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To District Attorney Joshua Eastman and George Main,

Josephine County has reviewed Mr. Main's appeal regarding his request for a fee waiver or reduction for various airport records. I will respond to each of the arguments he raises for a fee waiver or reduction with our analysis.

1. *"The records concern the financial administration of public property. Every requested item relates to how Josephine County manages, spends money on, leases, and values the Illinois Valley Airport, a public asset owned by the County. How a public body administers public property and public money is a matter of general public concern, not a private interest of any requester."*

There is no dispute about whether the records concern a piece of public property, nor whether the financial records related to that property constitute public records. However, individual requestors can certainly have personal interests in disclosure. The fact that a property's management may concern the general public does not preclude the possibility of commercial or private interests in the matter. Indeed, the requestor in this case notes a personal interest in his follow up email, stating that he intends to move to Josephine County and store an airplane at the Illinois Valley Airport, which does not support the argument that this request is primarily about benefitting the public as a whole.

Additionally, almost all documents the County keeps have some level of public interest, as they all reflect the conduct of the County's business. The fact that a document falls into the general area of public concern does not necessarily mean that the document must warrant a fee reduction or waiver.

2. *"Disclosure primarily benefits the general public. The beneficiaries of disclosure are the taxpayers of Josephine County, the tenants and users of the airport, and the residents of the Illinois Valley whose economic development the airport is intended to serve. I have no commercial interest in these records. I intend to review them for accountability purposes and to share significant findings with the public, including local press where warranted."*

On this point, I believe the requestor to be partially correct. Disclosure of records concerning public property *can* serve the public interest. The relevant question is whether *this disclosure* serves the public interest. Though I would note, again, that the requestor has a stated personal interest in these records, he states that his motivation is to provide

government accountability and possibly share his findings with local media. These are rather vague statements, given that disclosure of any public record serves a function of accountability and can be shared with news media.

This case falls into the gray area of the County exercising its authority to grant a fee waiver or reduction to serve the public interest [ORS 192.324(5)]. Factors for determining Public Interest include: the identity of the requestor, the purpose for the use of the information, the character of the information, whether the requested information is already in the public domain, and whether the requestor can demonstrate the ability to disseminate the information to the public. (AG Manual at 20.) “If the requestor fails to demonstrate the ability to meaningfully disseminate the information, disclosure will not primarily benefit the public.” (AG Manual at 19.)

Unlike the requestor in the case of In Defense of Animals v. OHSU [199 Or. App. 160 (2005)], the requestor in this case does not claim to be a public benefit or public interest organization, and there is no supporting evidence that the requestor has any ability to meaningfully review or disseminate the documents “for accountability purposes.” “A matter or action is commonly understood to be ‘in the public interest’ when it affects the community or society as a whole, in contrast to a concern or interest of a private individual or entity.” (*Id.* at 188.) There is little to suggest that the disclosure of these records will primarily benefit the general public.

Because the requestor did not provide any specifics on *how* these records will be used to serve the public interest, the County reasonably concluded that waiving or reducing fees is not appropriate. The requestor’s correspondence does not list any action other than his personal review of the records and the *possibility* of sharing them publicly or with public media outlets. He lists no media or community groups he intends to contact with the records, he provides no credentials that would suggest he has any experience with sharing information publicly, and he states that he is not a resident of Josephine County, but rather a potential future resident. While none of these things individually would preclude a fee waiver or reduction, the altogether lack of any corroborating evidence that these records will be used to benefit the public, coupled with the stated personal interest of the requestor and the fact that he lives out of state, lead the County to conclude that a fee waiver or reduction does not primarily serve the public interest *in this case*.

Finally, multiple staff who have reviewed this request have concluded that the requestor is likely using an AI chatbot to generate the requests and appeals. While this is not an issue on its own, utilizing a program that can easily crawl all of Oregon’s statutory law and case law and cite them in a manner designed solely to support the requestor’s interests, regardless of any other relevant facts, does not inspire the County’s confidence that these records will be used to benefit the public.

