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March 24, 2021

VIA EMAIL ONLY: plantaegroup@outlook.com

Andrew Anderson
P.O. Box 8042
Bend, OR 97708

Re: Petition for Public Records Disclosure Order
Oregon Liquor Control Commission
DOJ File No. 845600-GA0030-21

Dear Mr. Anderson:

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, which we received on March 17, 2021, asks the Attorney General to order the Oregon Liquor Control Commission (OLCC) to produce all documents in its custody that relate to you, Jocelyn Anderson or several businesses owned by you, and specifically including all correspondence and marijuana licensing and compliance records from January 2015 to present. Your petition explains your belief that OLCC is intentionally stalling its production of responsive records to you. 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 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). There are several exceptions to the fifteen-business day timeframe. First, an agency may request additional information or clarification from a requester and its obligation to process the request is suspended until the requester responds. ORS 192.329(4)(a). The timeframe also does not apply if compliance

would be impracticable because the staff necessary to complete a response are unavailable. ORS 192.329(6)(a). In such cases, the agency shall complete its response as soon as practicable and without unreasonable delay. ORS 192.329(8). 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).

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).

Your petition explains that you requested these records on January 25, 2021 and that OLCC acknowledged the request on January 26, 2021. On February 4, 2021, OLCC provided you a preliminary fee estimate of nearly $2,000 and asked whether you would like to narrow the scope of your request to reduce the processing fees. On February 12, 2021 you asked OLCC to proceed with your original request. In a February 19, 2021 update, OLCC informed you that it was conducting a search of its electronic records in order to prepare a more accurate fee estimate, which you would need to approve and pay before OLCC processed your request. On March 9, 2021, you requested an update on the status of your records request. OLCC informed you the next day that "[u]nfortunately, the software that we use to search across OLCC emails is currently not functioning. We are working on a fix. Once this software is fixed, we will be able to provide you with the estimated cost of your request." Your petition followed. We understand your petition to allege that OLCC has failed to provide a timely response to your request.

In response to your petition, we contacted Jeannine Stickle, OLCC Public Records Coordinator. She informed us that OLCC sent you its fee estimate on March 23, 2021. She also explained why it took more than a month to prepare the estimate. She explained OLCC's position that given the extensive nature of your request, it was not possible to prepare an accurate fee estimate or provide an estimated completion date until OLCC determined the volume of records requiring review. She explained that OLCC's efforts to locate responsive records were hampered by circumstances beyond OLCC's control. First, due to a February 12, 2021 ice storm in the Portland area, Pat Coyle, the employee with primary responsibility for conducting searches of OLCC's electronic records, was without power and unable to work for more than week.[1] Next, a software problem resulted in Mr. Coyle losing access to the system between February 25 and March 16, 2021. Although there were two other employees who ordinarily would have been able to cover for Mr. Coyle, Ms. Stickle indicated that they also lost access to the system during that period. Mr. Coyle was not able to complete the search and transfer the records to Ms. Stickle until March 19, 2021.

Under the circumstances, we are satisfied that OLCC has demonstrated that its compliance with the fifteen-business day timeframe was not required under ORS 192.329.

[1] Mr. Coyle, like most state employees, was working from home at the time due to the Coronavirus pandemic.

See ORS 192.407(1)(a). Specifically, we find that the inability to access the system for several weeks rendered staff unavailable to process the request and thereby made compliance with ORS 192.329 impracticable. *See* ORS 192.329(6)(a) and 192.407(1)(a). It follows that ORS 192.407(1)(a) does not require us to treat OLCC's failure to comply with ORS 192.329 as a denial for purposes of reviewing your petition. We also have no basis for concluding that OLCC has intentionally stalled or unreasonably delayed the processing of your request. And because OLCC has now provided you with its fee estimate, OLCC's obligation to process your request is currently suspended pending receipt of payment by you. *See* ORS 192.329(3)(a).

For the reasons discussed above, we cannot conclude that OLCC has failed to respond in a timely manner. We therefore respectfully deny your petition.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn
c via email only: Jeannine Stickle (OLCC)