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March 22, 2019

VIA EMAIL ONLY: shawn@hbclawyers.com

Shawn Lindsay
15350 SW Sequoia Parkway, Suite 250
Portland, OR 97224

Re: Petition for Public Records Disclosure Order
Oregon Department of Fish and Wildlife
DOJ File No.: 635020-GA00025-19

Dear Mr. Lindsay:

This letter is the Attorney General's response to your petition for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition asks the Attorney General to order the Oregon Department of Fish and Wildlife (ODFW) to disclose various correspondence. For the following reasons, we respectfully deny your petition.

The Public Records Law confers the right to inspect public records in Oregon, unless such records are exempt under ORS 192.338, 192.345, or 192.355. ORS 192.314(1). Any person denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld. ORS 192.411(1). The agency carries the burden to sustain any such denial. *Id.*

Your original request to ODFW, dated August 16, 2018, sought 18 different categories of correspondence going back to January 1, 2015. To reduce the fees associated with processing your request, we understand that you worked with ODFW to identify specific search terms and to refine the search timeframes. ODFW provided you with a fee estimate based on these refinements, which you paid in mid-December 2018. ODFW completed its response to you in latc February 2019.

Based upon the records ODFW disclosed, your petition explains your belief that ODFW intentionally withheld records responsive to four categories of correspondence. Accordingly, you ask the Attorney General to order ODFW to disclose the following:

1. All correspondence between ODFW staff and anyone with @pivotalresources.com from March 15, 2017 to November 15, 2017.

2. All correspondence between ODFW staff and anyone with @jmttg.com from March 15, 2017 to November 15, 2017.

3. All correspondence between Curt Melcher and Johnson, Mirmiran & Thompson, Inc. or @pivotalresources.com from January 1, 2015 to present.

4. All correspondence between Cedric Cooney and Johnson, Mirmiran & Thompson, Inc. or @pivotal resources.com from January 1, 2015 to present.

In response to your petition, we contacted James Owens, Office Specialist in the Office of the ODFW Director. He informs us that ODFW did not intentionally withhold any records discovered during its search, nor did it otherwise intend to deny any aspect of your request. Mr. Owens did identify an error in the timeframe ODFW used to search for correspondence responsive to the first part of your petition. Specifically, you initially agreed to a timeframe of March 15, 2017 to September 30, 2017, but ODFW mistakenly used a different timeframe when conducting its search. ODFW agrees to repeat the search using the correct timeframe.[1] We therefore deny the first part of your petition because ODFW did not deny your request and it agrees to redo the search. *See* ORS 192.411(1) (in general, the Attorney General may order disclosure only when a records request has been denied).

Regarding the second part of your petition for correspondence between the ODFW staff and @jmttg.com, the record indicates that you agreed to a search timeframe of September 1, 2017 to October 17, 2018. Mr. Owens informs us that ODFW disclosed to you all correspondence responsive to this part of your request. Your petition now asks us to order ODFW to disclose correspondence relating to @jmttg.com for a different timeframe – March 15, 2017 to November 15, 2017. Although there is slight overlap between these date ranges, your original request did not encompass correspondence with @jmttg.com between March 15, 2017 and August 31, 2017. We cannot order the disclosure of correspondence that was not part of your original records request. And because ODFW did not deny your request for correspondence falling within the original timeframe, we must deny the second part of your petition.

The third and fourth parts of your petition seek correspondence between two ODFW employees and @pivotalresources.com. The record indicates that you agreed to a search timeframe of March 15, 2017 to September 30, 2017. Mr. Owens tells us that ODFW disclosed to you all correspondence responsive to these aspects of your request. Your petition now asks us to order ODFW to disclose correspondence over a much broader timeframe – January 1, 2015 to

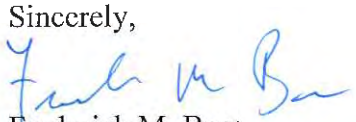
[1] We also note that the timeframe specified in the first part of your petition – March 15, 2017 to November 15, 2017 – is broader than the timeframe you originally negotiated with ODFW – March 15, 2017 to September 30, 2017. We cannot order ODFW to disclose correspondence that was not responsive to your original request.

present. For the reasons noted above, we cannot order ODFW to disclose correspondence that was not part of your original request.

The third and fourth parts of your petition also seek correspondence between the same two ODFW employees and @jmttg.com from January 1, 2015 to present. Mr. Owens acknowledges that ODFW inadvertently failed to conduct this aspect of the search, and agrees to conduct the search using the timeframe for the original request – March 15, 2017 to September 30, 2017. Again, we cannot order ODFW to extend the search timeframe beyond the scope of your original request. We therefore deny the third and fourth parts of your petition because ODFW did not deny your requests and it agrees to correct any errors.

We find no evidence in the record before us that ODFW intentionally withheld records from you. ODFW did not intend to deny any aspect of your request and it agrees to cure the two errors noted above. And we cannot order ODFW to disclose records that are not within the scope of your initial request. We therefore respectfully deny your petition.

Sincerely,



Frederick M. Boss
Deputy Attorney General

FMB:pjn/DM9494419
c via email only: James Owens (ODFW)