



ROD UNDERHILL, District Attorney for Multnomah County

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November 28, 2016

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, on behalf of Dr. O'Connell-Babcock, requesting direct access to a Multnomah County Animal Services database.

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 Animal Services to provide his client, Dr. Gail O'Connell-Babcock, direct access to its computer database, "Multiple Options." MCAS states it has provided, and continues to provide, electronic copies of the actual records sought by Dr. O'Connell-Babcock to her multiple times a month. Petitioner does not claim his client has been denied access to any particular record, rather he asserts that she is entitled to access those records on the terms she desires.

We have previously addressed this same dispute, between these same parties, in an order dated May 30, 2006. In our letter to petitioner denying his previous petition, we noted:

It appears that there are two competing provisions of the Public Records Law in ORS 192.430. First, the public agency shall furnish reasonable access to records maintained in readable or electronic form. Second, the public agency may adopt rules to protect the records and prevent interference with the regular discharge of the duties of the custodian.

Animal Services and the County Attorney went to extraordinary efforts to create and make available the requested records in an electronic format, available in a public kiosk. The removal of this kiosk can only be attributed to the conduct of Dr. O'Connell-Babcock. Consequently, the only question is whether you have established that Animal Services can and must provide the reports in some other electronic format.

Petition of Babcock, MCDA PRO 06-07 (2006).

The Attorney General has reconciled the tension in ORS 192.430 that we identified in our 2006 order as follows:

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Petition of Robert Babcock

Public bodies at every level of government use computers and electronic storage mechanisms extensively. The public's access to this information depends on its retrieval *by public bodies* through the use of computer software or programs developed or acquired by the public bodies at public expense. On the other hand, if a request merely requires a public body to use its existing software in order to retrieve existing information, we believe that the Public Records Law requires those efforts to retrieve and make available nonexempt computer or electronically stored data and information, when requested, through the computer software or programs in use by the public body. [...] When a public body uses computer software or programs to retrieve information for its own purposes, *the public body must, upon request, use* that same software or program to retrieve and make available existing data or information stored by the public body in computer or electronic form.

ATTORNEY GENERAL'S PUBLIC RECORDS MANUAL (2014) at 8 (emphasis added).

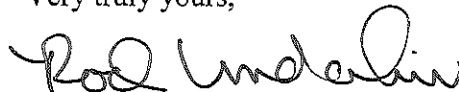
As interpreted by the Attorney General, the public records law does not require an agency to make its databases open to direct public access; it does require an agency to provide any non-exempt data contained in those databases to the public. *See also, Petition of Baucom, Att'y Gen. PRO* (July 19, 1982) ("We conclude as a matter of law that the right to inspect is satisfied by the furnishing of copies of requested records.")

Given our prior ruling, and the lack of change in legal or factual circumstances, we decline the invitation to revisit our 2006 decision.

ORDER

The petition is denied.

Very truly yours,



ROD UNDERHILL

District Attorney

Multnomah County, Oregon