



MIKE SCHMIDT, District Attorney for Multnomah County

1200 SW First Ave, Suite 5200 • Portland, Oregon 97204 • 503 988-3162 • FAX 503 988-3643
www.mcda.us

January 18, 2023

Patrick Cashman
pcashman20@gmail.com [via email only]

Re: Petition challenging a fee estimate from the David Douglas School District

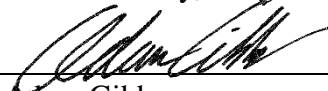
Dear Mr. Cashman:

On January 13, 2022, you submitted a petition to this office asserting that the David Douglas School District had quoted an impermissible fee in response to your public records request for: “All communications (SENT and bcc copies only) sent by Ms. Lashawanta Spears on official system or on personal systems if personal systems are used for official business containing the search term ‘Hardy Have’ from 10/1/2022 to date first action is taken on this demand.” Your petition states that David Douglas responded to this request with a fee estimate of \$72.94. You argue that David Douglas’ stated use of supervisory personnel rates for calculation of this fee is impermissible if the work involved could have been done by lower-paid clerical staff.¹

As this office, and the Attorney General have repeatedly and consistently held, we do not have the authority under the public records law to decide whether or not a fee estimate represents a public body’s “actual cost” to produce records under ORS 192.324(4). See, e.g., *Petition of Mayes*, Att’y Gen. PRO (3/29/2000); *Petition of Merrick*, MCDA PRO 17-35 (2017); *Petition of Babcock*, MCDA PRO 15-22 (2015). Your petition asks me decide whether or not David Douglas’ fee is accurate and permissible. I do not have that authority. Accordingly, your petition is dismissed for lack of jurisdiction.

Regards,

MIKE SCHMIDT
District Attorney
Multnomah County, Oregon

By: 
Adam Gibbs
Sr. Deputy District Attorney

Cc: Candy Wallace, David Douglas School District

23-06

¹ A recent court decision in Multnomah County has endorsed this as a correct statement of the law to the extent it deals with non-attorney staff (fees for attorney review are separately authorized by ORS 192.324(4)(b)). See, *Kessler v. City of Portland*, Opinion & Order of Nov. 19, 2019, Mult. Co. Cir. Ct. 18CV43134 (Russell, J.). However, the question of whether or not the work involved in reviewing responsive records in this case for applicable exemptions was work that available lower paid staff could have performed is a factual one that the district attorney is not empowered to consider.