ELLEN F. ROSENBLUM
ATTORNEY GENERAL

FREDRICK M. BOSS
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

Justice Building
1162 Court Street NE
Salem, Oregon 97301-4096
Telephone: (503) 378-4400

January 2, 2014

SENT VIA EMAIL ONLY

Linda Rogers
PO Box 19645
Happy Jack AZ 86024
lindarogers@butterflyboutique.net

Re: Petition for Public Records Disclosure Order
Oregon Department of Agriculture
DOJ File No. 603707-GA0137-13

Dear Ms. Rogers,

This letter is the Attorney General's order in response to your petition asking our office to order the Oregon Department of Agriculture (ODA) to disclose certain records to you. Specifically, on December 4, 2013 you had asked ODA to provide you with (1) copies of all comments ODA had received concerning its proposed rule change pertaining to the release of Monarch butterflies in Oregon, and (2) "copies of all comments and submittals sent during the rest of the comment and review period," which ran through December 31. ODA provided you with the comments that had been received as of the date of your request. ODA informed you that the remainder of your request – the "future looking" request for documents that ODA had not yet received – "isn't possible." ODA indicated that you could obtain copies of all of the comments by submitting a request for comments after the comment period was closed.

From your petition and related correspondence with our office, it is clear that you understood ODA's response to mean that, for some reason that ODA was not going to explain, comments received prior to your request were disclosable during the comment period, but that comments received between the date of your request and December 31 would not be disclosable until January 1, 2014. But ODA did not deny your request for any records or assert that records in its possession were exempt. Nor did ODA state that records it had not yet received would be exempt from disclosure until January 1. ODA simply declined your request that it provide you,

on an ongoing basis, with records it had not yet received, and suggested how you could obtain all of the comments.

Our office has long held that public bodies are not required to honor ongoing records requests:

> A public body is only required to make nonexempt records that are in the public body's possession at the time the request is made. Persons seeking to inspect or to obtain copies of records of a public body on a continuing basis may be required to make successive requests for records.
> Of course, an agency may choose to honor a continuing request.

ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS Manual (2011) at A-1. Because ODA did not deny your request for any records in its possession, we must respectfully deny your petition.

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

MCK:tmt/4886632
cc via email only:
Dr. Dan Hilburn, Oregon Department of Agriculture