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

November 14, 2016

VIA EMAIL ONLY: goodom@pinetel.com

Thomas Joseph Omann
P.O. Box 623
Halfway, OR 97834

Re: Petition for Public Records Disclosure Order
Oregon Department of Revenue
DOJ File No. 150800-GA0134-16

Dear Mr. Omann:

This letter is the Attorney General's order on your petition for disclosure under the Oregon Public Records Law, ORS 192.410 to 192.505.[1] Your petition, which we received on November 7, 2016, asks the Attorney General to order the Department of Revenue (DOR) to produce the following records:

1. Documents identifying DOR employee Shawna Johnson as a Tax Auditor 2.
2. Evidence of legislative action allowing DOR employees to exercise powers delegated to the DOR director without fulfilling the requirements in ORS 305.057.
3. DOR's application to Dun & Bradstreet for a D-U-N-S number.
4. DOR's policy on responding to a request when there is no documentary evidence that the issue is confidential.

We respectfully deny your petition: DOR has provided you with the records responsive to your first request; DOR is not required to engage in the legal analysis required to fulfill your second request; DOR no longer possesses records responsive to your third request; and DOR has not denied your fourth request, but rather asked you a clarifying question.

[1] An internet form for petitions can be found here: http://www.doj.state.or.us/forms/public_records_petition.pdf.

The Oregon Public Records Law confers a right to access any public record of a public body in Oregon, subject to certain exemptions contained in ORS 192.501 to 192.505. *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 review the public record to determine if it 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.*

We spoke with Joy Krawczyk, DOR's public information officer. She explained the following with respect to the records listed in your petition:

- *Documents identifying DOR employee Shawna Johnson as a Tax Auditor 2.* Ms. Krawczyk told us that on September 21, she mailed you documents satisfying this request. However, the envelope and documents were returned by you, along with a notice that federal law prohibits you from opening mail that isn't properly addressed. DOR has satisfied its obligations under the Public Records Law by mailing the responsive records to the appropriate address, and therefore has not denied this portion of your request.
- *Evidence of certain legislative action.* Although you have phrased this as a public records request, it really is seeking legal analysis and argument from DOR on whether its auditors are legally permitted to engage in certain duties. Public Records Law does not require DOR to provide you with such analysis or argument. *Attorney General's Public Records & Meeting Manual* 7 (2014). Therefore, we deny this portion of your petition.
- *DOR's application to Dun & Bradstreet for a D-U-N-S number.* Ms. Krawczyk told us that while DOR did at one time possess this application, the number associated with the application expired in 2001, and the application was destroyed by DOR in compliance with the Secretary of State's retention schedule. *See* OAR 166-300-0025(28). We cannot order DOR to produce a record it no longer has custody of.
- *DOR's policy on responding to certain requests.* Ms. Krawczyk told us that in a letter dated July 22, she asked you to clarify this request. Her letter to you was returned, and you have not responded to her clarifying question. Agencies are permitted to ask reasonable, clarifying questions of requesters; therefore DOR has not denied this portion of your request.

For the reasons discussed above, we respectfully deny your petition. We've attached Ms. Krawczyk's September 21st letter to you, as well as the documents responsive to your first request.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:ne2/DM7846125
c via email only: Joy Krawczyk, DOR