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

February 18, 2021

Rafael Mora Contreras
Booking ID: #18-05511
215 SW Adams MS35
Hillsboro, OR 97123

Re: Petition for Public Records Disclosure Order
Oregon Department of Corrections
DOJ File No.: 291011-GA0016-21

Dear Mr. Contreras:

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, dated February 6, 2021 but received by us on February 11, 2021, asks us to order the Oregon Department of Corrections (DOC) to disclose certain records. For 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 a written statement that the public body is still processing the request and provide a reasonable estimated completion date. ORS 192.329(5). A requester may seek review by the Attorney General if they believe an agency has failed to comply with the response timelines contained in ORS 192.329. ORS 192.407(1). An agency's failure to provide a timely response required by ORS 192.329 shall be treated as a denial of the request, unless the agency can demonstrate that compliance was not required under ORS 192.329. ORS 192.407(1)(a). The agency carries the burden to sustain its actions. ORS 192.411(1). Finally, an agency may 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).

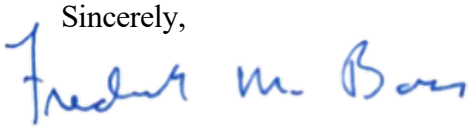
According to your petition, in October 2020, you requested DOC disclose e-mails between four DOC employees and seven other named individuals over a two-year period. DOC replied with a fee estimate for processing your request, which you paid. Your petition explains that that you have yet to receive any responsive documents despite having paid the fee nearly a

month ago. We understand your petition to allege that DOC has failed to provide a timely response to your request.

In response to your petition, we contacted Crystal Archdeacon, Legal Coordinator in DOC's Office of the Inspector General. She informed us that DOC mailed its fee estimate to you on November 16, 2020, which was within 15 days of receiving your initial request. She explained that DOC did not receive your payment until January 11, 2021. She asserted that DOC has been actively working your request since that time, but that DOC has experienced challenges locating responsive records using the search terms initially provided by you. Consequently, she explained, DOC has had to conduct multiple searches using various modified search terms, which has added to the processing time. She also explained that due to the nature of the records DOC located, which principally consist of correspondence with prosecutors that may relate to a pending criminal law matter, it will take additional time to review the correspondence for potentially exempt information. Finally, she explained that DOC sent you an update on February 5, 2021—prior to your petition—informing you that that DOC expects to complete its response by February 23, 2021. She advised us that DOC still expects to complete its response by that date.

Under the circumstances, we cannot conclude that DOC has failed to timely respond to your request. It follows that ORS 192.407(1)(a) does not compel us to treat DOC's failure to complete its response by the date of your petition as a denial. And based on the information currently available, we also have no reason to conclude that DOC's estimated completion timeframe, which you likely did not receive until after you submitted your petition, is unreasonably long or will result in undue delay. *See* ORS 192.407(1)(b). We therefore respectfully deny your petition.

Sincerely,



FREDERICK M. BOSS
Deputy Attorney General

FMB:pjn
c: via e-mail only: Crystal Archdeacon, DOC