

May 4, 2006

Kera Abraham
Eugene Weekly
1251 Lincoln
Eugene, OR 97401

Re: Petition for Review of Denial of Fee Waiver:
Oregon State University Records

Dear Ms. Abraham:

This letter is the Attorney General's order on your petition for review of the denial by Oregon State University (OSU) of your request for a waiver of fees under the Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on May 1, 2006, includes as an attachment OSU's April 27, 2006, response to your records request. That response estimates the cost to comply with your request at \$263 and waives approximately 30 percent of the estimate, asking you to pay \$184. Your petition disputes the reasonableness of the reduced fee and states a willingness to pay only a "small fee to cover copy charges." For the reasons that follow, we respectfully deny your petition for a greater reduction or complete waiver of fees.

The Public Records Law authorizes a public body to establish fees "reasonably calculated to reimburse it for its actual cost" in making records available. ORS 193.440(3). ORS 192.440(4) authorizes a public body to waive fees if it determines that the waiver is in the public interest "because making the record available primarily benefits the general public." However, even if waiving fees is in the public interest, the public body "is not required to grant the fee waiver or reduction." *In Defense of Animals v. OHSU*, 199 Or App 160, 189 (2005). Your petition states that you requested OSU to disclose eight months of electronic mail correspondence between the dean and a particular professor in the College of Forestry. By offering to reduce its estimated fee, OSU at least tacitly acknowledges that your request satisfies the public interest test.¹

¹ It is not necessary for us to review OSU's public interest determination. See Public Records Orders, January 4, 2006, Stotter and August 4, 2000, Brownscombe.

Your petition states that the *Eugene Weekly* finds the reduced fee of \$184 to be a “prohibitive” cost for the paper and primarily takes issue with the basis for a portion of the fee. OSU’s April 27th response to your request, signed by Special Assistant Attorney General Meg Reeves, explains that the estimated fee is comprised of four separate charges for: (i) searching and printing responsive records; (ii) reviewing the records and marking any portions subject to exemption from disclosure; (iii) redacting the marked text; and (iv) copying the records to provide to you. Slightly more than half of the originally estimated fee of \$263 is attributable to the task of reviewing the records, which would be performed by an attorney for the university. Your petition states that it is unreasonable for OSU to charge this portion of its fee because “e-mails between Oregon state employees * * * should not be subject to redactions.”

Electronic messages between state employees which contain information that relates to the conduct of the public’s business are, by definition, “public records” subject to disclosure. ORS 192.410(4)(a). However, those records are subject to disclosure only to the extent that they are not, in whole or in part, exempt from disclosure under either ORS 192.501 or 192.502. The Public Records Law specifically permits a public body to include “the cost of time spent by an attorney * * * in reviewing the records [and] redacting materials from the public records or segregating the public records into exempt and nonexempt records.” ORS 192.440(3)(b). Therefore, OSU was within its authority in charging this portion of its estimated fee.²

Where the public interest test is met, as we believe OSU has determined it is in regards to your request, a public body’s response to a fee waiver request must be “reasonable.” ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETINGS MANUAL (2005) at 18-19. OSU has agreed to grant the *Eugene Weekly* approximately a 30% reduction in fees. In explaining the rationale behind this reduction, Ms. Reeves told us that OSU has received several requests for public records related to the Forestry dean and faculty over the past few weeks, and has expended a substantial amount of time and significant resources to respond to these requests, including several days of attorney time. While OSU has waived fees for media requests requiring only a small expenditure of time and resources, it has offered a 30% fee reduction for responding to requests comparable to the one upon which you have petitioned as a way to manage its expenditure of resources and facilitate access to the requested information.

² Ms. Reeves told us that it is necessary to review the requested records, between the dean of a school and one of its professors, specifically to ensure compliance with the federal Family Educational Rights and Privacy Act (FERPA), 20 USC § 1232, 34 CFR part 99. FERPA protects the privacy of educational records and applies to all schools that receive funds under specified programs, including OSU.

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Given these factors, we do not believe that OSU's decision to reduce fees by 30% instead of granting a fee waiver or greater reduction to the *Eugene Weekly* is unreasonable. *See, e.g.*, Public Records Order, July 8, 1991, Marr/Rees (reduction of fee by over 25% found reasonable); Public Records Order, May 19, 1993, Smith (press not automatically entitled to complete fee waiver). Therefore, we deny your petition.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS17318

cc: Meg Reeves, OSU
Wendy Robinson, DOJ