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September 22, 2022

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

Re: Petition for Public Records Disclosure Order
Oregon Department of Consumer and Business Services
DOJ File No.: 440040-GA0077-22

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, which we received September 5, 2022,[1] asks the Attorney General to order the Oregon Department of Consumer and Business Services (DCBS) to produce certain records and to find that DCBS 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 dismiss your petition as moot.

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).

[1] Thank you for granting an extension of time in which to respond to your petition.

Your petition stems from a request originally submitted to DCBS on December 31, 2021. According to your petition, DCBS has not acknowledged or otherwise responded to your request. Therefore, you assert that DCBS 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 DCBS to disclose the records, imposes a $200 penalty upon DCBS, and waives $500.00 of any fees DCBS may seek to charge you to process the request.[2]

We contacted Mark Peterson, DCBS' Director of Public Information and Communications, regarding your petition. He explained that due, in part, to personnel changes earlier this year, DCBS staff was not aware of your request until receipt of your petition. He also explained that DCBS has now completed its response to you, waived any fees it incurred in processing your request, and apologized for the delayed response.

Under the circumstances, we find that DCBS failed to respond to your request in the time and manner prescribed in ORS 192.329. DCBS was required to complete its response to your request "as soon as practicable and without unreasonable delay." ORS 192.329(1). In addition, DCBS was required to complete its response to your request within fifteen 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 DCBS 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, DCBS has now completed its response and waived any fees it incurred in processing your request. Your petition is therefore now moot. And although DCBS clearly should have done a better job tracking and responding to your request, we lack the authority to order DCBS to pay a $200.00 penalty in this instance because the penalty provision in ORS 192.407(3) is contingent upon an order *granting* your petition.

For the foregoing reasons, we must respectfully dismiss your petition as moot.

Sincerely,

Lisa M. Udland

Lisa M. Udland
Deputy Attorney General

ACF:pjn
c via e-mail only: Mark Peterson (DCBS)

[2] 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 DCBS. The other remedies you seek fall outside of our authority.