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January 5, 2022

Daniel Loren Jenkins
SID #13120442
82911 Beach Access Rd
Umatilla, OR 97882

Re: Petition for Public Records Disclosure Order
Oregon Governor's Office
DOJ File No.: 121010-GA0003-22

Dear Mr. Jenkins:

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 governor's office answer several questions and to disclose documentation supporting its answers. 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). 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).

According to your petition, on October 18, 2021, you requested the governor's office answer the following questions:

1. Was your name entered into the "Take Your Shot, Oregon!" lottery contest?
2. Was the name of any adult-in-custody under the authority of the Oregon Department of Corrections entered into the lottery contest?
3. If your name or the names of other AICs were excluded from the lottery contest, then what Oregon rule allowed such exclusion?

Your petition explains that the governor's office has not responded to your questions.

At the outset, we note that your original request seeks answers to questions and does not request the disclosure of any particular public records. The Public Records Law concerns documents rather than information. *See* ORS 192.311(5) (defining a public record). As the Attorney General's Public Records Manual explains, the law does not require public bodies to create new public records; nor does it require public bodies to disclose the reasoning behind their actions; answer questions about their records; or perform legal research in order to identify records that are responsive to a request. *Attorney General's Public Records and Meetings Manual* at 7 (2019) (citations omitted). And there is no provision in the law authorizing the Attorney General to order state agencies to respond to general questions or requests for information. *See id*.; *see also* Public Records Order, September 20, 2020, Durham. We must therefore deny your petition insofar as you seek an order compelling the governor's office to answer your questions.

Regarding your request that we order the governor's office to disclose any documentation relating to this matter, we contacted Kevin Gleim, an assistant general counsel in the governor's office. He explained that the governor's office did not deny a request for such documentation because, unlike your petition, your original request did not seek the production of any particular records. He also informed us that even if you had requested records relating to your participation in the lottery contest, the governor's office is not the custodian of any responsive records.

Under the circumstances, we must respectfully deny the remainder of your petition because the governor's office did not deny a request for public records and we cannot order an agency to disclose records that it does not possess. *See* ORS 192.411(1) (in general, the Attorney General may order disclosure only when a records request has been denied). Moreover, we note that if the governor's office had denied your request, we lack the authority to consider your petition. *See* ORS 192.427 (appeal of a denial of a right to inspect a public record in the custody of an elected official shall not be considered by the Attorney General).

Sincerely,

Lisa M. Udland

Lisa M. Udland
Deputy Attorney General

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c via e-mail only: Kevin Gleim (Governor's Office)