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June 23, 2016

VIA E-MAIL ONLY: lsaccato@gmail.com

Larry Saccato
1224 NE Walnut #257
Roseburg, OR 97470

Re: Petition for Public Records Disclosure Order
Oregon Department of Revenue
DOJ File No. 150303-GA0086-16

Dear Mr. Saccato:

This letter is the Attorney General's order on your June 16, 2016, petition for public records disclosure under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition asks the Attorney General to order the Department of Revenue (DOR) to produce e-mails between its Property Tax Division and various individuals in the Douglas County and City of Roseburg governments for the period 1/2/16 to 5/15/16. Your petition also asks the Attorney General to order DOR to waive any fees it incurs in fulfilling your requests.

We respectfully deny your petition because DOR has not denied your requests for these records or denied your requests for a fee waiver. Since you filed your petition, DOR has produced all its records responsive to your request for e-mails with the City of Roseburg, and is working to resolve technical issues delaying production of its e-mails with Douglas County. And due to the relatively small number of responsive e-mails, DOR has not charged you any fee for its responses to these requests.

The Oregon Public Records Law confers a right to access any public record of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420(1). Any person denied the right to inspect or to receive a copy of any public record of a state agency may petition the Attorney General to determine if the record may be withheld. ORS 192.450(1). The Attorney General may order a state agency to disclose records only when the agency has denied the records request. *See id.* However, an agency's failure to produce records within a reasonable amount of time may constitute a constructive denial of the request. *See, e.g.*, Public Records Order, Dec 11, 2008, Harbaugh, at 2.

We have spoken with Bob Estabrook, DOR's public information officer. He told us, with respect to your request for e-mails with the City of Roseburg, that he provided these records to you on June 22 without any charge. Therefore we deny that portion of your petition as moot.

With respect to your request for Douglas County e-mails, he told us that your initial May 19th request asked for a broader set of records, that is, any e-mails between the Property Tax Division and Douglas County (excluding the assessor's office) between 6/1/15 and 5/15/16. He forwarded that request to DOR's IT department for processing, and acknowledged receipt of your request on May 25. On June 6, he notified you that the search (for both Roseburg and Douglas County e-mails) had found more than 4,000 e-mails and that he was preparing an estimate of the cost to review and produce any responsive e-mails; one factor delaying this estimate was the difficulty in determining how many of these e-mails were actually responsive: your initial request had asked that any e-mails with the assessor's office be excluded, but DOR had no way to exclude those e-mails in bulk because the assessor's office uses the same e-mail domain as the rest of the Douglas County government.

Your petition shows that on June 6, you responded to Mr. Estabrook by narrowing your request to the records and date range listed in your petition. Mr. Estabrook told us that after you revised your request, he submitted a new search request to the IT department, and reviewed the results with a program manager for exempt information. He then e-mailed you on June 16, the date we received your petition, explaining that the new search had turned up fewer than 30 e -mails and that there likely wouldn't be any cost to you. But a technical issue prevented the IT department from exporting these e-mails to Mr. Estabrook, which prevented him from sending the e-mails to you. DOR is still working to resolve this issue.

Based on the above, we cannot say that DOR has constructively denied your records request: you submitted your petition only ten days after you narrowed your request; in this case, taking into account the technical delays, ten days does not exceed the reasonable time needed to gather the responsive e-mails, review them for exemptions, and produce them to you. In addition, DOR has not denied your request for a fee waiver; based on the e-mails included in your petition and obtained from DOR, you never requested a fee waiver. In addition, DOR has agreed to produce these records without any charge. Therefore we deny this portion of your petition.

Because DOR has not denied your records requests or your fee-waiver requests, we respectfully deny your petition.

Sincerely,

For Frederick M. Boss
Deputy Attorney General

FMB:nog/DM7475134
c via email only: Bob Estabrook, DOR