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June 24, 2019

VIA EMAIL ONLY: hborrud@oregon.com

Hillary Borrud
The Oregonian
1500 SW First Ave
Portland, OR 97201

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100045-GA00049-19

Dear Ms. Borrud:

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, which we received June 13, 2019,[1] asks the Attorney General to order the Department of Human Services (DHS) to disclose "records of any processes the state has undertaken to terminate the employment" of three DHS employees. For the reasons that follow, we respectfully deny your petition.

Your petition relates to a May 1, 2019 request for "all records from any processes the state has undertaken to terminate the employment" of three DHS employees. Your request noted that "I do not know whether the state has initiated such processes with these employees, but if it has I would like a copy of all of the records." In its May 20, 2019 response, DHS informed you that the personnel investigations were still open and that "[t]he Department does not have any records it is able to provide at this time."

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[1] Thank you for granting an extension to the deadline for responding to your petition.

We contacted Mark Rasmussen, DHS Human Resources Deputy Director, regarding your petition. He informed us that the personnel investigations remain open and that DHS has not initiated any disciplinary action against these employees. Therefore, he explained, DHS does not have records responsive to your request at this time.[2]

Under the circumstances, we must respectfully deny your petition because we cannot order DHS to disclose records that do not exist.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn/DM9686151
c via email only: Mark Rasmussen (DHS)

[2] In its initial response to you, DHS also noted that it "cannot release material pertaining to open personnel investigations, including any preliminary termination process records, according to ORS 192.345(12)." In a subsequent exchange with DHS, you discussed whether records relating to the ongoing investigations, including preliminary termination process records, are exempt from disclosure. DHS cited a number of statutory bases for why it believes such records would be exempt from disclosure, to include ORS 192.345(12) (personnel disciplinary action) and ORS 192. 345(1) (records pertaining to anticipated litigation). Your petition argues that these exemptions do not apply to the records you seek because they are conditional and the public interest requires disclosure in this instance. We do not address those arguments because your petition does not ask us to order DHS to disclose records relating to the ongoing investigations. Rather, you have asked us to order DHS to disclose records relating to termination actions initiated by DHS. According to Mr. Rasmussen, such records do not exist.