



**ROD UNDERHILL**, District Attorney for Multnomah County

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July 2, 2015

Robert McCullough  
President  
Southeast Uplift Neighborhood Coalition  
3534 S.E. Main St.  
Portland, OR 97214

Jenifer Johnston  
Sr. Deputy City Attorney  
Office of City Attorney  
1221 S.W. 4<sup>th</sup> Ave., Ste. 430  
Portland, OR 97204

Re: Petition of Robert McCullough for Southeast Uplift requesting a waiver of fees associated with the disclosure of certain records of the City of Portland.

Dear Mr. McCullough and Ms. Johnston:

### **BACKGROUND**

In his public records petition under ORS 192.410 et seq., petitioner Robert McCullough, on behalf of Southeast Uplift, requests the district attorney to order the City of Portland to waive or reduce the fees charged for the production of the following records:

**[B]lack-up papers supporting the proposed city commercial tax table for street repairs.**

Southeast Uplift requested these records on November 12, 2014. In a letter dated December 11, 2014 the city responded and identified the computer databases that would contain responsive information along with estimates of the cost to produce and, where appropriate, redact those sources. The city presented three options for accessing the information requested along with cost estimates for each ranging from \$45 to \$2720 depending on the databases queried. Southeast Uplift then requested a fee waiver, asserting that their request was in the public interest.

On February 20, 2015 Commissioner Novick wrote to Donald Gardner, the vice president of Southeast Uplift's board, denying the organization's request for a fee reduction or waiver. Commissioner Novick's letter explains that the city does not believe the records request would primarily benefit the general public and was thus not eligible for a fee waiver. Moreover, the letter indicates that, even assuming the information was of benefit to the general public, the city was still denying the requested fee waiver due to the burden of responding to the request. According to Southeast Uplift's petition, their organization then paid the fee and obtained the records.

Mr. McCullough petitioned the district attorney on June 10, 2015 asking this office to order the city to reduce or waive the fees associated with their records request.

### DISCUSSION

The district attorney generally has jurisdiction to review denials of requests for fee waivers relating to requests for public records. Oregon law grants this office “the same authority in instances when a fee waiver or reduction is denied as it has when inspection of a public record is denied.” ORS 192.440(6). This statute incorporates by reference the limitations of ORS 192.480 in its grant of jurisdiction to this office:

A person who believes that there has been an unreasonable denial of a fee waiver or fee reduction may petition [...] the district attorney in the same manner as a person petitions when inspection of a public record is denied under ORS 192.410 to 192.505.

ORS 192.480 provides that the district attorney may not consider a petition to review a denial of a public records request either 1) when the records at issue are in the custody of an elected official, or 2) the records at issue are in the custody of any other person and the elected official claims the right to withhold disclosure. Likewise, this office may not consider a denial of a request for a fee waiver in those same circumstances.

Petitioner does not offer any argument that this is not the law, rather he argues that the city’s claim of an elected official’s denial is a “post-hoc rationalization of a decision already made.” The timing of an elected official’s decision does not affect analysis of jurisdiction under ORS 192.480. An elected official may avail him or herself of this statute even after a petition for review has been filed with the district attorney. Attorney General’s Public Record Manual, p.125 (2014). Regardless, on the facts of this case, Commissioner Novick’s letter of February 20, 2015 well pre-dated the filing of any appeal by petitioner.

Whether or not he made the initial decision regarding a fee waiver, Commissioner Novick’s letter is clear that he made the final decision. Accordingly, this office may not consider this matter and expresses no opinion on the merits of Mr. McCullough’s petition.

### ORDER

Mr. McCullough’s petition for fee waiver is dismissed for lack of jurisdiction.

Very truly yours,



ROD UNDERHILL  
District Attorney  
Multnomah County, Oregon