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July 8, 2022

VIA E-MAIL ONLY: kairedowninseiu@gmail.com

Kaire Downin
4925 Nadine Dr SE
Salem, OR 97302

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100012-GA0059-22

Dear Ms. Downin:

This letter is the Attorney General's order responding 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 Department of Human Services (DHS) to disclose certain employee surveys. For the reasons discussed below, we respectfully deny your petition as premature.

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's responsibility to process a public records request is triggered by the receipt of a written request submitted in accordance with the agency's publicly posted procedure for making records requests. *See Attorney General's Public Records and Meetings Manual* at 9; *see also* ORS 192.324(1), (2) and (7), and 192.329(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).

In response to your petition, we contacted Marina Carroll in DHS' Office of Human Resources. She informed us that DHS received a request from you for the employee surveys on May 17, 2022. However, she explained DHS' position that your request was not presented as a public records request, and it was not submitted in accordance with DHS' procedure for making records requests. Rather, she explained, the request was submitted by you as a union steward on behalf of a represented employee and it was styled as a formal union request for information (RFI) in relation to an ongoing grievance. Ms. Carroll explained that union RFIs are processed under the Public Employee Collective Bargaining Act (PECBA), and they are not treated as

public records requests. She also informed us that in this instance, DHS denied your RFI for the employee surveys after determining that disclosure was not required under PECBA because they were not relevant to the underlying grievance for which they were sought. Finally, Ms. Carroll informed us that in light of your petition, DHS has agreed to process your RFI as a public records request and will be in contact with you soon.

After reviewing your RFI and discussing it with DHS, we find that it was not submitted in accordance with DHS' procedure for submitting records requests. And given the form and context of your request, we find no basis for concluding that DHS reasonably should have understood your RFI to be a public records request. We therefore conclude that DHS was not required to treat it as a public records request and respectfully deny your petition as premature. *See* ORS 192.411(1) (Attorney General's authority is generally limited to instances in which a person is denied the right to inspect records requested under the public records law).[1]

Sincerely,

Lisa M. Udland

Lisa M. Udland
Deputy Attorney General

ACF:pjn
c via e-mail only: Marina Carroll (DHS)

[1] As DHS has now agreed to treat your RFI as a public records request, you are free to submit a new petition if DHS denies any aspect of your request.