ELLEN F. ROSENBLUM
ATTORNEY GENERAL

LISA M. UDLAND
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

Justice Building
1162 Court Street NE
Salem, Oregon 97301-4096
Telephone: (503) 378-6002

December 7, 2021

VIA E-MAIL ONLY: cengweiler@ojrc.info

Conrad Engweiler
Oregon Justice Resource Center
P.O. Box 5248
Portland, OR 97209

Re: Petition for Public Records Disclosure Order and Fee Reduction
Board of Parole and Post-Prison Supervision
DOJ File No.: 255001-GA0166-21

Dear Mr. Engweiler:

This letter is the Attorney General's response to your petition under the Oregon Public Records Law, ORS 192.311 to 192.431. Your petition asks the Attorney General to order the Board of Parole and Post-Prison Supervision (the "Board") to produce certain Board orders and to waive any processing fees above $100.00. For the reasons discussed below, we respectfully deny your petition.

Your petition indicates that you requested the following records from the Board on November 1, 2021:

> 1. Any and all Board orders granting or denying discharge of parole supervision and or post-prison supervision from January 1, 2014 to November 1, 2021, for individuals who were on parole or post-prison supervision for the crime of murder or aggravated murder. The information for each offender can be limited to (1) name and state identification number, (2) crime, and (3) duration of parole or post-prison supervision prior to discharge.
>
> 2. Any and all information showing the Board's compliance with Oregon's Public Meetings Laws when the Board met to decide your request for parole discharge prior to issuing Board Action Form No. 14 on October 15, 2021, including but not limited to notice, where the meeting was held, minutes and recordkeeping.

You also asked the Board to waive any processing fees in excess of $100.00, or alternatively that you be allowed to inspect the documents or systems in which those documents are stored.

In response, the Board denied your request to cap its fee at $100.00 and provided you with a $300.00 fee estimate to process the first part of your request. The Board explained that it would require the assistance of the Department of Corrections (DOC) to identify responsive case files by searching a database maintained by DOC. The Board also explained that DOC charges the Board $75.00 an hour for this work, and DOC estimated it would take four hours to conduct its search, for a total cost of $300.00. Regarding the second part of your request, the Board informed you that the matter you referenced was not subject to Oregon's Public Meetings Law.

Your petition explains your position that the Board cannot assess processing fees upon you for work performed by another agency for records that are in the Board's custody. You also assert that the fees should be waived because the documents will be used to present a legal claim that the Board has violated the state and federal constitutions. Finally, you characterize the Board's response to the second part of your request as erroneous.

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). An agency may establish fees reasonably calculated to recover actual costs in making public records available but may waive or reduce its fees if the custodian determines that a waiver or reduction "is in the public interest because making the record available primarily benefits the general public." ORS 192.324(4)–(5). Any person denied the right to receive a copy of a public record or denied a fee waiver or reduction by a state agency may petition the Attorney General for review. ORS 192.411(1) and ORS 192.324(6). The agency carries the burden to sustain its decisions. ORS 192.411(1).

In response to your petition, we contacted Lori Hodgin, the Board's Operations Manager. She explained that although the Board is the custodian of the orders you requested, the Board does not maintain an index or database of its orders from which it can search for the specific orders you requested. Therefore, she explained, the Board would have to conduct a manual search of more than 25,000 case files to locate any orders responsive to your request, and the cost associated with such a time-intensive search would likely be prohibitive for you. She explained that when the Board receives requests for such information, it instead relies upon DOC to prepare a list of responsive case files by conducting customized queries of a database that DOC maintains. She indicated that although DOC charges the Board $75.00 per hour to conduct such queries, this is the most efficient and cost-effective way for the Board to locate the orders you requested. Ms. Hodgin also explained the Board's determination that your request does not qualify for a public interest fee waiver or reduction because you have not explained how disclosing the orders to you will primarily benefit the general public. Finally, Ms. Hodgin informed us that the Board does not possess any records responsive to the second part of your request because the Board does not believe that the Public Meetings Law applied to the underlying matter.

///

Under the circumstances, we conclude that the Board did not err by including DOC's costs in its fee estimate. The Board indicates that using DOC to conduct queries of DOC's database and to compile a list of responsive case files is the most efficient and cost-effective way to locate the orders you requested. The Board's representation sounds reasonable to us given that the Board does not maintain its own database or index from which it can easily locate those orders. And the cost to use DOC's services appears to be an "actual cost" that the Board will incur to make the records available to you. The Board is therefore permitted to seek reimbursement for that cost. *See* ORS 192.324(4)(a).

We also conclude that the Board was permitted to deny your request for a fee waiver or reduction. To qualify in this instance, a fee waiver or reduction must be in the public interest because disclosing the requested orders to you will primarily benefit the general public. *See* ORS 192.324(5). The furnishing of public records primarily benefits the public when its greatest utility is to the community or society as a whole. *See In Defense of Animals v. OHSU*, 199 Or App 160, 189 (2005). This is in contrast to situations where disclosure would primarily implicate private interests. *See, e.g.,* Public Records Order, June 16, 2020, Johnson (disclosure would not primarily benefit the general public where requester sought records for purposes of private litigation); and Public Records Order, December 5, 2016, DeMartino (same). Pertinent factors include the requester's identity, the purpose for which the information will be used, the character of the information, whether the requested information is already in the public domain, and whether the requester can meaningfully disseminate the information to the general public. *Attorney General's Public Records and Meetings Manual* at 24 (2019) ("*Manual*").

Your petition does not explain why you believe disclosing the Board's orders to you will primarily benefit the general public. Nor does it indicate that you have the means or intent to disseminate the information to the general public. Instead, your stated purpose for obtaining these orders is to support a legal claim against the Board alleging that it improperly denied your request for a discharge from parole. As noted above, such private concerns generally do not implicate the public interest as defined in the Public Records Law. *See also Manual* at 23 (mere allegation that public body treated requester oppressively, absent broader public interest, does not satisfy public interest standard). Under the circumstances, we cannot conclude that the disclosure of the Board's orders to you will primarily benefit the general public, a necessary condition for our authority to compel the Board to waive or reduce its fee. We therefore deny your request that we order the Board to waive any fees above $100.00.

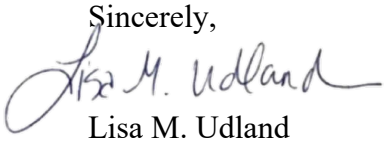
Turning to the second part of your record request, the Board indicates that it does not have any responsive records because it does not believe that the Public Meetings Law applied to the underlying matter. Under the circumstances, we have no reason to second-guess the Board's representation that it does not possess any responsive records. And because we cannot order the Board to disclose records that do not exist, we must deny the remainder of your petition.

///

///

For the foregoing reasons, we respectfully deny your petition.

Sincerely,



Lisa M. Udland
Deputy Attorney General

LMU:pjn
c via e-mail only: