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November 24, 2025

Prineville Review

Justin Alderman

Sent via email: jalderman@prinevillereview.com

OWWSA

Attn: Eileen Eakins

Sent via email: eileen@lgl-advors.com; office@owwsa.net

Re: Order on Petition to Review Public Record Request Fee Waiver Denial

Mr. Alderman and Ms. Eakins:

I. Relevant Background

Mr. Alderman, Prineville Review, submitted a Public Records Appeal Petition for review of the Ochoco West Water & Sanitary Authority's (OWWSA) denial of a public record request fee waiver.

On August 21, 2025, Mr. Alderman submitted a public record request to OWWSA seeking copies of audio recordings of OWWSA public meetings from April 1, 2025 to present. On August 21, 2025, OWWSA responded and acknowledged receipt of the public record request and advised it would start the process of gathering the requested materials.

On October 23, 2025, OWWSA emailed Mr. Alderman that a public record request fee of \$901.00 would be assessed to cover the costs associated with processing and providing the records. The fee included the following: attorney review and redaction (if necessary): \$285/hour x 3 hours; staff time to locate, scan, and email records: \$23/hour x 2 hour.

On October 29, 2025, Mr. Alderman requested a public interest fee waiver. Mr. Alderman's request stated he was seeking only audio recordings of public meetings, which should not need to be redacted. Mr. Alderman noted, "If executive sessions need to be redacted, this should still be very minimal and does not require an attorney determination of what was an executive session; it was clearly delineated and is timestamped as a matter of practice in the corresponding written minutes." Alderman further submitted in support of his public interest fee waiver request:

"Now, even with any more reasonable estimate of fees, pursuant to ORS 192.324, and the extent these are records under the records law and not just the meetings law, we would argue that our look into the operations of the OWWSA at this time on issues related to significant public interest related to property rights, ethics violations (nepotism), public meetings compliance, pro[v]ides for a waiver of fees as producing this record primarily benefits the public on matters

of governmental operations and public trust amid current ongoing controversy and the discovery of records supporting the previously mentioned issues. The Prineville Review is a publication of Western Media Group, a general-interest news organization that is primarily engaged in news reporting and has meaningful means to disseminate information to the public at no cost.”

It appears from the records submitted, there was no further response from OWWSA until after Mr. Alderman submitted this Petition for review on November 17, 2025

On November 17, 2025, I sent the following email to the parties:

“The District Attorney’s Office has received a Petition for Review of Public Record Request Denial. My decision is due in 7 days. The timeline will be as follows:

OWWSA’s response, including providing the records or a disclosure of the nature or substance of the records, together with a statement of OWWSA’s reasonings for believing the records are exempt from disclosure is due by end of business 11/20.

I have added Ms. Eakins, who previously represented OWWSA on this email. Ms. Eakins, if you no longer represent OWWSA, please let me know. My decision will be issued by 11/24.”

On November 20, 2025, Ms. Eakins submitted the following response:

“My client has reviewed the requested recordings for all board meetings since April 1 and determined that staff can perform the needed redactions of the executive session portion of the meetings. Therefore, OWWSA will not require Mr. Alderman to pay for attorney time to complete the redactions.

Per OWWSA’s public records policy, the revised cost estimate for staff time to redact, copy, and email the records is \$75 (\$25/hour x 3 hours = \$75.00). OWWSA declines the request for a fee waiver.

The records can be made available within five days of receipt of payment in full. Do you have any objection before my client provides Mr. Alderman with the revised cost estimate?”¹

On November 21, 2025, OWWSA advised Mr. Alderman of the revised fee for the records of \$75. OWWSA denied Mr. Alderman’s request for a fee waiver. OWWSA has adopted a public records policy, which grants either the District Manager or the Board the authority to determine a waiver or reduction in fees based upon public interest. OWWSA declined to grant a fee waiver to Mr. Alderman due to the numerous public record requests over very short periods of time. Mr. Alderman has declined the revised fee and seeks full waiver of cost.

