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 6, 2021

VIA E-MAIL ONLY: myers.j@icloud.com

Jeff Myers
8755 SW 165th Ave
Beaverton, OR 97007

Re: Petition for Public Records Disclosure Order
Oregon Department of Education
DOJ File No.: 581090-GA0165-21

Dear Mr. Myers:

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 29, 2021, asks the Attorney General to order the Oregon Department of Education (ODE) to disclose various records that you requested in early October. Your petition claims that ODE has failed to respond in a timely manner. For the reasons that follow, 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).

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).

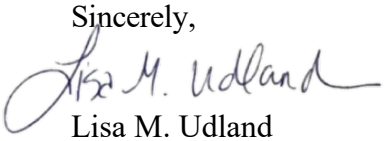
Your petition stems from a record request you submitted to ODE on October 5, 2021, for all ODE contracts with sixteen specific companies and individuals, as well as any related invoices. You indicate that on October 31, 2021, you mailed a $400.00 check to cover ODE's fee for processing the request and the check was posted on November 5, 2021. As of the date of your petition, you assert that DAS had not completed its response or provided you with an estimated completion date as required by ORS 192.329. Your petition asks us to order ODE to disclose the records, to refund to you the $400.00 processing fee, and to pay a $200.00 penalty.

In response to your petition, we contacted Jeremy Wartz, ODE Rules Coordinator. He explained to us that ODE provided a partial response your request in mid-October and that it is actively processing the remainder of your request. He also informed us that ODE notified you on December 2, 2021, that it expects to complete its response by December 10, 2021.

The record demonstrates that ODE 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 seven days, or within any other period we deem appropriate to bring the agency into compliance with ORS 192.329. ORS 192.407(3) also provides that if the Attorney General grants a petition filed under that statute, the Attorney General may order the agency to pay a penalty of $200.00 to the requester and may order a fee waiver or fee reduction if the agency responded to the request with undue delay or failed to respond to the request.

Under the circumstances, we decline to grant your petition and order disclosure within a particular time frame. ODE failed to provide you with a reasonable estimated completion date within the statutorily required time frame and we are required to treat this failure as a denial of your request. *See* ORS 192.407(1)(a). However, ODE has not actually denied your request and based on the available record, we have no reason to conclude that its failure to timely notify of its estimated completion date resulted in any undue delay in the processing of your request. More importantly, ODE has now provided you with the required notification and its estimated completion date, which is within four days of the date of this order, appears to comply with the law based on the information currently available. *See* ORS 192.329(5)(b). We therefore respectfully deny your petition.[1]

Sincerely,



Lisa M. Udland
Deputy Attorney General

FMB:pjn
c via e-mail only: Jeremy Wartz (ODE)

[1] Because we decline to grant your petition, the refund and $200.00 penalty you requested are not available in this instance. *See* ORS 192.407(3) (penalty and fee waiver or reduction provisions are contingent upon an order granting the petition).