



ROD UNDERHILL, District Attorney for Multnomah County

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June 7, 2018

James Buchal
Murphy & Buchal LLP
3425 S.E. Yamhill Street, Suite 100
Portland, Oregon 97214

Mary Kane
Portland Public Schools
501 N. Dixon Street
Portland, Oregon 97227

Re: Petition of James Buchal requesting that PPS be ordered to reduce or waive fees

Dear Mr. Buchal and Ms. Kane:

In his public records appeal, dated May 29, 2018, petitioner James Buchal asks this office to order Portland Public Schools (PPS) reduce or waive its fees associated with a public records request. Mr. Buchal had made a broad request for emails and other materials relating to PPS' involvement in facilitating student protests of gun violence. After some time Mr. Buchal and PPS agreed on search terms that would constitute the request.

On May 16, 2018 PPS quoted Mr. Buchal a cost of \$8,552.25 to complete his request. The estimate is itemized with the largest single item (\$7,082) being "reviewing for confidential information" the 15,738 emails returned by the agreed upon search. In all, the estimate includes 190 hours of staff time to complete the request.

On May 23, 2018, as part of his request for a fee waiver, Mr. Buchal clarified for PPS that he was now pursuing this matter only on behalf of PPS parents, and not the Multnomah County Republican Party, of which he is the chair. PPS declined to waive or reduce its fee, asserting that the public interest involved does not outweigh the substantial burden on PPS' operations that responding to this request would impose.

For the reasons discussed below, we conclude that PPS did not abuse its discretion in denying the requested fee waiver and, accordingly, deny the petition.

DISCUSSION

A. Fee Waivers – ORS 192.324

ORS 192.324(5) provides that:

The custodian of any public record may furnish copies without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public.

ORS 192.324(6) provides that:

A person who believes that there has been an unreasonable denial of a fee waiver or fee reduction may petition the Attorney General or the district attorney in the same manner as a person petitions when inspection of a public record is denied under ORS 192.311 to 192.478. The Attorney General, the district attorney and the court have the same authority in instances when a fee waiver or reduction is denied as it has when inspection of a public record is denied.

An agency evaluating a requested fee waiver faces a two-step analysis. First, would making the records available primarily benefit the general public, that is, is it in the public interest. Second, if the request is in the public interest, the agency must then exercise its reasonable discretion to decide whether or not it will waive or “substantially reduce” the fees.

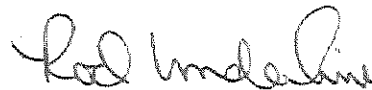
In reviewing an agency’s decision to deny a fee waiver, the district attorney may only determine whether or not the agency acted within the permissible bounds of discretion; we may not substitute our judgment for that of the agency. ORS 192.324(5).

It is not at all clear that a request on behalf of “PPS parents” is sufficient to establish that the request is in the public interest as that phrase has been interpreted. See, *In Defense of Animals v. OHSU*, 199 Or App 160, 188 (2005) (“A matter or action is commonly understood to be ‘in the public interest’ when it affects the community or society as a whole, in contrast to a concern or interest of a private individual or entity.”) However, we need to resolve that question here because, even assuming the request does satisfy the public interest element, declining to waive fees for 190 hours of work by school district employees is not unreasonable under these circumstances.

ORDER

Accordingly, the petition is denied.

Very truly yours,



ROD UNDERHILL
District Attorney
Multnomah County, Oregon