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September 20, 2021

VIA E-MAIL ONLY: sllvolin@gmail.com

Stephanie Volin
29 South Valley Road
West Orange, NJ 07052

Re: Petition for Public Records Fee Waiver
Oregon State Bar
DOJ File No.: 993001-GA0132-21

Dear Ms. Volin:

This letter is the Attorney General's response to a petition filed by you under the Oregon Public Records Law, ORS 192.311 to 192.431. You ask us to order the Oregon State Bar (the "Bar") to produce a complete and accurate copy of its Client Security Fund (CSF) spreadsheet from 2010-2019. For the reasons discussed below, we respectfully deny your petition.

According to your petition, you requested and received the CSF spreadsheet from the Bar in 2019. However, you explain, you recently discovered that the spreadsheet is incomplete because it does not include at least eleven CSF claims from 2012-2013 that relate to a former Oregon attorney. You became aware of these missing entries by finding references to the additional CSF claims in other records made publicly available by the Bar. You contend that the CSF spreadsheet you received was likely altered intentionally and you ask us to order the Bar to disclose a complete and accurate version of the spreadsheet.

In response to your petition, we contacted Nik Chourey, the Bar's Deputy General Counsel. He explained that at the time of your request, the CSF spreadsheet was an internal working document maintained by several Bar employees and it was susceptible to errors and omissions. He informed us that the Bar stopped maintaining the CSF spreadsheet in early 2020 and that the most accurate information about CSF claims is available in the Bar's Board of Governors Agenda Memorandums, which are publicly available on the Bar's website. Finally, he explained, the Bar provided you with the most current working version of the spreadsheet that

it possessed at the time of your 2019 request, and the Bar denies that it was intentionally altered in response to your request.

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 applies only to records that exist at the time of a public records request. Agencies are not required to create new records in response to such requests, nor are they required to answer questions about their records or analyze them prior to disclosure. *See Attorney General's Public Records and Meetings Manual* at 7 (2019).

Any person denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General. The Attorney General's authority on such appeals is generally limited to reviewing the record to determine if it may be withheld. ORS 192.411(1). The Attorney General's authority does not extend to evaluating an agency's processes for creating, retaining, or retrieving their records – at least not unless the effect of such processes is to deny access to public records. *See* Public Records Order, Apr 5, 2021, DeMartino. Nor does the Attorney General possess the authority to order a state agency to correct discrepancies in its records. On appeal, the agency carries the burden of sustaining its actions. ORS 192.411(1).

In this instance, the Bar represents that the spreadsheet you received in 2019 was the most current version available at the time and that it was not altered in response to your request. Given the Bar's acknowledgment that the spreadsheet was prone to errors and omissions, we have no reason to second-guess the Bar's representation. Moreover, we have no basis for concluding that the Bar's records management processes had the effect of denying your access to public information or records, particularly since more accurate information about CSF claims is freely available on the Bar's website. We therefore respectfully deny your petition because the Bar did not deny your 2019 records request and we lack the authority to order the Bar to correct any deficiencies in the spreadsheet it disclosed to you.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn/
c via e-mail only: Nik Chourey, OSB