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May 12, 2021

VIA EMAIL ONLY: JDRC@ortelco.net

Shaun Robertson
PO Box 242
John Day, OR 97845

Re: Petition for Public Records Disclosure Order
Oregon Department of Fish and Wildlife
DOJ File No.: 635010-GA0048-21

Dear Mr. Robertson:

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 May 5, 2021, asks us to order the Oregon Department of Fish and Wildlife (ODFW) to disclose complaints of deer damage prior to 1949 and after 1981, and complaints of elk damage prior to 1949, between 1980 and 2002, and after 2015. Your petition explains that you requested these records on February 23, 2021 but that ODFW has failed to complete its response or provide you with a reasonable estimated completion date. For the reasons that follow, we respectfully dismiss your petition in part and deny your petition in part.

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). 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).

In response to your petition, we contacted Michelle Tate, Executive Assistant in the Office of the ODFW Director. She informed us that ODFW responded to your request on May 11, 2021 by disclosing all of the deer and elk complaint data in its Damage Complaint Database, which contains data going back to 2002. ODFW also disclosed summary reports of complaint data compiled from 1997-2001. She also explained that under ODFW's record

retention rules, ODFW only retains complaint information for 15 years, after which such records should be destroyed. As to the complaint data ODFW has disclosed to you, we respectfully dismiss your petition as moot.

As to deer and elk damage complaints made prior to 2002, ODFW informed you that it is possible that the responsive records have been unintentionally retained in field offices around the state, likely in paper files. ODFW informed you that it will take considerable time and effort to conduct a manual search to determine whether such records even exist. ODFW inquired whether you would like the department to conduct a broader search, in which case it would likely prepare a fee estimate.

Based on the available record, it does not appear to us that your initial records request anticipated ODFW conducting a manual search for older records. We observe that both your initial request and your petition express your belief that all of the complaint data you have requested is maintained in ODFW's Damage Complaint Database, that the complaint data is "readily available," and that it is "easily compiled in electronic format." Ms. Tate informed us that ODFW's database only contains complaint data compiled since 2002 and that all of that data has been disclosed to you. She explained that if older records were retained by field offices, they are not readily available and, she believes, they are not easily compiled into electronic format. Under the circumstances, we conclude that it was reasonable for ODFW to clarify whether you would like the department to conduct a broader search of field offices for older records. Therefore, to the extent your petition asks us to order ODFW to conduct a broader search, we decline to do so at this time and respectfully deny this aspect of your petition.

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

FMB:pjn
c: via email only: Michelle Tate, ODFW