Nathan Vasquez, Multnomah County District Attorney

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January 28, 2025

via email only

Lian Zhu
lianzhuwork@gmail.com

Krista Stearns
Assistant General Counsel
Portland State University
krista6@pdx.edu

Re: Petition of Lian Zhu seeking review of Portland State University's denial of a public records fee waiver

Dear Lian Zhu and Krista Stearns:

Petitioner, Lian Zhu, made a public records request of Portland State University (PSU) on December 16, 2024 seeking statistical and descriptive information about all computer science classes offered by PSU in Spring 2023. After an initial misunderstanding as to whether or not petitioner was a faculty member at PSU, PSU responded by directing petitioner to where most of the information sought was already freely available. The only items not already publicly posted were anonymized course evaluations and grade distribution data for the 85 computer science courses offered in Spring 2023.

PSU estimated it would cost $580 to gather, de-identify, and produce this information. Petitioner seeks review from this office of PSU's decision not to grant a fee waiver.

For the reasons discussed below, I deny the petition.

DISCUSSION

A. Fee Waiver – ORS 192.324

Regarding fee waivers, ORS 192.324 provides that,

> (4)(a) The public body may establish fees reasonably calculated to reimburse the public body for the public body's actual cost of making public records available, including costs for summarizing, compiling or tailoring the public records, either in organization or media, to meet the request. […]
>
> (5) The custodian of a 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.

> (6) A requester 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 requester who petitions when inspection of a public record is denied […].

The district attorney's role in evaluating the denial of a fee waiver is to assess the objective reasonableness of a public body's decision. *Petition of Bial*, MCDA PRO 24-33 (2024) at 5 ("the legislature has granted public bodies discretion [in making fee waiver decisions], but their exercise of that discretion must be reasonable.")

A requestor needs to demonstrate some ability to meaningfully disseminate records to the public as an independent requirement from whether the substance of the records would interest the public.

> Regardless of how interested the public may be in the matter the requested records relate to, if the requester fails to demonstrate the ability to meaningfully disseminate the information, disclosure will not primarily benefit the public.

ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2024) at 19. (citing *Judicial Watch, Inc. v. Rossotti*, 329 F.3d 1309 (D.C. Cir. 2003)). Petitioner in this case has stated that they are developing a website that will "provide transparent, detailed information about PSU courses, instructors, and academic performance trends."

Stating that one is developing a publication is insufficient to demonstrate the *ability* (as distinguished from the *intent*) to meaningfully disseminate information. See, *Petition of Joyce Boles*, MCDA PRO 10-01 (2010) (denying petition where petitioner "offered no justification for a waiver of fees beyond the fact that she intends to build a newspaper/website which presumably would operate in the public interest.") The federal analysis, cited favorably by the Attorney General above, is in accord. See also *Larson v. CIA*, 843 F.2d 1481 (D.C. Cir. 1988); *National Security Counselors v. U.S. Department of Justice*, 848 F.3d 467 (D.C. Cir. 2017).

PSU's determination that petitioner failed to satisfy the public interest standard in ORS 192.324(5) was objectively reasonable.

ORDER

Accordingly, the petition is denied.

Regards,

NATHAN VASQUEZ
District Attorney
Multnomah County, Oregon

By: _____
Adam Gibbs
General Counsel

25-04