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6 IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
7  
8 FOR THE COUNTY OF MALHEUR

9 LES ZAITZ and THE MALHEUR  
10 ENTERPRISE,

11 Plaintiffs

12 vs.

13 GREGORY SMITH & COMPANY LLC;  
14 GREGORY SMITH;  
15 MALHEUR COUNTY;  
16 MALHEUR COUNTY DEVELOPMENT  
17 CORPORATION

18 Defendants

Case No.: Number

CIVIL COMPLAINT FOR DECLARATORY  
RELIEF AND MONETARY DAMAGES

19 Plaintiffs Les Zaitz and the Malheur Enterprise allege as follows:

20 **Parties**

21 1

22 At all times pertinent to this complaint, Plaintiff, Les Zaitz, edited and published  
23 the Malheur Enterprise.

24 2

25 At all times pertinent to this complaint, Plaintiff, the Malheur Enterprise, was a  
26 newspaper in Malheur County, Oregon.

27 3

1 At all times pertinent to this complaint, Defendant Gregory Smith & Company  
2 LLC had a contractual agency relationship with the other named defendants.

3 4

4 At all times pertinent to this complaint, Defendant, Greg Smith, served as a  
5 Malheur County Agent.  
6

7 5

8 At all times pertinent to this complaint, Defendant, Greg Smith, served as a  
9 Malheur County Agent subject to the Oregon Public Records Laws.  
10

11 6

12 At all times pertinent to this complaint, Grant Kitamura, served as president of  
13 Malheur County Development Corporation.

14 7

15 Malheur County Development Corporation is a public body under Oregon law.  
16

17 **General allegations**

18 8

19 At all times pertinent to this complaint, Defendant Greg Smith served as an  
20 Officer of the Board of the Malheur County Development Corporation.  
21

22 9

23 Defendant Greg Smith while serving as an officer of the Malheur County  
24 Development Board is a public official subject to Oregon Ethics Laws in ORS Chapter 244.  
25

26 10  
27  
28

1 Defendant Greg Smith, while serving as an officer of the Malheur County  
2 Development Board, is a public official subject to Oregon public meeting laws in ORS Chapters  
3 196 and 192.

4  
5 11

6 If the Malheur County Development Corporation is dissolved, all assets of the  
7 corporation are to be distributed to Defendant Malheur County.

8  
9 12

10 Defendant Greg Smith, while serving as an officer of the Malheur County  
11 Development Corporation, is a public official subject to Oregon public record laws in ORS  
12 Chapter 192.

13  
14 13

15 Malheur County provides public funds to the Malheur County Development  
16 Corporation.

17  
18 14

19 The Malheur County Development Corporation utilizes those public funds to  
20 conduct its business and to pay for the Treasure Valley Reload Center's construction (hereinafter  
21 referred to as "the reload center.")

22  
23 15

24 The Malheur County Court appoints the directors and must approve the  
25 appointment of officers to the Malheur County Development Corporation.

26  
27 16

28 Defendant, Malheur County, is a public body subject to Oregon's Public Records  
Laws.

1 **Jurisdiction and Venue**

2 17

3 The Malheur County Circuit Court has subject matter jurisdiction to hear this  
4 matter.  
5

6 18

7 Venue is appropriate in Malheur County Circuit Court.

8 **Claim One**

9 **Failure to provide requested public documents per June 9, 2022 request by**  
10 **Plaintiff Les Zaitz and Plaintiff Malheur Enterprise (herein after collectively referred to as**  
11 **plaintiffs)**

12 19

13 On May 24, 2022, Defendant Gregory Smith claimed to have a “very well-defined  
14 budget” for the Treasure Valley Reload Center.

15 20

16 On June 9, 2022, Plaintiffs demanded production of the “well-defined budget” by  
17 sending the following request to defendants:

18 “Pursuant to the Oregon Public Records Law, the Enterprise requests an  
19 electronic copy of the following public records in the custody of Malheur  
20 County

21 Economic Development Department, Malheur County Development  
22 Corp., Gregory

23 Smith & Associates and Greg Smith (Respondents) as follows:  
24

25  
26 The most recent budget prepared by Anderson Perry & Associates related  
27 to  
28

1 construction of the Treasure Valley Reload Center. This request includes  
2 but is  
3 not limited to the document referred to at the May 24, 2022, meeting of  
4 the  
5 MCDC Board when Greg Smith stated: “Brad showed me a very well-  
6 defined  
7 budget.””  
8

9 21

10 Defendants replied by sending Plaintiffs a photograph of what appeared to be a  
11 multi-page document which clearly had been redacted.  
12

13 22

14 Plaintiffs petitioned the Malheur County District Attorney to order full disclosure  
15 of the public records requested on June 9, 2022.  
16

17 23

18 The Malheur County District Attorney found that Defendants:

19 “...responded with a photo of what appears to be a scribbled-on budget  
20 document being held by someone at a distance from the camera.

21 This was not responsive. It is 2022.

22 Any current budget document should exist on a firm’s or the MCED’s  
23 computer in some electronic form. This actual/official budget document or documents  
24 would be responsive and must be provided. If somehow this photographed document IS  
the official working budget of MCED and Anderson Perry for the TVRC project, it must  
be scanned in or photocopied. A photograph from a distance of one page of what looks  
like a multi-page document is not a satisfactory response”

25 24

26 Defendants have failed to produce a scanned or photocopied electronic form of  
the requested public records.

27 **Claim Two**

1 **Failure to provide requested public documents per April 23, 2022 request by**  
2 **Plaintiffs.**

3 25

4 Plaintiffs re-alleges paragraphs 1-18 above.

5 26

6  
7 On April 23, 2022, Plaintiffs sent Defendants a public records request requiring  
8 Defendants to provide:

9 1. Each and every email sent to, received by or deleted from the email  
10 account [rbailey@eou.edu](mailto:rbailey@eou.edu) that in any manner relates to the public business of MCDC and  
11 MCED. The request includes any and all attachments to any such email in the account of  
12 Ryan Bailey at the email address cited.

13  
14 2. Each and every text message sent or received by the telephone number  
15 (541) 720-4021, the cell phone used by Ryan Bailey.

16 27

17  
18 On May 13, 2022, Defendant Smith responded, "My staff and I do not retain text  
19 messages."

20 28

21 Plaintiffs, on April 29, 2022, sent at least two text messages to Defendant Smith  
22 that were public records under Oregon Law.

23 29

24  
25 Plaintiffs requested both of those text messages to determine if Defendant Smith  
26 destroyed those public records.

27 30

1 Defendant Smith confirmed that he destroyed the public records.

2 31

3 A public body or individual subject to Oregon public Records Laws may not  
4 destroy public records unless authorized by law.

5 32

6 Destruction of the requested public documents was not authorized by law.

7 33

8 A public body or individual who willfully destroys a public record is required to  
9 retrieve the public record and provide the public record to the requestor, if possible.

10 34

11 Defendant, with assistance from a computer forensic expert, has the ability to  
12 recover deleted text messages.

13 35

14 Plaintiffs petitioned the Malheur County District Attorney to order Defendants to  
15 produce the public records.

16 36

17 The Malheur County District Attorney held that text messages can be public  
18 records and, if Defendants intentionally destroyed public records, they need to consult county  
19 administrators to “remedy that situation.”

20 37

21 Defendant Smith has not provided the text messages.

22 38

23 Defendant Smith deleted or otherwise destroyed the text messages.

The deleted or otherwise destroyed text messages were public records.

**Claim Three**

**June 6, 2022, request**

Plaintiffs re-allege paragraphs 1-18 and paragraphs 26-36.

On June 6, 2022, Plaintiffs requested each and every document from April 1, 2022 to present that in any way to relates to efforts to obtain additional funding, whether by grant, gift, loan or any other financial arrangement for TVRC, to complete construction of the reload center. The request includes but is not limited to these records from each and every

Respondent:

- Every calendar entry, regardless of where or how it is maintained, involving Mr. Smith and the funding issue as described. In response to an earlier public records request, Mr. Smith represented that calendar entries are a fundamental method used by the Respondents to track public business.

- Every text message, regardless of where or how it is maintained, involving Mr. Smith and the funding issue as described. This request includes text messages received or sent by Mr. Smith, Ryan Bailey, or Brad Baird, in Mr. Smith’s capacity as contractor for Malheur County Development Corp.

- Every email message, regardless of where or how it is maintained, involving Mr. Smith and the funding issue as described. This should include email messages on Mr. Smith’s personal Gmail account, as well as other accounts used by Respondents.



1 • Every message, regardless of where or how it is maintained, on ANY other  
2 communication platform including, but not limited to, WhatsApp, Signal, or similar messaging  
3 platforms. Every other document, regardless of where or how it is maintained, involving Mr.  
4 Smith and the funding issue as described.  
5

6 If a Respondent elects to withhold any responsive documents, please identify the  
7 document generally and cite your statutory authority for so doing. Please note that a document  
8 labeled “confidential” does not make it automatically immunize it from disclosure. A legal basis  
9 under the OPRL is required for withholding or redacting any so labeled documents for each  
10 specific paragraph of requested public records enumerated above.  
11

12 42

13 On June 13, 2022, Defendant Smith acknowledged that he was the custodian of  
14 the requested records.  
15

16 43

17 On June 24, 2022, Defendant Smith acknowledged that he did not possess text  
18 messages.  
19

20 44

21 Defendant Smith deleted or otherwise destroyed the text messages.  
22

23 44

24 The deleted or otherwise destroyed text messages were public records.  
25

26 **Claim Four**

27 **Unlawful destruction of public records**

28 45

1 Plaintiffs re-alleges paragraphs 1-18 and paragraphs 26-36.

2 46

3 Defendant Smith is an Oregon House representative representing House District  
4 57 in the Oregon Legislature.

6 47

7 The Oregon Legislature passed the Oregon Public Record Laws and laws making  
8 it a crime to destroy public records.

9 48

10 ORS 162.305 provides:

11 **162.305. Tampering with public records**

12 (1) A person commits the crime of tampering with public records if, without  
13 lawful authority, the person knowingly destroys, mutilates, conceals, removes, makes a false  
14 entry in or falsely alters any public record, including records relating to the Oregon State Lottery.  
15

16 49

17 Defendant Smith's knowing destruction of public records without legal authority  
18 violated ORS 162.305.

19 50

20 ORS 162.415 provides:

21 **162.415. Official misconduct in the first degree**

22 (1) A public servant commits the crime of official misconduct in the first degree  
23

24 if:

25 (a) With intent to obtain a benefit or to harm another:

26 (A) The public servant knowingly fails to perform a duty imposed upon the public  
27 servant by law or one clearly inherent in the nature of office; or  
28

1 (B) The public servant knowingly performs an act constituting an unauthorized  
2 exercise in official duties.

3 51

4 Defendant Smith intended to obtain a benefit or benefits when he destroyed public  
5 records.  
6

7 52

8 Defendant Smith intended to harm Plaintiffs when he destroyed public records.

9 53

10 Defendant Smith had a duty imposed by law to retain public records.

11 54

12 Defendant Smith's destruction of public records was an unauthorized exercise of  
13 Defendant Smith's exercise of official duties.  
14

15 55

16 Plaintiffs and the general public suffered harm as a result of Defendant Smith's  
17 actions.  
18

19 56

20 Pursuant to ORS 31.725 Plaintiffs, after the filing of this complaint, are entitled to  
21 amend this complaint to allege a punitive damage claim against Defendant Smith.  
22

23 **Claim Five**

24 **Demanding excessive fees for public records**

25 57

26 Plaintiffs realleges paragraphs 1-18 above.

27 58

1 On May 3, 2022, the Plaintiffs sought records of construction meeting minutes  
2 and requested a fee waiver, as disclosure would serve the public interest.

3 59

4 On May 11, 2022, Defendant Smith responded: “Your request for a fee waiver is  
5 denied. It is not clear that the information you request will directly impact, affect, or serve an  
6 identified interest of the general public or advance the welfare or well-being of the general  
7 public.”

8 60

9 On May 11, 2022, defendant Smith notified Plaintiffs by email: “The records will be compiled  
10 on or before Wednesday, May 25th, and will be released only after payment has been received.”  
11 He assessed a fee of \$250.  
12

13 61

14 Anderson Perry & Associates is the consulting engineer working on the re-load center project.  
15

16 62

17 Anderson Perry & Associates assessed an additional fee of \$53.75 for the requested records.  
18

19 63

20 Plaintiffs delivered to Malheur County payment of \$250, processed and deposited by Malheur  
21 County on May 20, 2022. Plaintiffs delivered to Malheur County a second payment of \$53.75,  
22 processed and deposited by Malheur County on June 3, 2022.  
23

24 64

25 Plaintiffs sought from Defendants any invoicing or other accounting for the basis for these public  
26 records fees.  
27

28 65

1 Neither Malheur County nor Defendant Smith has provided the accounting requested in  
2 paragraph 64.

3  
4 66

5 On May 26, 2022, Plaintiffs sought records of a farm lease and requested a fee waiver, as  
6 disclosure would serve the public interest.

