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September 13, 2022

VIA E-MAIL ONLY: Michael.Pelella@yahoo.com

Re: Petition for Public Records Disclosure Order
Oregon Department of Agriculture
DOJ File No.: 603010-GA0078-22

Dear Mr. Pelella:

This letter is the Attorney General's response to your petition for the disclosure of records under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition asks the Attorney General to find that the Oregon Department of Agriculture (ODA) has failed to complete its response to a public records request within the timeframes prescribed by the Public Records Law. 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 the requester with a reasonable estimated completion date. ORS 192.329(5). The fifteen business day timeline does not apply if an agency determines that compliance is impracticable because it lacks sufficient staff, compliance would demonstrably impede the agency's ability to perform other necessary services, or because it is unable to comply due to the volume of public records requests being simultaneously processed by the agency. ORS 192.329(6). However, an agency that cannot comply with the timeline for one of those reasons is still required to acknowledge the request and complete its response "as soon as practicable and without unreasonable delay." ORS 192.329(8). A requester may petition the Attorney General if they believe an agency has failed to comply with the processing timelines and other provisions contained in ORS 192.329. ORS 192.407(1). The agency carries the burden to sustain its actions. ORS 192.411(1).

Your petition stems from a request originally submitted to ODA on December 31, 2021. ODA responded to that request on January 5, 2022, by disclosing responsive records that were located in its Food Safety Program. You subsequently filed a petition with this office, explaining that you were seeking all responsive ODA records, not just records located in that particular program. Public

Records Order, Jan 10, 2022, Pelella. ODA responded to that petition by agreeing to conduct an agency-wide search for records responsive to your request. Because ODA agreed to continue processing your request and had not otherwise denied any aspect of the request, we dismissed your initial petition as premature. *Id*.

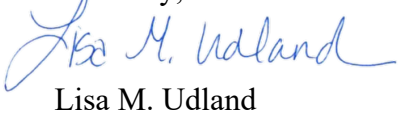
Your current petition states that you have not received any updates from ODA since the original petition was dismissed in January 2022. Therefore, you assert that ODA has failed to respond in a timely manner, which we are to treat as a denial of your request. *See* ORS 192.407(1)(a). You seek an order that compels disclosure of the records, imposes a $200 penalty on ODA, and waives $500 of any fees ODA charges you for the request.[1]

We spoke with Lauren Henderson, ODA's deputy director, and Andrea Cantu-Schomus, ODA's director of communications. They explained that ODA has now completed its response to your request: ODA has now conducted an agency-wide search for responsive records and produced them to you. ODA has also decided to waive any fees incurred in processing your request. They attributed ODA's delay to a heavy workload.

Under the circumstances, we find that ODA failed to respond to your request in the time and manner prescribed in ORS 192.329. ODA was required to complete its response to your request "as soon as practicable and without unreasonable delay." ORS 192.329(1). In addition, ODA was required to complete its response to your request within 15 business days of receiving it or to provide a reasonable estimated date of completion. ORS 192.329(5). Here, more than nine months have passed since you submitted the request and ODA has not adequately explained the delay, or why complying with the timeframe in ORS 192.329(5) would have been impractical. *See* ORS 192.329(6).

However, ODA has now produced the responsive records. And ODA has now waived any fees incurred in processing your request. These portions of your petition are therefore now moot. In addition, we deny your request for a $200 penalty: When ODA discovered that your request remained unfilled, it promptly searched for and provided the records. And it decided to waive any fees incurred. We also do not see any indication that you followed up with ODA during this nine-month gap. While ODA clearly should have done better, we think these facts suggest an oversight rather than intentional bad behavior. We therefore respectfully deny your petition.

Sincerely,



Lisa M. Udland
Deputy Attorney General

NE2:pjn
c via e-mail only: Andrea Cantu-Schomus (ODA)

[1] These remedies all fall under our express authority in ORS 192.407(3). However, you also seek various other remedies, such as a verbal reprimand of ODA. These other remedies fall outside of our authority.