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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 Health Authority
DOJ File No.: 443001-GA0174-21

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 Oregon Health Authority (OHA) to answer several questions relating to your participation in the "Take Your Shot, Oregon!" lottery contest. 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 27, 2021, you requested OHA answer the following questions:

1. Was your name reported to OHA by the Oregon Department of Corrections as having been vaccinated?
2. Was your name assigned a unique identification number and entered into the "Take Your Shot, Oregon!" lottery pool?
3. If your name was reported as vaccinated but not assigned a unique identification number or reported to the Oregon Lottery, then what was the legal basis for excluding you from the contest?

Your petition explains that OHA has not answered your questions.

We contacted Jeanne Windham, OHA's Public Records Coordinator, regarding your appeal. She informed us that she had no record of receiving your records request. She also explained that upon review of your appeal, it does not appear that you have requested the production of any particular public records. OHA therefore believes your petition is premature because OHA has not denied a request from you for public records. Nonetheless, Ms. Windham explained, OHA will be in contact with you shortly to determine whether there are records in OHA's custody that may be of interest to you.

We observe that both your original request to OHA and your petition only seek answers to questions and neither requests the disclosure of any 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 answer general questions or to respond to requests for information. *See id*.; *see also* Public Records Order, September 20, 2020, Durham.

Because we lack the authority to order OHA to answer your questions, and because OHA has not otherwise denied a request for records, we must respectfully deny your petition. *See* ORS 192.411(1) (in general, the Attorney General may order disclosure only when a records request has been denied).

Sincerely,

Lisa M. Udland

Lisa M. Udland
Deputy Attorney General

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