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September 14, 2021

VIA E-MAIL ONLY: myers.j@icloud.com

Jeff Myers
8755 SW 165th Ave
Beaverton, OR 97007

Re: Petition for Public Records Disclosure Order
Oregon Department of Education
DOJ File No.: 581001-GA0131-21

Dear Mr. Myers:

This letter is the Attorney General's response to your petition, dated September 7, 2021, for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition asks the Attorney General to order the Oregon Department of Education (ODE) to disclose various records that you requested in mid-August. Your petition claims that ODE has failed to respond in a timely manner. For the reasons that follow, we respectfully dismiss your petition in part and deny your petition in part.

Under the public records law, 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 contained in ORS 192.329. ORS 192.407(1). The agency carries the burden to sustain its actions. ORS 192.411(1).

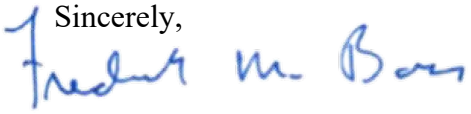
Your petition stems from three public records requests submitted to ODE on the 12th and 13th of August 2021. Because ODE had not responded to your requests as of the date of your petition, you assert that ODE has failed to comply with the statutory processing timeframes.

In response to your petition, we contacted Jeremy Wartz, ODE Rules Coordinator. He informed us that ODE completed its response to your first and third requests on September 10, 2021. We therefore respectfully dismiss those parts of your petition as moot.

Regarding your second request, which ODE received on August 12, 2021, the record indicates that ODE provided you with a fee estimate on August 27, 2021, and that you mailed your payment on August 30, 2021. According to Mr. Wartz, ODE did not confirm receipt of payment until September 8, 2021 – a day after you submitted your petition. Thereafter, on September 10, 2021, ODE confirmed that it received your payment and informed you that that it expects to complete its response to your second request by September 17, 2021.

Under the circumstances, we cannot conclude that ODE failed to comply with the processing timelines applicable to your second request. Agencies are permitted to establish fees reasonably calculated to reimburse them for the actual costs of processing records requests. ORS 192.324(4)(a). If an agency informs a requester of such a fee, the agency's obligation to complete its response is suspended until the fee is paid. ORS 192.329(3)(a). In this instance, ODE provided you with a fee estimate on August 27, 2021, which was the eleventh business day after receiving your second request. ODE's obligation to process your request was then suspended until it received payment on September 8, 2021, at which time the adjusted fifteen-business day deadline became September 15, 2021. The record demonstrates that ODE complied with the adjusted deadline by providing you with its estimated completion date on September 10, 2021. *See* ORS 192.329(5). We therefore respectfully deny your petition as it pertains to your second records request.

Sincerely,



Frederick M. Boss
Deputy Attorney General

FMB:pjn/
c via e-mail only: Jeremy Wartz (ODE)