ELLEN F. ROSENBLUM
Attorney General

FREDERICK M. BOSS
Deputy Attorney General

DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

February 13, 2014

Chuck Erickson
2727 Stanton Street
North Bend, OR 97459

RE: Petition for Public Records Disclosure Order
Oregon Department of Fish and Wildlife
DOJ File No. 635020-GA0018-14

Dear Mr. Erickson:

This letter is the Attorney General's order on your petition for review of the denial by the Oregon Department of Fish and Wildlife (ODFW) of your request for records. The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. If a state agency denies a request for disclosure of records, the requestor may petition the Attorney General for review of the denial. ORS 192.450.

Your petition refers to a public records request dated October 28, 2013 and was dated February 3, 2014. Shortly thereafter, Michael Kron spoke with you in order to clarify your petition. From his conversation with you, we understand that the documents that are the subject of your petition for a public records order are the five items listed in your letter to Teri Kucera at ODFW, dated December 15, 2013, and included with the packet of materials you sent the Attorney General. For the reasons that follow, we respectfully deny your petition as moot.

Background

Your December 15 letter followed an ODFW letter, dated December 12, 2013, relating to a previous public records request from you. On October 28, 2013 you had sent ODFW public records request # 5631, and ODFW responded on October 31, indicating that they would search for relevant records but that certain other records you requested did not exist. On November 27, 2013, ODFW sent you another letter stating that they had identified relevant records and providing a cost estimate of $98.00. On December 12, 2013, however, rather than charge you for records, ODFW wrote you another letter, providing a variety of information in response to your records request, including budget analyses. That letter also stated that ODFW would not charge you for compiling the information. That letter did not include a response regarding revenues for commercial licenses for shellfish. On December 15, you wrote ODFW requesting 5 categories of

documents, including revenues from commercial shellfish licenses, and in addition making new requests relating to information in ODFW's December 12, 2013 letter.

We have spoken with ODFW regarding your December 15, 2013 letter, and understand that ODFW has been in the process of formulating a response.

At the outset, we note that some of your requests related to questions to which it appears you seek answers. The public records law concerns documents rather than information. As the Attorney General's Public Records Manual explains, that law does not impose on public bodies the duty to create public records or to explain or to answer questions to provide analysis about their public records. *Attorney General's Public Records and Meetings Manual* p. 6, Public Records Order, May 26, 2005, Andrade; Public Records Order, February 23, 2006, Kane.

Item 1. With respect to Item 1, "copy of the ODFW shellfish program mentioned on page 2 of your letter." The December 12 letter referred to the cost of implementing the "shellfish program." We understand from ODFW that there is not such a document, because the "shellfish program" is a functional work unit, it is not contained or summarized in a document. Accordingly, there are no documents responsive to that request. However, we understand that ODFW is responding regarding some sources of information about the program. Therefore we deny your petition as to Item 1.

Item 2. With respect to item 2, "a detailed explanation of personnel expenses mentioned on page two," it is not entirely clear what kind of details you are seeking. However, we understand that ODFW is providing sources of budget information and personnel cost information as well as position information for the staff members referred to. Accordingly, we deny your petition as to Item 2.

Item 3. With respect to item 3, "total number of full time shell fish employees at ODFW and which office they work out of," ODFW is providing the answer to your question. Given the nature of the inquiry and prior exchanges between you and ODFW, it appears likely that an answer, rather than documents, will satisfactorily respond to your request. Accordingly we deny your petition as to Item 3.

Item 4. With respect to Item 4, "published summaries" of special research projects, ODFW has prepared and will be providing to you a list of such summaries. Most of those are available on the Shellfish Program website, and ODFW will also provide a cost estimate for copying.

That item also requests a "breakdown of cost and hours." ODFW does not have documents showing such a breakdown for work on research projects. For those reasons, we deny your petition as to Item 4.

Item 5. With respect to Item 5, you requested "total revenues from commercial shellfish licenses and fees for crabbing, clamming, oyster, and a breakdown of how these monies are

spent." We understand from your conversation with Michael Kron that you are looking for information similar to the information in the chart regarding recreational licenses that ODFW provided in its December 12, 2013 letter. However, we understand from ODFW that the commercial license information you are interested in is more difficult to compile for a variety of reasons. ODFW has agreed to provide you information regarding certain total revenues, but there is no document reflecting a separate breakdown of the way in which commercial shellfish revenues are used. ODFW is willing to provide you with the information that it has, and we are unable to order ODFW to provide you with information it does not have. Accordingly, we deny your petition as to Item 5.

Conclusion

For the reasons stated above, we respectfully deny your petition as moot. If you dispute any determination made by ODFW under the Public Records Law, you will be free to petition this office to review ODFW's actions.

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

cc via email only:
Teri Kucera, ODFW