ELLEN F. ROSENBLUM
ATTORNEY GENERAL

FREDERICK M. BOSS
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

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

April 29, 2021

VIA E-MAIL ONLY: dsupham58@gmail.com

Donald Scott Upham
3906 SW Altadena Ave
Portland, OR 97239

Re: Petition for Public Records Disclosure Order
Oregon School Board Association
DOJ File No.: 137043-GA0001-21

Dear Mr. Upham:

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 School Board Association (OSBA) to disclose certain records to you. As explained below, we conclude that OSBA is not a "state agency" for purposes of petitions to the Attorney General under ORS 192.411(1). As a result, we conclude that, under ORS 192.415, your petition should be directed to the Marion County District Attorney.

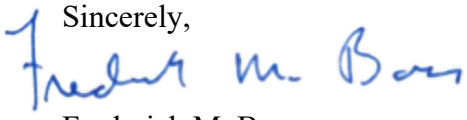
Under ORS 192.411(1), "any person denied the right to inspect or to receive a copy of any public record of a *state agency* may petition the Attorney General to review the Public record to determine if it may be withheld from public inspection." (Emphasis added.) A "state agency" means "any state officer, department, board, commission or court created by the Constitution or statutes of this state * * * ." ORS 192.311(6). In cases where a person is denied the right to inspect or to receive a copy of a public record of a public body other than a state agency, the "district attorney of the county in which the public body is located * * * shall carry out the functions of the Attorney General." ORS 192.415(1)(a).

Based on our research and conversations with OSBA's Chief Legal Counsel, we have determined the following with respect to OSBA. First, OSBA is not created by any Oregon statute or by the Oregon Constitution. Rather, it is a nonprofit public benefit corporation. Its membership consists of approximately 1,400 locally-elected public officials who serve on the boards of local school districts, education service districts and community colleges across the state. Although the chair of the Oregon State Board of Education is a non-voting ex officio

member of OSBA's board, OSBA is not an instrumentality or subsidiary of any state agency, nor are OSBA's activities directed or controlled by any state agency. Finally, OSBA does not contract to provide services to any state agencies, nor does it receive any direct funding from the state.

Based on these determinations, we must conclude that OSBA is not a "state agency" as defined by ORS 192.311(6). As a result, the Attorney General cannot resolve your petition under ORS 192.411(1). Because OSBA's main office is located in Marion County, your petition should be directed to the Marion County District Attorney. *See* ORS 192.415(1)(a).

Sincerely,



Frederick M. Boss
Deputy Attorney General

FMB:pjn
c via e-mail only: Haley Percell (OSBA)