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Re: Ms. Banta appeals a denial of a fee waiver by Lane County

As I understand the underlying request, the County has agreed to provide documents it already possesses, free of charge. Ms. Banta has requested, in the alternative, that the County provide the information in a specific format, which does not currently exist. The County has assessed a charge of \$101.38 for providing that service.

ORS 192.324(4)(a), allows a public body to charge a fee reasonably calculated to reimburse the public body for the actual cost of providing the records. ORS 192.324(5) allows a public body to waive or reduce fees, if it is determined that providing the records primarily benefits the general public. However, the public body is not required to do so.

ORS 192.324(6), allows a person to appeal a denial of a fee waiver to the District Attorney.

In considering a fee waiver or reduction, a public agency should consider:

1. The identity of the requestor.
2. The ability of the requestor to pay the fees.
3. The purpose for which the requestor is seeking the information in the records.
4. The character of the information.
5. Whether the information is already available to the public.
6. Whether the requestor can demonstrate the ability to disseminate the information to the public.

In *Defense of Animals v. OSHU*, 199 Or App 160(2005), the court recognized that it is the initial responsibility of the public agency to determine the reasonableness of a fee waiver request. Even if a public agency determines a request to be "in the public interest," the agency is not required to waive the fees. It is the agency's responsibility to exercise its discretion, according to the relevant statutory criteria.

Considering the above criteria, and the amount of the fee, the County's denial of the waiver is not unreasonable.

Therefore the appeal is denied.

Sincerely,

PATRICIA W. PERLOW, District Attorney



Robert D. Lane
Deputy District Attorney