



## Nathan Vasquez, Multnomah County District Attorney

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*via email only*

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Trevor Byrd  
Deputy City Attorney  
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Re: Petition of Alan Kessler challenging the City of Portland's fee estimate on a public records request for Smarsh metadata

Dear Mr. Kessler and Mr. Byrd:

On March 27, 2026, Mr. Kessler submitted a public records request to the City of Portland for an export of metadata from the City's non-police instance of Smarsh covering every message archived since November 1, 2023. Smarsh is an enterprise level text message archiving utility that the City uses to retain messages sent to and from City-owned cell phones. On April 14, 2026, the City issued a fee estimate of \$4,154.15 pursuant to ORS 192.324(4).<sup>1</sup>

Mr. Kessler petitioned this office on April 15, 2026 contending that the fee estimate is unreasonable. The City responds that the responsive records consist of 110 Excel spreadsheets containing approximately 65,000 lines each, and that processing each spreadsheet requires moving the exported data into a separate import file, applying an automated redaction script, and conducting a quality-control review of the script's output. The City extrapolated from a single spreadsheet that took thirty minutes to process and arrived at fifty-five hours of staff time across the full set.

A public body may charge fees "reasonably calculated to reimburse the public body for [its] actual cost of making public records available." ORS 192.324(4)(a). Mr. Kessler argues that the City has had automated processes for redacting Smarsh records since at least 2020, and that the present request, limited to message metadata and excluding message bodies, should accordingly require less labor than the broader requests the City processed inexpensively in the past. This office, however, lacks statutory authority to review a challenge to the factual accuracy or reasonableness of a public body's fee estimate. *Petition of the American Accountability Foundation*, MCDA PRO 25-28 (2025) (collecting authority); *Petition of Beckham*, MCDA PRO 24-63 (2024) ("[P]etitioner asserts that the fee estimate itself was unreasonable because of the particular personnel whose salaries were used to estimate the costs. This is not a claim that is justiciable in this forum."). My only inquiry is "whether a fee is so grossly disproportionate to the

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<sup>1</sup> The City corrected that estimate after it received this petition to \$3,765.30 based on a determination that it had applied the wrong staff person's hourly rate.

tasks involved as to announce that the true purpose of the fee estimate is to deny access to records.”  
*Petition of A. Kessler, MCDA PRO 22-46 (2022).*

Petitioner identified what appeared to be an inconsistency between the City’s prior representations about automation in its processes and its response to the current request. The City has provided a facially reasonable explanation for the difference: a per-spreadsheet processing time multiplied across 110 responsive files that includes checks to ensure that the scripts did not over-redact documents. The City explains that,

the process is not as simple as merely “running a script.” It requires moving data exported from Smarsh into a particular file and applying the script to that spreadsheet. After the script has been applied, it creates a redacted spreadsheet, and the staff member does a review of the applied redactions to ensure nothing was mistakenly withheld.

Verifying the accuracy of automated work is not unreasonable, particularly when the public body holds any liability for costs and attorney’s fees if a court finds it improperly withheld records. ORS 192.415. The City states that it developed the estimate in this case by applying this workflow to one of the 110 documents, a process that took 30 minutes for the 65,000 lines contained in the one document.

Whether a more efficient process is available, or whether the City could have selected different personnel to perform the necessary manual work, are not questions I have the authority to resolve in this forum. *Petition of A. Kessler, MCDA PRO 22-46 (2022)* (evaluating whether a public body could employ a “more efficient, and cheaper, process to produce records” “would necessitate a thorough factual record developed through depositions, requests for production, and sworn trial testimony.”) From the information provided by the City I find that the fee is not grossly disproportionate to the tasks involved.

**ORDER**

Accordingly, the petition is denied.

Regards,

NATHAN VASQUEZ  
District Attorney  
Multnomah County, Oregon

By: 

Adam Gibbs  
General Counsel