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

September 5, 2017

VIA E-MAIL ONLY: wmwoodwort@salem.gannett.com

Whitney Woodworth
Statesman Journal
340 Vista SE, Suite 200
Salem, OR 97302

Re: Petition for Public Records Fee Waiver:
Oregon Department of Corrections
DOJ File No.: 291011-GA0126-17

Dear Ms. Woodworth:

This letter is the Attorney General's order responding to your August 22, 2017, petition for a fee waiver under the Oregon Public Records Law, ORS 192.410 to 192.505.[1] Your petition asks the Attorney General to order the Department of Corrections (ODOC) to waive the estimated fee to produce reports, investigative paperwork, and other documents pertaining to complaints about sex abuse involving prison staff from 2007 to 2017.

As discussed below, we conclude that ODOC's decision to grant a fee reduction was reasonable under the totality of the circumstances: requiring ODOC to waive its fee for 56 hours of staff time would be a significant burden, and given the breadth and generality of your request we cannot conclude that the public interest compels a complete waiver of the fee.

The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exemptions and limitations. ORS 192.420(1). A public body may establish fees reasonably calculated to recover its actual cost in making public records available for inspection, but may waive or reduce its fee if doing so "is in the public interest because making the record available primarily benefits the general public." ORS 192.440(4)–(5). Even if waiving or reducing the fee is in the public interest, a public body has discretion whether or not to grant such a waiver or reduction. *In Defense of Animals v. OHSU*, 199 Or App 160, 189 (2005).

[1] Thank you for granting an extension on the deadline to issue an order.

But, examining the totality of the circumstances, "the public body's decision whether to grant or deny a fee waiver or reduction must be reasonable." *Id.* at 190.

This decision should usually be based on the following factors: 1) the character of the public interest in the particular disclosure; 2) the extent to which the fee impedes the public interest; and 3) the extent to which waiver or reduction would burden the public body. *Attorney General's Public Records & Meetings Manual* 23 (2014). Any person denied a fee waiver or reduction by a state agency may petition the Attorney General to review that denial. ORS 192.440(6).

Your petition shows that ODOC provided you with a cost estimate of $1,110 to locate records responsive to your request.[2] This was based on an estimate of 56 hours at $20 per hour, with the first half hour waived. We spoke with Michelle Dodson, a Special Program Manager with ODOC's Office of Communications, regarding your petition. She told us that ODOC officials had determined in good faith that there were records in approximately 56 cases they would need to search for and locate; because the records were created and maintained in different formats and locations (e.g., on-site electronically in different databases, and off-site in hardcopy format requiring manual pulling and sorting through boxes), it would take ODOC officials approximately an hour per case to gather responsive records. ODOC's actual estimated fees for these efforts would have amounted to $2,932.72 ($52.37 per hour staff time x 56 cases at 1 hour per case to search for and retrieve responsive records). But based on DAS's statewide policy on public records fees, ODOC limited its hourly rate to $25/hour. ODOC then determined that producing these records to you would be in the public interest, and granted a 20% discount from $25/hour to $20/hour. In addition, Ms. Dodson told us that ODOC has suggested to you a number of ways in which you could have reduced the fee even further by narrowing the scope of your request.

Because ODOC determined that disclosing these records to you would be in the public interest, we must determine whether its decision to reduce its fee by only 20% was reasonable under the totality of the circumstances. Because the Public Records Law grants agencies discretion with respect to waiving and reducing fees, we do not ask whether our office would have made the same decision as ODOC under the particular facts. Instead we ask "whether the public body's decision impedes the policies favoring disclosure of public records to the extent that the decision cannot be said to reflect a 'lawful option[]' under the Public Records Law." *Public Records Manual* at 22–23.

With respect to the first of the three factors described above, we acknowledge a significant public interest in learning how ODOC has handled complaints of sexual abuse. However, your request covers all complaints over ten years; and you have declined ODOC's invitations to consider ways in which your request might be narrowed. For example, it may be that ODOC could provide summary documents at a much lower cost, and that after reviewing those summaries you might conclude that you are interested in supporting documentation for

[2] ODOC explained that once it located the responsive records, it would provide you an additional estimate to review them for exempt information and to redact such information.

some but not all of them; this would result in disclosure of the information most relevant to you, at a lower shared cost to you and ODOC. Alternatively, if your review revealed reason to think that obtaining all of the records in all of the cases would serve important public interests, that information could inform a subsequent waiver request and fee petition. With respect to the second factor, your petition notes that *The Statesman Journal* is a small-scale newsroom and cannot afford to pay such a high fee. Again, though, you have declined various ways in which the costs of the request could potentially be reduced. And with regard to the third factor, requiring ODOC to waive its fee for 56 hours of staff work would burden ODOC. Overall, we conclude that ODOC's decision to grant you a fee reduction of 20% was reasonable under the circumstances. Therefore, we must respectfully deny your petition.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn/DM8470371
c: via email only: Marica Ventura, ODOC