



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

1021 SW 4<sup>th</sup> Ave., 600 County Courthouse • Portland, Oregon 97204 • 503 988-3162 • FAX 503 988-3643  
www.mcda.us

August 12, 2015

Robert Babcock  
Holmes Weddle & Barcott  
310 N. State St., Suite 200  
Lake Oswego, OR 97034

Jenny Madkour  
County Attorney  
501 S.E. Hawthorne Blvd.  
Portland, OR 97214

Re: Petition of Robert Babcock requesting a reduction and refund of fees from Multnomah County relating to the production of certain email records.

Dear Mr. Babcock and Ms. Madkour:

In his public records petition under ORS 192.410 et seq., petitioner Robert Babcock, requests the district attorney to order Multnomah County to provide certain records without payment of fees for attorney review of the records.

Petitioner requested the following records from the county:

**All emails between the domains 'multco.us' and 'wweek.com' between 2/1/2015 and 7/21/2015.**

The county agreed to provide the records and estimated its costs at \$630. That quote included \$140 for the county's information technology department to find and duplicate the emails and five hours of attorney time, billed at \$70 per hour, to review the emails for privilege prior to production.<sup>1</sup>

Mr. Babcock contests these fees arguing that the county's "actual cost of production" is \$140 and that he should not be required to pay any fees in excess of that amount.

Ms. Madkour responds that the Public Records Law does not grant the district attorney the authority to review whether or not an agency's estimated fees represent its actual cost of production.

#### ANALYSIS

The district attorney's authority to resolve public records disputes is established by, and accordingly limited by, the Oregon Public Records Law. The attorney general has concluded

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<sup>1</sup> ORS 192.440(4)(b) permits an agency to charge for attorney review and segregation of exempt records.

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that the Public Records Law does not grant jurisdiction to the attorney general or district attorney to review whether or not a requested fee represents the “actual cost” of an agency in complying with a public records request. *In re petition of Mayes*, Att’y Gen. PRO (3/29/2000). In certain circumstances, our authority to enforce the inspection provisions of the Public Records Law may require this office to review a fee that appears to be grossly excessive under circumstances suggesting that the true purpose of the fee is to deny access to records. *In re petition of Kellington*, Att’y Gen. PRO (3/23/2009). This is not such a case.

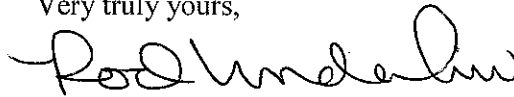
We agree with the attorney general’s reasoning in *Mayes* and likewise conclude that we lack the jurisdiction to resolve this dispute. The proper forum for challenging the reasonableness or necessity of a public agency’s fees is the court. *In Defense of Animals v. OHSU*, 199 Or App 160 (2005). ATTORNEY GENERAL’S PUBLIC RECORDS MANUAL, pp.18-19 (2014).

Petitioner further requests that we order the county to produce any emails it deems privileged for our review. That issue is not ripe as the county has not yet refused to provide any records.

**ORDER**

The petition is dismissed for lack of jurisdiction.

Very truly yours,



ROD UNDERHILL

District Attorney

Multnomah County, Oregon