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November 15, 2019

VIA EMAIL ONLY: RDavis@oregonian.com

Rob Davis
The Oregonian
1500 SW First Avenue
Portland, OR 97201

Re: Petition for Public Records Disclosure Order
Oregon Department of Forestry
DOJ File No.: 629001-GA001409-19

Dear Mr. Davis:

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 November 5, 2019,[1] appeals the Oregon Department of Forestry's (ODF) estimated timeline for completing a public records request as being unreasonably long. *See* ORS 192.407(1)(b). Because ODF has now agreed to significantly revise its estimated timeline, 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). 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). A requester may petition the Attorney General if they believe an agency's estimated completion date is unreasonably long and will result in undue delay of disclosure. ORS 192.407(1)(b). The agency carries the burden to sustain its actions. ORS 192.411(1). Finally, an agency may also establish fees reasonably calculated to recover actual costs in making public records available, and its obligation to process a request is suspended until the fee has been paid or waived. *See* ORS 192.324(4) and 192.329(3)(a).

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

Your petition stems from a broad records request submitted to ODF on June 4, 2019. On July 5, Ms. Krawczyk, ODF Public Affairs Manager, notified you that ODF had identified more than 25,000 potentially responsive records, which would take approximately 134 hours to review and at a cost of $4,856.00. Over the next four months, you worked with Ms. Krawczyk to reduce the estimated cost. In September, you reduced the scope of your request to approximately 4,000 emails. In October, Ms. Krawczyk estimated ODF could complete its response in approximately two weeks, and provided you with a $534.00 fee estimate. In a November 5, 2019 update, Ms. Krawczyk informed you that the fee estimate had been reduced to $480.00. She also estimated that it would take ODF approximately 21 hours to complete its review, but explained that she was able to commit only two-to-three hours per week to your request due to reduced manning, resource constraints, the upcoming holidays, and other agency priorities. She estimated ODF would complete its response to you by the end of the year, or in approximately eight weeks.

Your petition followed. You assert that ODF's estimated completion date is unreasonably long and will result in the unduly delayed disclosure of the records you seek. *See* ORS 192.329(1); and 192.407(1)(b).

The public records law mandates that agencies respond to records requests "as soon as practicable and without unreasonable delay." ORS 192.329(1). And as we have previously observed, responding to public records requests is a statutory obligation that agencies must prioritize over non-statutory tasks. *See* Public Records Order, Jan 14, 2018, Budnick. It follows that in most instances, it would not be reasonable for a moderately sized agency like ODF to commit only two-to-three hours per week to a records request that is estimated to take 21 hours to process.

We contacted Ms. Krawczyk regarding your petition. In light of your concerns and ours, she indicated that ODF has committed that the remaining work can be completed within two weeks. We note, however, that the statutes tie response timelines to the payment or waiver of fees. *See* ORS 192.329(3)(a). As noted above, ODF has provided you with a fee estimate of $480.00, which you have not challenged and which we understand reflects a significant reduction from the actual cost of processing your request. By statute ODF may, but is not required to, seek payment of the fee prior to completing its response. Under the circumstances, we find ODF's revised commitment reasonable and therefore respectfully deny your petition.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn/DM9945811
c via email only: Joy Krawczyk, ODF