II. Legal Analysis

A denial of a request for fee waiver or reduction may be submitted to the District Attorney for review. ORS 192.324(6). A public body is authorized to establish fees “reasonably calculated to reimburse [it for the] actual cost of making public records available.” This includes the “costs for summarizing, compiling or tailoring the public records, either in organization or media, to meet the person’s request.” ORS 192.324(4). “Actual cost” may include a charge for the time spent by the public body’s staff in locating the requested records; reviewing the records in order to redact exempt material; supervising a person’s inspection of original documents in order to protect the records; copying records; certifying documents as true copies; or sending records by special

¹ On November 20, 2025, I responded to OWWSA’s email and advised that I don’t have any involvement in negotiations between the parties regarding fees.

methods such as express mail. “Actual cost” also may include the cost of time spent by the public body’s attorney reviewing and redacting, although the cost of the attorney’s time spent determining the application of the Public Records Law is not recoverable. *Id.*

Public bodies are permitted to negotiate with requesters to reduce the cost of fulfilling requests. This can be accomplished in many ways, including using narrower search terms or a narrower date range, limiting the search, or excluding the records most likely to contain exempt information. *Attorney General’s Public Records and Meetings Manual (“Attorney General’s Manual”),* June 2019, p 21.

A public body may waive or reduce its fee for a particular request if doing so “is in the public interest because making the record available primarily benefits the general public.” ORS 192.324(5). If disclosure is in the public interest, the public body’s decision to deny a request for a fee waiver or reduction must be reasonable under the totality of the circumstances. *Attorney General’s Manual, citing In Defense of Animals*, 199 Or App 160 (2005).

Waiving or reducing fees is in the public interest “when the furnishing of the record has utility—indeed, its greatest utility—to the community or society as a whole.” *In Defense of Animals*, 199 Or App at 189. This is distinct from situations where disclosure would primarily affect “a concern or interest of a private individual or entity.” *Id.*

If a requester seeks records relating to the requester, a mere allegation that the public body has treated the individual oppressively, absent a broader public interest, does not satisfy the public interest standard. *Attorney General’s Manual*, p. 23, citing *Conklin v. United States*, 645 F Supp 1104, 1106 (D Colo 1987).

Public bodies may seek additional information from a requester to help clarify the basis for seeking a fee waiver. In determining whether the requester has established sufficient public interest, relevant factors include the requester’s identity, the purpose for which the requester intends to use the information, the character of the information, whether the requested information is already in the public domain, and whether the requester can demonstrate the ability to disseminate the information to the public. The requester’s inability to pay is also a factor, but is not, on its own, sufficient basis for a fee waiver. Without such information, it may be difficult or even impossible to assess whether the requested disclosure is in the public interest. *Attorney General’s Manual*, p. 24.

Even if waiving or reducing the fee is in the public interest, a public body has the discretion whether to do so. *In Defense of Animals*, 199 Or App at 189. However, the public body’s decision, on a case-by-case basis, must be reasonable under the totality of the circumstances. *Id.* at 190.

Facts typically relevant to a fee-waiver decision include how narrowly tailored the request is to a matter of public interest; the time and expense needed to fulfill the request; the volume of the records requested; the need to segregate exempt from nonexempt materials; whether the fee was avoidable; and the ability of the requester to pay the fee. A public body may consider the aggregate effect of numerous public records requests from the same requester in assessing its burden. *Attorney General’s Manual*, p. 25.

The public body bears the burden of demonstrating that its cost estimate to produce the records is reasonably calculated to its actual costs and must provide specific support for its assessment; that support generally includes an explanation of the reasonableness of the tasks undertaken and, if challenged, an explanation of how the wages

paid to complete that task are themselves reasonable. *Bong. v. Douglas Education Service District*, 342 Or App 1 (2025).

In this matter, Mr. Alderman requested copies of recordings of public meetings from April 2025 through August 21, 2025 (the date the public record request was submitted). There has been no information submitted to me regarding the length of the meetings or to substantiate the need to redact recordings of public meetings.

I find there is public interest in the recordings of public meetings. In addition, I find OWWSA has not met its burden to show that its fee estimate is reasonably calculated to reimburse it for its actual cost to provide the records.

Petitioner's Public Records Request Petition is GRANTED. Due to the upcoming holiday, I find it is reasonable to allow OWWSA additional time to provide the records. OWWSA shall provide responsive records by December 5, 2025. Either party may institute proceedings with the Crook County Circuit Court to seek review of my decision. ORS 192.407; ORS 192.431.

Sincerely,

Kari Hathorn

Crook County District Attorney