



MICHAEL D. SCHRUNK, District Attorney for Multnomah County
600 County Courthouse • Portland, Oregon 97204 • (503) 248-3162

December 24, 1998

GARET MARTIN
PO BOX 10442
PORTLAND OR 97209-0442

HANK MIGGINS
MULTNOMAH COUNTY ANIMAL CONTROL
1700 N COLUMBIA RIVER HIGHWAY
TROUTDALE OR 97060

Re: Petition of Garet Martin, dated December 18, 1998,
to disclose certain records of the Multnomah County
Animal Control

Dear Ms. Martin and Mr. Miggins:

BACKGROUND

On this public records petition, ORS 192.410 et. seq., petitioner Garet Martin requests the District Attorney to order the Multnomah County Animal Control and its employees to produce a copy of the following records:

[T]he names, phone numbers and addresses of all complaints on barking dog nuisance on a weekly basis. Please make this request retroactive to the beginning of October....

Petitioner made her request for "complainant contact information" to Hank Miggins, Director of the Animal Control Division, in a letter dated November 14, 1998. Petitioner received various other documents (and telephone calls) from Mr. Miggins and his staff during the next month. She did not, however, receive either the necessary information on barking complaints or a written explanation denying the request or explaining the delay.

The Animal Control Division has not asserted an exemption from disclosure of the public records requested by petitioner. However, we have been advised by Multnomah County Counsel Matt Ryan that the information is not maintained in a log-in complaint format or retained in the agency computers in a retrievable format. This was confirmed by Mr. Miggins in the attached letter.

Page 2
December 24, 1998
RE: Petition of Garet Martin

Animal Control does maintain a limited public record of complainant information. It is not created until a notice of infraction is generated by Animal Control incident to enforcement action. At this time, a complainant is asked to formally sign a petition against a barking dog owner. According to County Counsel and the Animal Control Director, it is possible to conduct a computer search and identify these notices by number. Once the number is identified, a further computer search is necessary to retrieve the petition and generate a hard copy.

Mr. Miggins estimates that approximately 3,000 barking dog complaints are made each year to Animal Control. Of these, approximately 50 reach the stage of a notice of infraction and a corresponding petition. It is these petitions that contain the name, address and phone number of the complainant.

DISCUSSION

Multnomah County Animal Control has claimed no exemption from disclosure of its "public records" subject to the payment of its actual costs in retrieving those records.

1. The Public Record

"The Public Records Law does not impose on public bodies the duty to create public records." Attorney General's Public Records Manual, 1997, page 5. There is a distinction between creating a new program to extract data requested by the public and using existing programs used by the agency to retrieve information for its own purposes. The public agency has no duty to develop or acquire such a retrieval program. Its duty is limited to using available software or programs when information is requested by the public.

Mr. Miggins has explained in his December 23rd letter that Animal Control has no program to extract the "contact" data requested by petitioner. The set-up costs to write a "FoxPro" program would be \$250. There would be the additional costs of generating individual reports after the complaint numbers were identified. If and when Animal Control does develop such a program for its own purposes, it would then be available to respond to a public records request by petitioner.

At the present time, the public record available to petitioner, consistent with her request, is limited to the notice of infraction complaint petitions generated in October and November, 1998.

Page 3
December 24, 1998
RE: Petition of Garet Martin

2. Fees

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, 1997, page 11.

It may be advisable for Animal Control to estimate and seek prepayment due to the extensive staff time that may be necessary to locate or process the records. The charges should, of course, be reasonable. See ORS 192.440(4) and (5) which allow a waiver or reduction of fees.

ORDER

Accordingly, it is ordered that the Multnomah County Animal Control promptly disclose the records sought in the above petition (limited to the notice of infraction complaint petitions generated in October and November, 1998). Disclosure of the documents ordered is subject to payment of Animal Control's fee, if any, not exceeding the actual cost in making the information available, consistent with ORS 192.440.

Very truly yours,



MICHAEL D. SCHRUNK
District Attorney
Multnomah County

Page 4
December 24, 1998
RE: Petition of Garet Martin

NOTICE TO PUBLIC AGENCY

Pursuant to ORS 192.450(2), 192.460 and 192.490(3) your agency may become liable to pay petitioner's attorney fees in any court action arising from this public records petition (regardless whether petitioner prevails on the merits of disclosure in court) if you do not comply with this order and also fail to issue within 7 days formal notice of your intent to initiate court action to contest this order, or fail to file such court action within 7 additional days thereafter.

JKH:jkh
cc: Assistant County Counsel Matt Ryan

98-32