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August 31, 2020

VIA E-MAIL ONLY: mranweiler@gmail.com

Michael Ranweiler
409 S. Alder Ave
Yacolt, WA 98675

Re: Petition for Public Records Fee Waiver or Reduction
Oregon Employment Department
DOJ File No.: 471090-GA0083-20

Dear Mr. Ranweiler:

This letter is the Attorney General's response to your petition under the Oregon Public Records Law, ORS 192.311 to 192.431. Your petition asks the Attorney General to find that the Oregon Employment Department (OED) unreasonably denied your request for a public records fee waiver or reduction. For the reasons discussed below, 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). Agencies may establish fees reasonably calculated to recover actual costs in making public records available, but "may furnish copies without charge or a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public." ORS 192.324(4)–(5). Any person denied a fee waiver or reduction by a state agency may petition the Attorney General for review. ORS 192.324(6). The agency carries the burden to sustain its action. ORS 192.411(1).

Your initial request to OED, dated Aug 13, 2020, sought all "emails, memos [and] documents where waiting week is mentioned between the Employment Department Director Kay Erickson, Employment Director David Gerstenfeld, Governor Kate Brown, and staff." OED responded on Aug 18, 2020, by providing you with a $690.00 fee estimate to process your request. Thereafter, you requested OED either waive or reduce its fee because of "the great public interest, and the number of people affected by this." OED denied your request for a fee

waiver or reduction on Aug 19, 2020 after concluding that disclosing these records to you would not primarily benefit the public.

In support of your petition, you note that Governor Brown and former OED Director Erickson announced in April that, due to the Coronavirus pandemic, OED would waive the mandatory one-week waiting period before an individual can receive unemployment benefits. You also note that to date, Oregonians still have not received any benefits accrued during their first week of unemployment and you are trying to determine the cause for the delay. You believe this is a newsworthy topic and that obtaining these records will help the public understand what is happening within OED. Finally, you indicate that you intend to make these documents available to the public through online sharing sites such as Scribd or Google Drive.

Under the Oregon Public Records Law, public bodies considering a request for a fee waiver must first determine whether making the records available primarily benefits the general public. *See* ORS 192.324(5). The furnishing of public records primarily benefits the public when its greatest utility is to the community or society as a whole. *See In Defense of Animals v. OHSU*, 199 Or App 160, 189 (2005). Pertinent factors include the requester's identity, the purpose for which the information will be used, the character of the information, whether the requested information is already in the public domain, and whether the requester can disseminate the information to the general public. *Attorney General's Public Records and Meetings Manual* at 24 (2019). We have observed that regardless of the level of public interest in a particular matter, if the requester fails to demonstrate the ability to meaningfully disseminate the information to the public, disclosure will not primarily benefit the general public. *Id.*

We acknowledge the considerable public interest in the large backlog of unpaid claims. We also observe that there has been significant media coverage of the factors contributing to the delays in OED's claims processing.[1] But, the available record does not sufficiently demonstrate to us that disclosure will primarily benefit the general public. First, there has already been significant public discussion about these delays, and we see no particular reason to expect that the records you have requested would meaningfully add to that conversation. Indeed, the breadth of your request (*all* documents mentioning "waiting week") means OED staff are likely going to have to spend considerable time compiling and reviewing records completely unrelated to any matter of public interest. Moreover, you have not demonstrated the ability to meaningfully disseminate information to the general public. We understand that you intend to make this

[1] *See, e.g.*, Jamie Goldberg, *Jobless Oregonians Pay it Forward as they Endure Long Waits for Unemployment Benefits*, Oregon Live (Aug 24, 2020), *available at* https://www.oregonlive.com/coronavirus/2020/08/jobless-oregonians-pay-it-forward-as-they-endure-long-waits-for-unemployment-benefits.html (accessed Aug 30, 2020); Morgan Romero, *Jobless Oregonians Still Waiting on State to Waive Waiting Week for Unemployment Benefits*, KGW News 8 (Jul 2, 2020), *available at* https://www.kgw.com/article/news/local/im-crying-out-for-help-and-no-one-hears-me-jobless-oregonians-still-waiting-on-state-to-waive-waiting-week-for-unemployment-benefits/283-e15674b3-f85b-4415-9e83-a5996adf44f1 (accessed Aug 30, 2020); Mike Rogoway, *Oregon Hopes to Begin Paying $300 Weekly Unemployment Bonus in 'A Few Weeks',* Oregon Live (Aug 26, 2020), *available at* https://www.oregonlive.com/business/2020/08/oregon-hopes-to-begin-paying-300-weekly-unemployment-bonus-in-a-few-weeks.html (accessed Aug 30, 2020); and Mike Rogoway and Hillary Borrud, *Oregon Leaders Squandered Years on Jobless Benefits Computer Upgrade. Now the Project's Future is Again in Doubt* (Aug 6, 2020), *available at* https://www.oregonlive.com/news/2020/08/oregon-leaders-squandered-years-on-jobless-benefits-computer-upgrade-now-the-projects-future-is-again-in-doubt.html (accessed Aug 30, 2020).

information freely available, but we see no basis to conclude that your plan to post documents online will reach any significant segment of the public. We therefore respectfully deny your petition.

Sincerely,



Frederick M. Boss
Deputy Attorney General

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