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November 7, 2012

Jeff Walton
3098 Craftsman Drive
Bend, OR 97701

Re: Petition for Public Records Disclosure Order
Oregon Employment Department Records
DOJ File No. 471090-GA0076-12

Dear Mr. Walton,

This letter is the Attorney General's order in response to your petition asking our office to direct the Oregon Employment Department (OED) to disclose certain public records to you. Your petition relates to a letter you sent to OED on DATE pertaining to a hearing in which you were a party. You enclosed that correspondence with your petition, and explained that you never received any records from OED in response to your letter. That letter consists of 12 questions you posed to OED. For the reasons that follow, we respectfully deny your petition.

Oregon's Public Records Law, ORS 192.410 to 192.505, confers on "[e]very person * * * a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.501 to 192.505." ORS 192.420(1). In general, public records must be disclosed on request. Exemptions must be express in statute, and they are construed narrowly, meaning that "if there is a plausible construction of a statute favoring disclosure of public records, that is the construction that prevails." *Colby v. Gunson*, 224 Or App 666, 676 (2008). The public is entitled to inspect nonexempt public records as promptly as the public body reasonably can make them available. ATTORNEY GENERAL'S PUBLIC RECORDS & MEETINGS MANUAL (2010) (MANUAL) at 11. In general, public bodies are permitted to recover from requesters the reasonable cost of providing nonexempt public records. ORS 192.440(4) and (5). If a requester feels that a state agency's response is inconsistent with the requirements of the Public Records Law, the requester generally may petition the Attorney General for an order directing that agency to comply with the law. ORS 192.450.

Following receipt of your petition, Assistant Attorney General Michael C. Kron corresponded with OED staff members Craig Spivey and Joel McPheeters regarding your petition. Mr. Spivey provided a copy of a response that was emailed to you on October 8, 2012, and a copy of a packet of information that he reports was sent on October 1, 2012 to the mailing address you provided to OED. Copies of those documents are enclosed for your convenience. Mr. Spivey reports that the information sent on October 1, 2012 fully responds to questions 1-3 and 5 of your initial request. (With regard to question 5, OED's October 8 response to your letter indicates that "All information pertaining to your account that you are entitled to was mailed to you in your hearings packet." Mr. Spivey explains that OED's position is that a claimant is entitled to everything in his or her file that OED "sent directly to them or they directly contributed" to OED, and that, in your case, that is "everything in [your] file." Consequently, OED's October 1 response provided you with all public records responsive to your fifth numbered question as well.) To the extent that OED's October 1 mailing responded to your request, OED did not deny the request and your petition must be respectfully denied. Again, that conclusion applies to items 1, 2, 3 and 5 of your underlying request.

OED's October 8 response also took the position that a number of your questions were not actually public records requests. Specifically, OED answered your items 4, 6, 7, 9, 10 and 12 with the explanation that "This question can not be answered through a public records request. It is better suited for the hearings process." In general agree with OED that those questions were not requesting public records, but instead seeking explanations of various facts from OED.

> Public bodies are not required to create a record to disclose the "reasoning" behind their actions, or other "knowledge" their staff might have. Nor does the Public Records Law require public bodies to explain or to answer questions or provide legal research or analysis about their public records.

MANUAL at 6. The questions at issue are as follows:

> 4. * * * Why was I not informed by the employment dept. that I had approximately $4300 of Tier 4 benefits that I was eligible for prior to June 2nd, 2012? * * * Why did I not automatically begin receiving my Tier 4 benefits per the policy quoted above? * * * Why was I not notified by mail of my additional Tier 4 benefits?
>
> 6. * * * What is the employment dept's written policy/procedure for handling returned letters? Does this policy include calling recipients whose mail is returned?
>
> 7. * * * Why was I not given a "request for waiver" form with the letter even though the letter refers to the request for waiver form?
>
> 9. * * * Who was responsible for this error? Was this error created by a human or by the employment dept. information system?

> 10. Am I currently eligible to receive any unemployment benefits at this time?
>
> 12. * * * [H]ow did the employment dept. determine that I was out of labor market? * * * When the employment dept. information system detects that someone is out of their labor market, how is this information reported and who gets this information? * * * What was the date that the employment dept. information system detected that I was allegedly out of my labor market? * * * [W]hy was my claim not stopped immediately and why did it continue to be paid? * * * Why did it take until May of 2011 (15 months) to be contacted by letter regarding this matter?

Of these questions, only question 6 appears to relate to a particular public record (OED's "written policy/procedure for handling returned letters"). But even that question does not seem to be seeking a copy of the policy; instead you are seeking specific information about the policy. In any event, you have now been provided with the policy, and OED states that it is willing to provide you with an official public record documenting it if you so request. Consequently, your petition is respectfully denied with respect to your sixth numbered question.

Questions 4, 7, 9 and 10 are all seeking explanations only; we do not see how those questions can be construed as requests for records. Question 12 contains some inquiries that could be understood as public records requests, but only if read generously. Specifically, question 12 could be understood to contain records requests if "When the employment dept. information system detects that someone is out of their labor market, how is this information reported and who gets this information?" were interpreted as "Please provide a public record showing how the OED information system detects that someone is out of the labor market and who receives this information," or if "What was the date that the employment dept. information system detected that I was allegedly out of my labor market?" were interpreted as "Please provide a public record showing the date on which the OED system detected that I was out of my labor market." But in light of the other aspects of question 12, which attempt to establish facts that would be resolved in your then-pending hearing, OED's understanding that the question in its entirety was seeking explanations that should instead be developed through the hearings process was completely reasonable. In other words, in light of the overall tenor of question 12, we do not think that OED was required to re-imagine some of the questions you actually asked as public records requests. Your petition is respectfully denied as to items 4, 7, 9, 10 and 12 of your underlying letter.

That leaves questions 8 and 11, which asked the following:

> 8. * * * Please provide me with a screen shot of the list of questions and any linked information to each of these questions if any.
>
> 11. Please provide me with employment dept. phone system statistics on "average hold time" and "calls dropped" for the year 2010[.]

With respect to item 8, Mr. Spivey states that the packet mailed to you on October 1 includes the list of questions you request and that OED inadvertently overlooked the request for "any linked information to each to these questions if any." However, you have now been provided with the information that OED understands to be responsive to your request. As a consequence, your request that we order OED to provide the information sought in your eighth question is moot, and we respectfully deny your petition with regard to that information.

With regard to item 11, OED informs us that it does not have information on dropped calls, but that the average hold time in 2010 was 19:20. Again, OED states that if you want official public records documenting that hold time, rather than simply a response to your question, you can request such records from OED. We deny your petition as moot with respect to your eleventh question, as you have received the information you requested to the extent that it exists.

For the foregoing reasons, your petition is respectfully denied.

Sincerely,

Mary H. Williams
Deputy Attorney General

MHW:nog/Justice #3765036
c: Craig Spivey, OED