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

June 16, 2020

Martin Allen Johnson
SID #5410056
Eastern Oregon Correctional Institution
2500 Westgate
Pendleton, OR 97801

Re: Petition to Review Public Records Fee Estimate
Oregon Department of Corrections
DOJ File No.: 291011-GA0055-20

Dear Mr. Johnson:

This letter is the Attorney General's response to your petition under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition asks this office to review a fee estimate provided to you by the Oregon Department of Corrections (ODOC) to produce a list of all citizens since 1984 who were sentenced to death in Oregon, including their dates of birth, case numbers, sentences, start dates and release dates. You assert the fee estimate is excessive.

We note that we have already addressed your claim that ODOC's fee estimate is excessive in response to a petition previously submitted by you. *See* Public Records Order, Sep 24, 2019, Johnson. In that instance, we advised you that the Attorney General's authority does not include evaluating the reasonableness of a fee estimate unless it appears the purpose of the fee was to constructively deny the request. After finding that the fee estimate appeared to be reasonably calculated to recoup ODOC's actual costs of processing your request, we concluded that the fee estimate was not designed to constructively deny your request. *Id*. at 2. Because your current petition does not raise any new arguments in support of your belief that the fee is excessive, we decline your request to reconsider this matter.

In support of your new petition, you also included documentation showing that you requested ODOC waive or reduce its fee and that ODOC denied your request. Although your petition does not specifically allege that ODOC's denial was unreasonable, we assume that by including this documentation you are asking us to review ODOC's decision. *See* ORS 192.324(6) (a requester who believes that there has been unreasonable denial of a fee waiver or reduction may petition the Attorney General for review).

An agency may provide records without charge if it determines that a fee waiver "is in the public interest because making the record available primarily benefits the general public." ORS 192.324(5). A fee waiver is in the public interest when the "greatest utility" of disclosing the record is to "the community or society as a whole." *In Defense of Animals v. OHSU*, 199 Or App 160, 189 (2005). This is in contrast to situations where disclosure would primarily affect private concerns. *See, e.g.,* Public Records Order, Dec 5, 2016, DeMartino (disclosure would not primarily benefit the general public where requester sought records for purposes of private litigation). And disclosure will not primarily benefit the general public if the requester cannot demonstrate the ability to meaningfully disseminate the information to the public. *See Attorney General's Public Records and Meetings Manual* at 24 (2019) (citation omitted).

You have not explained why you believe disclosing this information to you will primarily benefit the general public. Instead, you have indicated that you intend to use this information primarily for purposes of private litigation and that you have no ability to meaningfully disseminate the information to the general public. Under the circumstances, we cannot say that disclosing these records to you would primarily benefit the general public, a necessary condition to our authority to compel ODOC to waive or reduce its fee in this instance. Therefore, we respectfully deny your petition for a fee waiver or reduction.

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

#10280305
cc via email only: Michelle Dodson, ODOC