JOHN R. KROGER
ATTORNEY GENERAL

MARY H. WILLIAMS
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

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

May 29, 2012

Lois Hamilton
638 Park Road
Winlock, WA 98596

Re: ***Public Records Order: Oregon Department of Agriculture Records***
DOJ File No. 603010-GA0040-12

Dear Ms. Hamilton,

This letter is the Attorney General's order in response to your petition asking our office to review a fee estimate generated by the Oregon Department of Agriculture (ODA) in response to your request for public records. You assert that the fee estimate is unreasonable and constitutes "an effort to keep [you] from obtaining" the records in question. For the reasons that follow, we respectfully deny your petition.

The Oregon Public Records Law confers upon "any person" the right to inspect "any public record of a public body in this state," subject to express exemptions. ORS 192.420(1). Public bodies may, however, establish fees that are "reasonably calculated to reimburse the public body for the public body's actual cost of making public records available." ORS 192.440(4)(a). In order to establish a fee in excess of $25, the public body must first provide an estimate to the requester and secure the requester's agreement to pay the fee amount. ORS 192.440(4)(c). A public body's actual cost "may include a charge for the time spent by the public body's staff in locating the requested records, reviewing the records in order to delete exempt material, supervising a person's inspection of original documents in order to protect the records, copying records, certifying documents as true copies, or sending records by special methods such as express mail." ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2011) (MANUAL) at 15. We have long indicated that "no provision in the Public Records Law that authorizes a person to petition the Attorney General to review an agency's fees established under ORS 192.440(4)." MANUAL at 16. However, our "authority to enforce the inspection provisions of the public records law may require the Attorney General to evaluate an

agency's fees where the amount of the fee in comparison to the nature of the request suggests that the true purpose of the fee is to constructively deny the request, rather than to recoup the agency's actual costs " *Id.* at 17.

After discussing your request with ODA, we cannot conclude that the agency's fee estimate in this case implicates our limited authority to review the reasonableness of agency fees. Your request is a broadly-phrased request seeking all records relating to a complex matter that has been ongoing since 2006. The matter involves at least 9 ODA employees, multiple files within ODA, and coordination and communication with other government agencies. ODA informs us that it would be happy to work with you in an attempt to narrow your request and, hopefully, make it less labor-intensive for ODA and therefore less expensive for you. We respectfully deny your petition because we cannot conclude that ODA's fee estimate is actually intended to deny your request rather than recoup ODA's actual costs.

Sincerely,

Mary H. Williams
Deputy Attorney General

MHW:nog/Justice #3414601
c: Dale Mitchell, ODA