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April 12, 2018

VIA EMAIL ONLY: les@malheurenterprise.com

Les Zaitz
Malheur Enterprise
293 Washington Street West
Vale, OR 97918

Re: Petition for Public Records Disclosure Order
Oregon Judicial Department, Office of the State Court Administrator
DOJ File No. 198040-GA0021-18

Dear Mr. Zaitz:

This letter is the Attorney General's order responding to your petition for disclosure of certain records under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition, which we received on April 5, 2018, relates to your March 19, 2018 request to the Office of State Court Administrator (OSCA) for the email logs of five employees from February 1, 2018 to March 19, 2018. You argue that by failing to respond to your request prior to the date of your petition, OSCA has failed to comply with the timeliness standards in ORS 192.329. Under the circumstances, however, we disagree and respectfully deny your petition.

The Public Records Law confers the right to inspect public records in Oregon, subject to certain exemptions contained in ORS 192.338, 192.345, or 192.355. ORS 192.324(1). ORS 192.329 requires public bodies to complete responses to public records requests "as soon as practicable and without unreasonable delay." In addition, a public body must either acknowledge the request or complete its response within five business days of receipt. ORS 192.324(2). As soon as reasonably possible but not later than 10 business days after the required acknowledgment date, the public body must either complete its response or provide a written statement that it is still processing the request along with an estimated completion date. ORS 192.329(5). A requester may petition the Attorney General as if the request was denied in cases where the public body fails to respond within the prescribed period, and in any other instance in which the requester believes that the public body has failed to comply with ORS 192.329. ORS 192.407(1)(a)-(c). The agency carries the burden to sustain its action. ORS 192.411(1).

You argue that OSCA has failed to comply with ORS 192.329's requirement to respond to requests as soon "as practicable and without unreasonable delay." Whether an agency has failed to respond as soon as practicable and without unreasonable delay will inevitably require us to consider the specific circumstances of the request. In this case, we are persuaded it would not have been practicable for OSCA to complete its response to your request prior to your petition.

We understand from your petition that you have made multiple requests for similar information from OSCA going back to mid-January 2018, and that you have not found OSCA's responses to be particularly timely. You explain your belief that OSCA has shown a consistent pattern of obstructing access to court files, frustrating your rights under the Public Records Law, and consistently failing to respond as promised to your questions. In that context, you ask us to conclude that your request for email logs – something that your petition understandably assumes should be easy for OSCA to create – was met with unreasonable delays.

OSCA explains to us, however, that your reasonable assumption about the ease with which email logs can be created is incorrect as applied to OSCA. The Oregon Judicial Department (OJD) uses an older email system that does not generate logs in the same manner as systems used by the Executive Branch. In this case, OSCA reports it took nearly four business days just to generate the responsive email logs. As OSCA informed you on April 9, 2018, the responsive data consists of approximately 20,000 log entries. OSCA intends to review those records for potentially exempt material, such as juvenile names and case numbers, before releasing it. This is also one of four requests you submitted to OSCA between March 19th, 22nd. Other of your requests have been similarly broad and have required significant work on the part of OSCA. Moreover, it appears that OSCA has been working diligently upon your requests. OSCA senior staff, including Acting Deputy Director Phil Lemman and Legislative Policy and Staff Counsel Tim Lewis report that they have spent several dozen hours processing these requests, which represents a significant investment by individuals responsible for administering OSCA's daily operations. Moreover, your request was submitted directly to Mr. Lewis rather than to OSCA's established email address for submitting public records requests. Because Mr. Lewis was out of the office on March 19th, 20th, and part of the 21st, OSCA did not become aware of the request until the 21st.[1]

On the whole, we cannot find that OSCA has been unreasonably slow to respond. We respectfully deny your petition.

Sincerely,

Frederick M. Boss
Deputy Attorney General

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c via email only: Tim.R.Lewis@ojd.state.or.us

[1] Public records request procedures often are specifically devised to insure that, when staff are out of the office, the request is received by someone else. Failing to follow them can invite some delay.