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DEPARTMENT OF JUSTICE

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April 17, 2020

VIA EMAIL ONLY: ak@alankesslerlaw.com

Alan Kessler
No More Freeways PDX
2725 SE 36th Ave
Portland, OR 97202

Re: Petition for Public Records Disclosure Order
Oregon Department of Transportation
DOJ File No. 731020-GA0033-20

Dear Mr. Kessler:

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, originally submitted on March 18, 2020 and amended on April 6, 2020,[1] asks the Attorney General to order the Oregon Department of Transportation (ODOT) to disclose all of the applications for the I-5 Rose Quarter Community Advisory Committee.

You originally requested the applications on February 19, 2020 and we understand that ODOT has already disclosed much of this information to you in Portable Document Format (PDF format). However, because the applicant data is stored electronically in a database, you ask us to order ODOT to disclose the data, without redactions, "in the format kept or a reasonably useful export," such as a spreadsheet. You also ask us to order ODOT to refund $100.00 in processing fees, and to require ODOT to pay a $200.00 penalty pursuant to ORS 192.407(3)(b) for failing to provide a timely response to your request. 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). The law is a disclosure law, and exemptions from disclosure must be express. Any person denied the right

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

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*.

We contacted Laura Rojas, ODOT Public Records Requests Coordinator, regarding your petition. She informed us that ODOT disclosed a spreadsheet to you on April 17, 2020 that contains the applicant data you requested. She also indicated that ODOT will be refunding the $100.00 processing fee to you shortly. Because ODOT has disclosed the data in a format consistent with your request and has also agreed to refund the processing fee, we deny those aspects of your petition as moot.

Ms. Rojas also explained that ODOT redacted a column from the spreadsheet containing the applicants' e-mail addresses. ODOT asserts this information is exempt from disclosure under ORS 192.355(40). That provision expressly exempts from disclosure "[e]lectronic mail addresses in the possession or custody of an agency or subdivision of the executive department ***," although it does not apply to public employees' work e-mail addresses. In light of legislative history that strongly suggests the intent of this exemption was to permit public bodies to deny requests for e-mail lists, we have advised that public bodies applying the exemption literally to redact e-mail addresses that simply appear within e-mail correspondence would be applying the exemption in a manner not contemplated by the legislature. *See* Attorney General's Public Records and Meetings Manual at 132-33 (2019). In this instance, ODOT has not redacted e-mail addresses from e-mail correspondence, but rather has redacted a list of e-mail addresses in a manner that appears consistent with the purpose of the exemption. We therefore conclude that ODOT was permitted to withhold the e-mail addresses and deny your request to order ODOT to disclose an unredacted version of the applicant data.

For the foregoing reasons, we respectfully deny your petition.[2]

Sincerely,



Frederick M. Boss
Deputy Attorney General

FMB:nog/DM10163626
c via email only: Laura Rojas, ODOT

[2] We are not able to consider your request to assess a $200.00 penalty because such a penalty is authorized only when the Attorney General issues an order *granting* a petition. *See* ORS 192.407(3).