3. *“The County provided no reasoning. The denial consists of one conclusory sentence. Nothing in the County’s response indicates that it considered the nature of the records, the identity or purpose of the requester, or the beneficiaries of disclosure. A determination under ORS 192.324(5) that is unaccompanied by any articulated basis cannot be a reasonable exercise of the discretion the statute confers.”*

There is no statutory requirement to elaborate on the specifics of the reasoning in this particular decision at that particular time. The absence of evidence is not evidence of absence. The appeal process exists for the evaluation of the County’s reasoning. Also, the requestor did not make a showing that the public interest would be served by providing him, personally, with the records. Denial was not unreasonable under the totality of the circumstances. (Public Records Order, Harden, October 18, 2016)

4. *“The County’s fee handling in this matter does not inspire confidence. The County’s initial \$1,275.00 estimate overstated the applicable rates by \$495.00, an error the County acknowledged and corrected only after I challenged the estimate. The County subsequently offered to produce three of the five requested items for a combined one hour of staff time, further indicating that the original estimate materially overstated the cost of substantial portions of the request. ORS 192.324(4)(a) limits fees to amounts “reasonably calculated to reimburse the public body for the public body’s actual cost.” Oregon appellate authority likewise requires a public body to provide specific support for a fee estimate, including support for the reasonableness of the tasks and, when challenged, the wages charged. See Bong v. Douglas Education Service District, 342 Or App 1 (2025). A fee process this imprecise, followed by a one-sentence waiver denial, provides little indication that the County meaningfully evaluated either the actual cost of the request or whether disclosure primarily benefits the general public.”*

Contrary to the requestor’s claim, the fact that the County revisited the fee estimate and found an error that resulted in a substantial reduction in cost to the requestor is evidence that staff are meaningfully evaluating the cost to the requestor. The reason for the error was simple: the employee who would be primarily responsible for retrieving and compiling these records recently held an interim management position and was reclassified to a clerical position after the airport manager was reinstated. The fee was recalculated to reflect this.

The fee estimate process is uniform, and the hourly staff rates are calculated to reflect the lowest grade of pay possible to reimburse the County. The fees, as currently assessed, do represent the minimum amount to reimburse the County for the actual cost to fulfill this request, based upon Legal Counsel’s and the Airport Manager’s good faith estimates. (As a personal note, this request is the only case I’ve seen where a requestor demanded an itemized estimate, which I chose not to provide because I did not wish to consume more staff time creating a new document.)

To further explain the process of fulfilling this request, I'll add the Airport Manager's explanation of the time needed for Items 3 and 4 in the original request.

"I believe Item 3 will account for the majority of the staff time required. Identifying, locating, retrieving, organizing, and compiling invoices, work orders, receipts, and related records for a full fiscal year will be the most labor-intensive portion of the request and will require coordination with other departments that maintain portions of those records.

Item 4 will also require a significant amount of staff time. While our lease management software assists in identifying lease records, each agreement must still be retrieved, reviewed for exempt or confidential information as appropriate, and coordinated through Legal before release. Overall, the request spans multiple record types maintained by multiple departments, making it a costly and time-consuming process to assemble a complete response."

Even where there is a public interest in obtaining the records, the County is entitled to recoup the actual cost of making public records available, and may charge costs for summarizing, compiling, or tailoring the public records to meet the request. Bong v. Douglas Education Service District [342 Or. App. 1, 5, 575 P.3d 1067, 1069 (2025)]. Additionally, labor time is appropriately included in these fees (Harden at 2). The Airports Department, which manages two airports, consists of one manager, one budget specialist, and one maintenance technician. It will be necessary to pull the clerical staff away from regular duties to compile and redact the records, and the clerical staff will then be required to catch up on any tasks that were set aside.

Conclusion:

While I appreciate Mr. Main's interest in moving to Josephine County and utilizing its airports, I cannot find any way to reasonably conclude that this request sufficiently serves the public interest to justify the County's time and expense to fulfill the request. Because of this, I believe the County is entitled to be reimbursed for the actual cost of making these records available. Unless otherwise directed by the District Attorney, I will not be granting a fee waiver or reduction in this case.

Respectfully,

Thomas Gray
Josephine County Records Management Officer