7 67

8 On June 3, 2022, defendant Smith responded: “Your request for a fee waiver is denied. It is not  
9 clear that the information you request will directly impact, affect, or serve an identified interest  
10 of the general public or advance the welfare or well-being of the general public.”  
11

12 68

13 Defendant Smith required Plaintiff to pay a fee of \$590 for the public records.

14 69

15 On June 2, 2022, Plaintiffs wrote to County Judge Dan Joyce and others seeking the intercession  
16 of the Malheur County Court in the fee matter. Judge Joyce did not respond.  
17

18 70

19 Plaintiffs, under protest, tendered payment of \$590 to Malheur County.

20 71

21 On June 22, 2022, the Defendants provided responsive documents.  
22

23 72

24 Defendants have not provided an invoice or otherwise accounted for the collected fees.

25 73

26 By email dated June 23, 2022, Defendant Smith advised Plaintiff: “For your request dated May  
27 26, 2022 (Farmland Lease), the actual charges will be \$100.”  
28

1 74

2 Defendants have not reimbursed plaintiffs for the excessive fees charged.

3 75

4 On June 6, 2022, Plaintiffs sought records related to reload center funding and requested a fee  
5 waiver.  
6

7 76

8 On June 13, 2022, Defendant Smith advised Plaintiffs that there would be a \$210 fee for  
9 processing the request.  
10

11 77

12 Defendant Smith did not address the fee waiver request and implicitly denied the fee waiver  
13 request by demanding payment.  
14

15 78

16 Plaintiffs tendered payment of \$210 to Malheur County.

17 79

18 On June 24, 2022, Defendant Smith provided responsive records and an invoice for \$105.

19 80

20 The invoice provided in paragraph 79 does not specify the time spent or the hourly rate charged.  
21

22 81

23 Defendants have not reimbursed Plaintiffs for the excess fees charged.

24 82

25 During the time period pertinent to this complaint, Defendants established  
26 unreasonable fees in excess of what was reasonably calculated to reimburse the public body for  
27 the public body's actual cost of making public records available, including costs for  
28

1 summarizing, compiling or tailoring the public records, either in organization or media, to meet  
2 the request.

3 83

4  
5 During the time period pertinent to this complaint, Plaintiffs paid the fees  
6 demanded by Defendants under protest to ensure the public had access to the information.

7 84

8 During the time pertinent to this complaint, Plaintiffs demanded records and an  
9 accounting for the fees that Defendants required.

10 85

11  
12 Defendants are obligated to return fees charged for public records if the originally  
13 established fees collected exceed the defendant's actual cost of making public records available,  
14 including costs for summarizing, compiling or tailoring the public records, either in organization  
15 or media, to meet the request.

16 86

17  
18 Prior to plaintiff's retaining counsel, Defendant Smith failed to account for the  
19 reasonableness of the collected fees or account for the reasonableness of the amount charged.

20 87

21  
22 Defendant Smith began providing some accounting and reduction in fees only  
23 after he became aware that Plaintiffs had filed a formal tort claim notice.

24 88

25  
26 Defendant Smith set and charged the unreasonable fees in his attempt to shield  
27 himself and the Malheur County Development Corporation from public scrutiny regarding their  
28 spending of public dollars and their management of the Reload Center's construction.

Pursuant to ORS 31.725 Plaintiffs, after the filing of this complaint, are entitled to amend this complaint to allege a punitive damage claim against Defendant Smith.

**Claim Six  
Refusal to grant fee waiver or reduction of fees**

90

Plaintiffs re-alleges paragraphs 1-18 above.

91

Pursuant to ORS 192.324, a public body must waive or reduce fees for public records when “making the record available primarily benefits the general public.”

92

Plaintiffs requested and utilized the records to keep the public informed regarding the spending and management of public funds spent on the Reload Center.

93

ORS 192.324(6) allows a court to review the reasonableness of a public body’s refusal to grant a fee reduction or fee waiver when the request for public records benefits the general public.

94

The public records, which allowed Plaintiffs to inform the general public about spending and management of public funds used to build the Reload Center, benefitted the general public.

95

Defendant’s improperly denied Plaintiff’s fee waiver requests.

**PRAYER**

Wherefore, Plaintiffs demand production of all requested public records, general damages in an amount to be determined at trial, specific damages for amounts paid for public records, punitive damages in an amount to be determined, attorney fees, and costs, and such other relief necessary in the interest of justice.



Dated this 9<sup>th</sup> day of September, 2022.



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Daniel O. Norris

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