paying such a fee establishes an unwelcome precedent (in the past the district has met WW's requests without charge - admittedly for smaller parcels of information) and appeal for a waiver of charges as permitted by statute.**

On October 16, 2000, District General Counsel Bruce Samson responded to the petition. He first noted that the request was for over 8000 names and job descriptions. "Producing these records required special runs of our computer records and approximately five hours of work primarily by an outside contractor." The District paid approximately \$300 for the work. Mr. Samson provided this office with the relevant administrative regulations that limit the charge for producing the records to \$25 per hour. The District believes the \$125 fee is reasonable and has declined to reduce or waive the fees.

In his letter, Mr. Samson argues that the assertions of public interest are vague and speculative and that Willamette Week has made no claim of financial hardship. Further, Mr. Samson submits that the District has acted cooperatively and reasonably and made a special effort to charge petitioner the lowest possible fee. Mr. Samson finally notes that the Oregon taxpayers will ultimately pay any fees required by the District.

In a subsequent telephone conversation with this office, petitioner indicates that disclosure of the records is in the public interest because Willamette Week is investigating whether the District is employing persons with criminal records. Petitioner contends that the lack of financial hardship to his newspaper and the cooperation of the district are irrelevant considerations and that the Oregon taxpayer argument is a red herring.

#### 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.

The fee schedule published by the District provides the necessary notice and explanation for its charges. It appears that the District has made the records available at nearly a 60% reduction

from its actual costs. The five hours spent by the outside contractor compiling the extensive electronic list is certainly reasonable and justified.

## 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. This office appreciates that the investigative reporting of Willamette week generally serves the public interest. However, we are not prepared to say there has been an abuse of discretion in the decision of the District not to expend its limited financial resources by granting petitioner a fee waiver. In the future, it would be prudent for both the requester and the District to discuss such extraordinary costs before the work is done in order to avoid the very problem present in this petition.

### ORDER

Accordingly, it is ordered that the petition of petitioner Nigel Jacquiss on behalf of Willamette Week for a waiver of fees for the production of records of the Portland School District is denied.

Very truly yours,

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MICHAEL D. SCHRUNK  
District Attorney  
Multnomah County