ELLEN F. ROSENBLUM
ATTORNEY GENERAL

LISA M. UDLAND
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

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

September 16, 2022

VIA E-MAIL ONLY: rhunt@barran.com and Kelsey.Dietrick@boli.oregon.gov

Re: Petition for Public Records Disclosure Order
Oregon Bureau of Labor & Industries
DOJ File No.: 839407-GA0080-22

Dear Mr. Hunt and Ms. Dietrick:

This letter is the Attorney General's response to Mr. Hunt's petition for the disclosure of records under the Oregon Public Records Law, ORS 192.311 to 192.478. The petition alleges that the Bureau of Labor & Industries (BOLI) has denied various records requests by not substantively responding to them. For the reasons that follow, we grant Mr. Hunt's petition. Although Mr. Hunt made various records requests, and submitted separate petitions for each of these requests, we will treat all the petitions together as one single 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).

Mr. Hunt's petition alleges that he submitted various records requests to BOLI on December 30, 2021. He further alleges that although he received responses from Kelsey Dietrick on January 10, 2022, and January 18, 2022, he never received an estimated completion date or any records.

We spoke with Ms. Dietrick. She explained that BOLI has not completed its response for the following reasons:

- BOLI has seen a steady increase in requests for public records. The agency is currently receiving approximately 2000 requests per year.
- All records released by the agency require a level of review that can only be done by a trained professional for compliance with privacy concerns, and to ensure consistent and appropriate redactions of personal or legally protected information.
- The agency must prioritize its requirement to perform discovery for litigation brought against the agency subject to legal timelines.

She also explained that BOLI will be waiving any fees it incurs in processing these requests. She added that some of these requests can be resolved promptly because no responsive records exist; others can be resolved within 30 days, and that the requests related to administrative prosecutors could potentially take 90 days or more. Reviewing the requests, and Ms. Dietrick's responses, it appears that at least some of the requests are framed more as discovery requests than public records requests: they are framed in adversarial terms that require BOLI to prove or show certain things. Because of this, Ms. Dietrick may need to consult with Mr. Hunt to determine the proper scope of these requests.

However, we must find that BOLI failed to respond to Mr. Hunt's request in the time and manner prescribed in ORS 192.329. BOLI was required to complete its response to the requests "as soon as practicable and without unreasonable delay." ORS 192.329(1). In addition, BOLI was required to complete its response to the requests within 15 business days of receipt or to provide a reasonable estimated date of completion. ORS 192.329(5). Here, nine months have passed since Mr. Hunt submitted his requests, and there is no evidence that BOLI sent an estimated date of completion, or processed the requests after January 18, 2022. While BOLI has provided some general reasons why its response has been delayed, we find that BOLI has not met its burden to justify the delay. As we explain in the *Attorney General's Public Records & Meetings Manual* (2019), the exceptions to the statutory deadlines "are intended to apply narrowly."

Therefore, we order BOLI to complete its response to Mr. Hunt's requests within 30 days, on a rolling basis. For the requests asking for documents relating to administrative prosecutors' use of subpoenas, we order BOLI to complete its response within 90 days. These timelines will be tolled for any period where BOLI seeks in good faith to clarify the scope of the request.

Sincerely,

Lisa M. Udland

Lisa M. Udland
Deputy Attorney General

NE2:pjn