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November 23, 2021

VIA E-MAIL ONLY: PKaul@rbgg.com

Priyah Kaul
101 Mission Street
San Francisco, CA 94105

Re: Petition for Public Records Disclosure Order
Oregon Health Authority
DOJ File No.: 443001-GA0160-21

Dear Ms. Kaul:

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 asks the Attorney General to order the Oregon Health Authority (OHA) to disclose various records. For the reasons that follow, we respectfully dismiss 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 exemptions from disclosure must be express. 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 to review the record and determine if it may be withheld. ORS 192.411(1). The agency carries the burden to sustain its actions. ORS 192.411(1).

Your petition stems from an extensive, 35-part request for various records, reports and data relating to the implementation of Oregon's Death With Dignity Act (the "Act"), as well as OHA's compliance and oversight responsibilities pertaining to the Act. According to your petition, OHA denied your request in its entirety by asserting that all of the records you seek are exempt from disclosure under ORS 127.865(2). That provision directs OHA to make rules to facilitate the collection of information regarding compliance with the Act and makes any information collected under those rules exempt from public inspection. Your petition asserts that the rule implementing that statutory provision, OAR 333-009-0010, does not apply to most of the categories of information you have requested, in which case such information is not exempt from disclosure under ORS 127.865(2).

We contacted Jeanne Windham, OHA's Public Records Coordinator, regarding your appeal. She explained that in light of your petition, OHA no longer asserts all of the records you seek are exempt under ORS 127.865(2). OHA has therefore agreed to process your request for any nonexempt records in its custody, subject to your payment of any processing fees and the redaction of any information it concludes is exempt from disclosure. *See* ORS 192.324(5) (agencies may establish fees reasonably calculated to reimburse them for their actual cost of making public records available); and ORS 192.338 (duty to separate exempt and nonexempt material). If you disagree with OHA's processing fees or redactions, you may again petition this office for review. Because OHA has agreed to process your request, we respectfully dismiss your petition as moot.

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

FMB:pjn/
c via e-mail only: Jeanne Windham (OHA)