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December 23, 2016

VIA EMAIL ONLY: RDavis@oregonian.com

Rob Davis
The Oregonian

Re: Petition for Public Records Disclosure Order
Oregon Department of Environmental Quality
DOJ File No.: 340980-GA0138-16

Dear Mr. Davis:

This letter is the Attorney General's order responding to your November 14, 2016, petition for disclosure under the Oregon Public Records Law, ORS 192.410 to 192.505. Thank you for agreeing to extend the deadline to issue this order. Your petition asks the Attorney General to order the Department of Environmental Quality (DEQ) to produce unredacted versions of records related to recent reports of pollution on Hayden Island. You subsequently clarified to our office that you are not contesting redactions of the names (and other identifying information) of complainants who requested confidentiality or redactions of teleconference phone numbers and access codes.

We respectfully deny your petition as DEQ has now produced unredacted versions of the previously produced records, particularly with respect to the specific categories you listed in your petition:

- *Personal e-mail addresses; e-mail recipients; health complaints; names on invoices.* These types of information can be redacted only under certain circumstances; the most relevant public records exemption here is ORS 192.502(2), which applies to information of a personal nature where disclosure would be an unreasonable invasion of privacy, unless the requester shows by clear and convincing evidence that the public interest requires disclosure. Oregon's appellate courts have explained that this exemption can't be applied on a blanket basis; that is, the public body must make a threshold showing on an individualized basis that disclosure would be an unreasonable invasion of privacy. *Guard Publ'g Co. v. Lane County School District No. 4J*, 310 Or 32, 39–40 (1990). Therefore, DEQ has now produced records to you with this information unredacted.

DEQ also initially redacted e-mail recipients and some content under the ORS 192.501(3) exemption for criminal investigatory information. DEQ has now produced these e-mails with the recipients and content unredacted.

- *Sender, recipient, and subject line of attorney-client e-mails.* DEQ has now produced records with this information unredacted.

- *Permit inspection plans.* DEQ has now produced unredacted versions of these records as they don't disclose any information on unannounced future inspections.

DEQ has also left certain information redacted. Under Oregon's Public Records Law, DEQ carries the burden to show that this information is expressly exempt from disclosure. ORS 192.450(1).

- *Attorney-Client Confidential Communications.* DEQ redacted some e-mails under the privilege for attorney-client confidential communications, which is found in OEC 503 and incorporated as a public records exemption by ORS 192.502(9)(a). As relevant here, that privilege applies to confidential communications between DEQ and its lawyer made for the purpose of facilitating the rendition of professional legal services, as well as to internal DEQ e-mails made for the same purpose. OEC 503(2)(a), (d). After reviewing these e-mails, we find that DEQ has met its burden to show that the privilege applies: these are e-mails between DEQ and its Department of Justice lawyers regarding legal advice on applying public records exemptions, as well as internal DEQ e-mails relaying that advice to other staff.

- *Southern Oregon Sanitation Recycling Collector Survey 2015.* DEQ redacted information showing the amounts of recycling material sold, delivered, or used by Southern Oregon Sanitation, as well as information on that company's customers. DEQ collects this information annually from privately operated recycling facilities under ORS 459A.050(6). We find that this information is exempt from disclosure under ORS 459A.050(7), which applies to this collected information if it relates to customer lists or specific amounts and types of collected materials.

Because DEQ has now produced unredacted versions of previously produced records, and has shown that the remaining redactions were made to information that is exempt from disclosure, we respectfully deny your petition.

Sincerely,

Frederick M. Boss
Deputy Attorney General

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