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November 23, 2021

VIA E-MAIL ONLY: corgistuff@frontier.com

Richard H. Mills
850 NE Chehalem Dr.
Newberg, OR 97132

Re: Petition for Public Records Disclosure Order
Oregon Department of Administrative Services
DOJ File No. 107011-GA0159-21

Dear Mr. Mills:

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 November 17, asks the Attorney General to order the Oregon Department of Administrative Services (DAS) to produce certain records because DAS has not completed its response to you in a timely manner. 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). If an agency has, in good faith, requested additional information or clarification from the requester, the agency's obligation to further complete its response to the request is suspended. ORS 192.329(4)(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).

According to your petition, you submitted a records request to DAS on October 12, 2021, which DAS acknowledged on October 20, 2021. As of the date of your petition, DAS had not completed its response nor had it provided you with an estimated completion date as required by ORS 192.329.

In response to your petition, we contacted Adam Crawford, DAS External Relations Director. He informed us that DAS contacted you on November 19, 2021, apologized for the delay, and asked you to clarify your request because it has been unable to determine what records you seek or whether it is the custodian of responsive records.

The record demonstrates that DAS failed to provide the response required by ORS 192.329(5) within the prescribed time period, and it has not demonstrated that compliance with this time frame was not required under ORS 192.329. ORS 192.407(3) provides that when an agency fails to comply with ORS 192.329, we have discretion to order the disclosure of nonexempt material within a timeframe we deem appropriate to bring the agency into compliance with ORS 192.329.

However, on this record we cannot assess whether DAS has any records responsive to your request or, if DAS does have such records, how many. It is therefore not feasible at this time for us to order disclosure within a time frame that would bring DAS into compliance with ORS 192.329. To be clear, we cannot order DAS to disclose records that do not exist or for which DAS is not the custodian. We therefore respectfully deny your petition at this time. If after clarifying your request DAS determines that it is the custodian of responsive records, you may file a new petition with this office if at some future date you believe DAS is not responding to your request as soon as practicable and without unreasonable delay.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn
c via e-mail only: Adam Crawford (DAS)