ELLEN F. ROSENBLUM
ATTORNEY GENERAL

FREDERICK M. BOSS
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

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

July 20, 2016

SENT VIA E-MAIL ONLY: elena@opusnet.com

Elena M. Farley
Martinis & Hill
PO Box 3938
Salem, OR 97302

Re: Petition for Public Records Disclosure Order
Oregon Department of Aviation
DOJ File No.: 109001-GA0097-16

Dear Ms. Farley:

This letter is the Attorney General's order responding to your petition for disclosure under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on July 13, 2016, asks the Attorney General to order the Oregon Department of Aviation (ODA) to provide you, on behalf of your client Joe Weber, with "any releases retained by Pacific Northwest Skydiving, LLC for the benefit of the Oregon Department of Aviation."

We respectfully deny your petition because these releases are not public records: Although ODA requires Pacific Northwest to obtain signed releases from skydiving customers, those releases are contracts between a private skydiving company and its customers. They are not owned, prepared, used, or retained by ODA.

The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain express exemptions and limitations. *See* ORS 192.420(1). Any person denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to review the record to determine if it may be withheld. ORS 192.450(1).

Your petition shows that ODA leases commercial space at the Mulino State Airport in Clackamas to Pacific Northwest Skydiving. The lease agreement requires Pacific Northwest to obtain a signed release from each customer, and to retain and give ODA access to each release.

The template release, which was approved by ODA, was incorporated into the lease agreement as Exhibit B and has already been provided to you by ODA. E-mails included with your petition show that ODA not only approved the template release, but also revised the draft release prepared by Pacific Northwest.

We have spoken with Matthew Maass, ODA's state airports manager. He told us that ODA denied your request for the signed releases because they are not public records: ODA does not own or possess them, and has not used or prepared them. He explained that although ODA approved the template release, it is not involved in the process by which Pacific Northwest obtains a filled-out, signed version from each customer. He added that ODA has never used or even reviewed any of these signed releases.

The issue here is whether Pacific Northwest's signed customer releases are public records. *See* ORS 192.420(1) (providing the public a right to inspect a public body's public records). *Public record* is defined to include "any writing that contains information relating to the conduct of the public's business . . . prepared, owned, used or retained by a public body." ORS 192.410(4).

Based on our conversation with Mr. Maass, we think it clear that ODA has not used, retained, or prepared these releases. While it retained, used, and helped prepare the template release incorporated into the lease agreement, that template has been provided to you; thus, to the extent that ODA prepared the form, ODA has provided it to you. ODA did not further prepare the filled-out, signed release that Pacific Northwest obtains from each customer. The customer prepared it by filling out and signing it. Pacific Northwest, not ODA, retains those signed forms. And Pacific Northwest, not ODA, uses the signed forms in the course of business. Should a particular release become relevant to ODA business, ODA may well acquire it, retain it, and use it, but unless and until that happens we cannot say that ODA has retained or used a signed release.

The only remaining question is whether ODA's right of access to these releases means that ODA owns them. ODA has only the right to inspect the signed releases. Neither its contract with Pacific Northwest nor any legal principle we are aware of gives ODA rights tantamount to ownership of the signed releases. For example, ODA has no right to deprive Pacific Northwest of them, or destroy them without Pacific Northwest's consent. Therefore, we conclude that ODA does not own the releases, and that they are not public records.

You advance several arguments that these signed releases are public records. However, these arguments all blur the distinction between the template release that was approved by ODA and the signed releases that Pacific Northwest obtains from its skydiving customers. For example, you argue that the signed releases are incorporated into the contract when, in fact, only the template release is incorporated. And your argument that ODA prepared these releases focuses solely on the template release, not on the individual releases that are filled out and signed by each customer.

Because the signed release forms are not prepared, owned, used or retained by ODA, they are not public records and ODA is not required to provide them to you. Therefore, we respectfully deny your petition.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:nog/DM7536503
c via email only: Matthew D. Maass, ODA