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) 378-6002

December 26, 2018

Ronald Marcus Leistiko, SID#4339604
Oregon State Penitentiary
2605 State Street
Salem, OR 97301

Re: Petition for Public Records Fee Waiver
*Oregon Department of Corrections*
DOJ File No.: 291011-GA0069-18

Dear Mr. Leistiko:

This letter is the Attorney General's response to your petition under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition asks this office to order the Oregon Department of Corrections (ODOC) to waive $54.46 in fees to produce certain inmate records relating to you. For the reasons discussed below, we respectfully deny your petition.

The Oregon Public Records Law, ORS 192.311 to 192.431, provides that every person "has a right to inspect any public record of a public body in this state," subject to certain limitations. ORS 192.314(1). Agencies may establish fees reasonably calculated to recover actual costs in making public records available, but may provide copies without charge if the custodian determines that a fee waiver "is in the public interest because making the record available primarily benefits the general public." ORS 192.324(4)–(5). A fee waiver is "in the public interest" when the "greatest utility" of disclosing the record is to "the community or society as a whole." *In Defense of Animals v. OHSU*, 199 Or App 160, 189 (2005). Even if waiving the fee is in the public interest, agencies have discretion whether or not to grant such waivers. *Id.* An agency's decision to deny a fee waiver must be reasonable under the totality of the circumstances. *Id.* at 190. Any person denied a fee waiver by a state agency may petition the Attorney General for review. ORS 192.324(6).

In your initial request to ODOC for a fee waiver, you indicated the records will be used for the "purpose of due process" because you believe they contain defamatory statements about you. ODOC denied your request for a fee waiver after determining that your justification was

"insufficient to satisfy the 'public interest' test so as to justify a fee reduction or waiver" under ORS 192.324(5). Your petition appeals this determination and asks the Attorney General to order ODOC to waive its fees.

You argue ODOC's denial was unreasonable because ODOC previously approved fee waivers for three other inmates who requested similar records. We contacted Michelle Dodson, ODOC's Records Officer, who explained that ODOC did not waive its fees in those cases because disclosure would primarily benefit the public interest. Rather, agency policy required ODOC to waive its fees in those cases because each request took less than 30 minutes to process.[1] In contrast, ODOC estimates it will take at least two hours to process your request because there are more records to review for potentially exempt material. Ms. Dodson also noted that ODOC has not treated your request differently because – like the other requests you cite – ODOC's fee estimate waives the first 30 minutes of processing your request.

Under the totality of the circumstances, we cannot conclude ODOC unreasonably denied your request for a fee waiver. From the record before us, it does not appear the greatest utility of disclosing these records to you will be to "the community or society as a whole." *See In Defense of Animals* at 189. Rather, disclosure to you would appear to primarily benefit you. Therefore, we respectfully deny your petition.

Sincerely,

Frederick M. Boss

FREDERICK M. BOSS
Deputy Attorney General

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[1] Pursuant to Department of Administrative Services policy, most state agencies – to include ODOC – are required to waive their fees associated with the first 30 minutes of processing public records requests. However, agencies may deny eligibility for the 30-minute waiver if a requester abuses the process by either (1) fragmenting a request that –when aggregated – would require significantly more than 30 minutes to process; or (2) submitting multiple small requests over a short period causing an undue burden on the agency. *See* Department of Administrative Services Statewide Policy Number 107-001-030, *Public Records Requests Fees and Charges,* at Exhibit A (effective February 15, 2017), *available at*: https://www.oregon.gov/das/Policies/107-001-030.pdf.