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

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VIA EMAIL ONLY: jamesbcomstock@gmail.com and deena.k.loughary@dhsoha.state.or.us

James Comstock
PO Box 230204
Tigard, OR 97212

Deena Loughary
Department of Human Services
500 Summer St NE
Salem, OR 97301

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100101-GA00119-19

Dear Mr. Comstock and Ms. Loughary:

This letter is the Attorney General's response to Mr. Comstock's petition for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. The petition, which we received August 7, 2019,[1] asks the Attorney General to order the Department of Human Services (DHS) to disclose records relating to the deaths of two foster children. For the reasons that follow, we grant Mr. Comstock's 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). The law is a disclosure law, and agencies are obligated to respond to records requests "as soon as practicable and without unreasonable delay." ORS 192.329(1). An agency that is unable to complete its response within fifteen business days of receiving a written request is required to provide the requester with a reasonable estimated completion date. ORS 192.329(5). The fifteen business day timeline does not apply if an agency determines that compliance is impracticable because it lacks sufficient staff, compliance would demonstrably impede the agency's ability to perform other necessary services, or because it is unable to comply due to the volume of public records requests being simultaneously processed by the agency. ORS 192.329(6). However, an agency that cannot comply with the timeline for one of those reasons is still required to acknowledge the request and complete its response "as soon as practicable and without unreasonable delay." ORS 192.329(8). A requester may petition the Attorney General if they believe an agency has failed to comply with the processing timelines and other provisions

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

contained in ORS 192.329. ORS 192.407(1). The agency carries the burden to sustain its actions. ORS 192.411(1).

Mr. Comstock's petition explains that he originally requested these records from DHS on March 30, 2019. His original request indicated that he was only seeking records that DHS had previously disclosed to a state senator and to the media on or after December 1, 2018. After having received no acknowledgment or response to his request, he resubmitted the request to DHS in person on May 2, 2019. DHS acknowledged the request the same day, but did not provide an estimated completion date. Thereafter, Mr. Comstock requested status updates on May 15 and May 22, 2019, but did not receive a response from DHS. On May 28, 2019, Mr. Comstock again requested a status update and also sought assistance from Ginger McCall, the Public Records Advocate. That day, the DHS Child Safety Unit informed Mr. Comstock that it was working diligently with other departments within DHS to address his request. DHS did not provide an estimated completion date at that time.

The petition explains that on June 19, 2019, DHS disclosed a single email to Mr. Comstock as a partial response to his request. DHS' response indicated "we are working diligently and are continuing our search for any other document(s) that may be responsive to your public records request. We are currently working with our IT department to assist in this search and should any further responsive documents be located, we will be in contact with you." Mr. Comstock requested another status update on June 25, 2019, but DHS had not responded to that request as of the date of his petition. The petition indicates that Ms. McCall's multiple requests to DHS for an estimated completion date were also unsuccessful. Mr. Comstock now asks us to order DHS to disclose the responsive records.

We contacted Deena Loughary, DHS Child Safety Manager, regarding the petition. She explained that DHS did not intend to deny Mr. Comstock's request. She indicated that a number of personnel changes and resource constraints have contributed to the delayed processing of his request. She also explained that DHS has finished locating the responsive records and will be able to complete its response to you within the next two weeks. This estimate is due to ongoing personnel and resource constraints, as well as the need to review the records for exempt information.

Under the circumstances, we cannot conclude that DHS has responded to Mr. Comstock's request "as soon as practicable and without unreasonable delay." Several of the constraints DHS identified may reasonably account for some of the four and a half month delay. However, DHS has not adequately explained why it took so long to locate records it had disclosed to the media just a few months before Mr. Comstock's initial request. And DHS has not adequately explained why it failed to timely respond to Mr. Comstock's and Ms. McCall's multiple status requests. Under the circumstances, we conclude DHS' delay was unreasonable.

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Accordingly, we grant Mr. Comstock's petition and order DHS to disclose all nonexempt records responsive to his request. DHS has 14 days to comply with this order or announce its intention to seek judicial review. ORS 192.407(3).

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn/DM9785239