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November 24, 2021

Andrew Anderson
SID #23279853
777 Stanton Blvd
Ontario, OR 97914

Re: Petition for Public Records Disclosure Order
Oregon Liquor Control Commission
DOJ File No. 845600-GA0145-21

Dear Mr. Anderson:

This letter is the Attorney General's response to your petition for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.431. Your petition asks the Attorney General to find that the Oregon Liquor Control Commission (OLCC) has failed to respond a records request submitted by you in a timely manner. For the reasons discussed below, we respectfully deny your petition.

Your petition relates to an extensive records request that we considered earlier this year. *See* Public Records Order, April 9, 2021, Anderson. In that instance, we concluded that OLCC's estimated completion time frame of 25 weeks – or mid-October 2021 – was not unreasonable based on the information available at the time.[1] However, we emphasized that OLCC's statutory obligation to respond to your request in a timely manner meant that it would not be reasonable for OLCC to treat its estimate as a fixed deadline if additional resources were to become available that would make it practicable to respond sooner. We also expressed our expectation that OLCC provide periodic partial disclosures of nonexempt records to you rather than providing a single response once it completes its entire review. We now understand that as of mid-October 2021, OLCC has not completed its response to your request, nor has it provided you with an updated estimated completion date.

[1] Because of the extensive scope of your request, OLCC initially estimated it would take 44 weeks to complete its response to you. However, in response to your previous petition, OLCC agreed to commit additional resources to your request, thereby reducing its estimate to 25 weeks. The revised estimate was based on OLCC's calculation that it would take at least 200 hours to process your request and OLCC's ability to commit an average of eight hours per week to your request.

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 based on the information currently available. ORS 192.329(5). A person who has submitted a written request for records to a state agency may petition the Attorney General if they believe the agency has failed to timely respond to their request or if estimated completion time frame for the agency's response is "unreasonably long and will result in undue delay of disclosure." ORS 192.407(1)(a)-(b).

In response to your current petition, we contacted Mark Pettinger, Director of OLCC's Communications and Education Section. He explained that as of mid-October, OLCC staff had already spent approximately 240 hours – or approximately ten hours per week – on your request and that OLCC had disclosed more than 1,500 records to you since April 2021. Mr. Pettinger also informed us that due to several unforeseen circumstances, processing your request has been significantly more time-consuming that originally anticipated. In particular, he explained, OLCC's public records coordinator, who was the only staff member working on your request initially, left OLCC in August and OLCC has not yet been able to fill the position. This has impaired OLCC's ability to process its high volume of public record requests generally[2] and required OLCC to dedicate and train other staff to work solely upon your request. Mr. Pettinger also explained that the system OLCC uses to store electronic records was changed in 2020 and that most records pre-dating the transition were archived. OLCC has since learned that many of the archived records were not saved in an electronically searchable format, thereby necessitating more time-intensive manual searches for responsive records. Based on the volume of records that still require review, OLCC now estimates that it will take another 200 hours – or 20 weeks – to complete its response. Mr. Pettinger also informed us that OLCC does not intend to charge you for this additional work.[3]

It appears OLCC significantly underestimated the amount of time it would take to process your request. And although OLCC should have communicated its processing challenges and revised completion time frames to you sooner, we conclude that OLCC has not failed to complete its response to your request in a timely manner. The available record demonstrates that since mid-April 2021, OLCC has been able to commit an average of ten hours per week to your request, which is substantially more than the eight hours per week we previously deemed to be reasonable given the size of your request. OLCC also reports that it has already devoted more time to the processing of your request than it originally estimated it would take to complete its response. And it appears OLCC has met our expectation that it make periodic, partial disclosures of nonexempt records as they are identified. Based on the information currently available, we cannot conclude that OLCC has unreasonably delayed the processing of your request.

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[2] According to Mr. Pettinger, OLCC is currently receiving an average of 80 public records requests per month, and it is actively working on approximately 150 open requests.

[3] OLCC's fee estimate was based on its initial estimate that processing your request would require approximately 220 hours of staff time, including approximately 20 hours of work that had been conducted before you paid the fee.

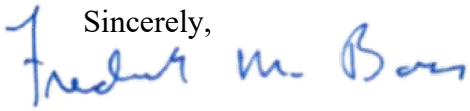
Given the volume of remaining records that OLCC indicates it must review, OLCC now estimates that with a continued commitment of ten hours per week, it will take another 20 weeks to complete its response. Because we have no reason to second-guess OLCC's revised estimate, the remaining issue is whether continuing to commit only ten hours per week to your request will result in undue delay. *See* ORS 192.407(1)(b). In other words, should OLCC be required to commit additional resources to the processing of your request in order to avoid undue delay?

Under the circumstances – which include the extensive nature of your request and your unwillingness to narrow the scope of the request – we conclude that maintaining the current level of effort will not result in the undue delay of disclosure. Our conclusion is supported by the fact that OLCC has been making periodic disclosures of nonexempt records as they are identified, and according to conditions and priorities specified by you (e.g., communications involving certain named parties first, disclosed in reverse chronological order). We also find that the dedication of ten hours a week to your request to be a reasonable commitment of agency resources given OLCC's current records request workload and resource constraints.

We recognize that there may be circumstances in which an agency may be required to dedicate substantially more resources to a records request than normal in order to avoid undue delay, such as for records relating to matters of heightened interest among the general public or involving time-sensitive matters of public policy. In this instance, however, other than your general desire to receive the records more quickly, you have not identified any public or private interests that might be impaired by the additional time OLCC estimates it will take to complete its response.[4] We therefore conclude that OLCC is not required to commit additional resources to the processing of your request in order to avoid undue delay.

For the foregoing reasons, we respectfully deny your petition.

Sincerely,



Frederick M. Boss
Deputy Attorney General

FMB:pjn
c via e-mail only: Mark Pettinger (OLCC)

[4] In a previous petition, you indicated that you need these records for purposes of litigation involving OLCC's decision to revoke four of your OLCC licenses. But as we noted at the time, "the ordinary tools of civil discovery generally 'negate the need to use the Public Records Law to access records for purposes of pursuing private litigation.'" Public Records Order, April 9, 2021, Anderson (citing *Attorney General's Public Records & Meetings Manual* at 53 (2019).