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

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VIA E-MAIL ONLY: paulpedreira@gmail.com and jeannine.stickle@oregon.gov

Re: Petition for Public Records Disclosure Order
Oregon Liquor Control Commission
DOJ File No.: 845600-GA0113-21

Dear Mr. Pedreira and Ms. Stickle:

This letter is the Attorney General's response to Mr. Pedreira's petition for the disclosure of records under the Oregon Public Records Law, ORS 192.311 to 192.478. His petition, which we received July 2, 2021, asks the Attorney General to find that the Oregon Liquor Control Commission (OLCC) has failed to complete its response to a record request within the timeframes prescribed by the Public Records Law. For the reasons that follow, we grant Mr. Pedreira's 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). 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). An agency's failure to provide a response required by ORS 192.329 within the prescribed timeframe 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).

Mr. Pedreira's petition stems from a request he submitted to the OLCC on January 22, 2021. The OLCC began work on his request on March 3, 2021 after receiving payment of the associated processing fee. Although the OLCC estimated it would take only 75 minutes to process the request, it initially advised Mr. Pedreira that due to staffing limitations, it expected to complete its response by April 30, 2021 – thereby indicating that an agency with an annual budget in excess of $120 million expected to spend an average of less than two minutes per workday on Mr. Pedreira's request. Thereafter, on April 30, 2021, the OLCC provided a new estimated completion date of May 31, 2021. And on June 1, 2021, the OLCC provided a revised estimated date of July 30, 2021.

Mr. Pedreira's appeal followed. We understand his petition to assert that the OLCC has failed to respond to his request in a timely manner, which we are to treat as a denial of his request. *See* ORS 192.407.

In response to Mr. Pedreira's petition, the OLCC asserts that it was not practicable for it to have completed its response to him sooner. According to the OLCC, it substantially underestimated the number of records it would need to review – which consist of 430 e-mails and 59 license and compliance records – and thereby underestimated the amount of time required to process the request. The OLCC informs us that its staff has dedicated more than six hours to the request to date. The OLCC reports that it has experienced a high volume of record requests since January, including nearly 230 public record requests and seven subpoenas, several of which have required extensive time to process. The OLCC currently has more than 50 outstanding record requests and four outstanding subpoenas. Finally, the OLCC informs us that it has only one full-time records coordinator dedicated to processing public record requests and subpoenas. At the time Mr. Pedreira submitted his request, the records coordinator was relatively new to the OLCC and to the area of public records. In mid-May, the records coordinator's work hours were reduced to 25-35 hours per week.

As we noted in a recent order addressing similar issues, the OLCC's statutory obligation to respond to public record requests in a timely manner means that processing such requests must take precedence over the OLCC's non-statutorily required activities. *See* Public Records Order, Apr 9, 2021, Anderson at 3 (citing Public Records Order, Jan 14, 2014, Budnick). While we recognize the challenges contributing to the OLCC's processing delays, we do not believe that devoting only six hours to Mr. Pedreira's request over the last four months – an average of just over three minutes per workday – demonstrates that the OLCC has given his request sufficient priority. Specifically, the OLCC has not adequately explained why – given the high volume of record requests and subpoenas since January, the general staffing limitations it has recognized since at least March, and the reduced productivity of its records coordinator since mid-May – it was not practicable to allocate other resources to address these challenges.

Instead, the information available to us suggests the OLCC could be doing more to make public records available more promptly. We have learned, for instance, that there are five other employees in OLCC's Communications and Education section, some of whom have just recently begun providing limited assistance to the records coordinator. And although we recognize that those employees may have been assigned to tasks that support other agency priorities, the OLCC has not demonstrated that over the past four months each of them was engaged exclusively in activities that could legitimately claim precedence over OLCC's statutory duty to respond to Mr. Pedreira's request in a timely manner. To the extent those employees lack familiarity with the Oregon Public Records Law, we observe that the Office of the Oregon Public Records Advocate is available for training as well as for advice and guidance. ORS 192.475.

For the foregoing reasons, we cannot conclude that the OLCC has responded to Mr. Pedreira's request "as soon as practicable and without unreasonable delay." ORS 192.329(1). We therefore grant the petition and order the OLCC to disclose all nonexempt records responsive to the request. Pursuant to ORS 192.407(3), when an agency fails to comply with ORS 192.329 we have discretion to order the disclosure of nonexempt material within any timeframe we deem appropriate. The OLCC estimates

that it can complete its response by July 30, 2021. Measured from today, we cannot say this timeframe would be unreasonable based on the information available to us. Accordingly, we order that the OLCC has 21 days to complete its response to Mr. Pedreira or announce its intention to seek judicial review of this order. *See* ORS 192.407(3) and 192.411(2).

Measured from the date of Mr. Pedreira's original request, however, there is no timeframe that we could adopt that would effectively bring OLCC into compliance with the requirements of ORS 192.329. In light of that – and considering that we raised very similar concerns about the adequacy of OLCC's commitment to its statutory obligations under the Oregon Public Records Law just this April – we believe that further relief to Mr. Pedreira is appropriate. As a result, we exercise our authority under ORS 192.407(3)(c) to order OLCC to fully waive its fee in this instance. Any amount already paid by Mr. Pedreira must be refunded. We also caution that if OLCC continues to fail to devote adequate resources to its statutory obligations under the Oregon Public Records Law, we may take the further step of assessing fines under ORS 192.407(3)(b).

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn