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November 2, 2020

VIA E-MAIL ONLY: jeremy@bolesky.com

Jeremy Bolesky
732 Clara Court
Lake Oswego, OR 97034

Re: Petition for Public Records Disclosure Order
Department of Consumer and Business Services
DOJ File No.: 123660-GA00100-20

Dear Mr. Bolesky:

This letter is the Attorney General's response to a petition filed by you under the Oregon Public Records Law, ORS 192.311 to 192.431. Your petition, which we received October 26, 2020, asks the Attorney General to order the Oregon Department of Consumer and Business Services (DCBS), Division of Financial Regulation (DFR), to disclose certain data relating to title insurance policies sold in Oregon from 2015 to present. Your petition indicates that you requested this data on October 7, 2020 and you contend that DFR denied your request on October 21, 2020. For the reasons that follow, 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). 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 contained in ORS 192.329. ORS 192.407(1). The agency carries the burden to sustain its actions. ORS 192.411(1).

According to the record, DFR acknowledged your request on October 7, 2020. Thereafter, on October 21, 2020, you received the following message from DFR:

> Due to resource constraints and competing priorities associated with DCBS's response to the COVID-19 pandemic, DCBS anticipates it will take longer than normal to process many public records requests for the foreseeable future. This will be the case for any requests that cannot be completed by teleworking employees, or that would require attention by employees that are currently diverted to help mitigate the current emergency. DCBS will strive to meet the statutory deadlines for either completing our response or to providing you with an estimated completion date within 15 business days of your request. However, depending upon the nature of your request, for the reasons described above, it may be impracticable for DCBS to comply with those deadlines. In such cases, we will nevertheless complete our response as soon as practicable and without unreasonable delay upon the availability of staff to do so, and their return to work in our offices, in compliance with ORS 192.329(6) and (8).

Your petition followed. You assert that DFR's October 21, 2020 message operates as a denial of your request based upon your belief that DFR will not begin processing your request until DFR's teleworking employees return to their offices.

We contacted Gail Gage, Compliance Specialist in DFR, regarding your petition. She indicated that DFR's October 21, 2020 message was a boilerplate update that DCBS has been providing to all records requesters for several months to advise them of potential processing delays resulting from the COVID-19 pandemic. She explained DFR's position that the update was not intended to be a denial of your request nor was it directed at the processing constraints that may be associated with your particular request. More importantly, she indicated that DFR provided you with an interim response on October 30, 2020 indicating that DFR does not appear to be the custodian of the data you requested but that it expects to provide you with confirmation within the next two weeks.

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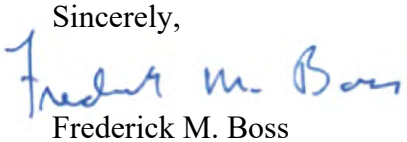
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Under the circumstances, we cannot conclude that DFR has denied your request or otherwise failed to comply with the processing timelines or other provisions of ORS 192.329. We do not interpret DFR's October 21, 2020 update to be a denial of your request. Moreover, we find that DFR complied with ORS 192.329(5) by providing you with an interim response and a reasonable estimated completion date within fifteen business days of your request. We therefore respectfully deny your petition.

Sincerely,



Frederick M. Boss
Deputy Attorney General

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c via e-mail only: Gale Gage, DFR