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December 8, 2022

VIA E-MAIL ONLY: nickie-hart@hotmail.com

Re: Petition for Review of Denial of Public Records Fee Waiver
Department of Geology and Mineral Industries
DOJ File No. 632040-GA0113-22

Dear Ms. Shatz:

This letter is the Attorney General's response to your petition under the Oregon Public Records Law, ORS 192.311 to 192.431. Your petition asks the Attorney General to find that the Department of Geology and Mineral Industries (DOGAMI) unreasonably denied your request for a public interest fee waiver. For the reasons discussed below, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exemptions and limitations. ORS 192.314(1). Agencies may establish fees reasonably calculated to recover their actual costs for making public records available, but "may furnish copies without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public." ORS 192.324(4)–(5). The furnishing of public records primarily benefits the general public when its greatest utility is to the community or society as a whole. *See In Defense of Animals*, 199 Or App 160, 189 (2005). Any person who believes there has been an unreasonable denial fee waiver or reduction by a state agency may petition the Attorney General for review. ORS 192.324(6).

Your petition relates to a November 14, 2022 records request to DOGAMI that seeks twelve broad categories of information relating to the operations of several energy companies at eight different operating sites over the last eleven years. DOGAMI responded to your request on November 29, 2022 by acknowledging that it was the custodian of at least some responsive records and informing you that it was preparing a fee estimate to process your request. On November 30, 2022, you requested a fee waiver in which you indicated that you need this information for the safety of your family. Specifically, you expressed your belief that your well water and other nearby water sources may have been contaminated as the result of natural gas extraction and processing operations in the area by companies regulated by DOGAMI. You also asserted that the general public would benefit from knowing whether these companies have been illegally injecting waste fluids into state waters. DOGAMI denied your request for a fee waiver based upon its determination that you are seeking the records primarily for personal reasons.

In response to your petition, we contacted Sarah Lewis, a DOGAMI Program Manager. She explained DOGAMI's position that you appear to be seeking this information primarily for personal reasons, as evidenced by a tort claim notice recently filed by you against DOGAMI, the Oregon Department of Environmental Quality (DEQ), and NW Natural Gas. She also indicated that DOGAMI does not believe that disclosing this information to you will primarily benefit the general public because neither DOGAMI nor DEQ have any evidence that natural gas extraction and processing operations have contaminated wells in your area.[1] Finally, she noted that because DOGAMI does not regulate the injection of waste fluids, it is unlikely that its records will address your concerns about water contamination or the disposal of waste fluids.

Under the circumstances, we cannot conclude that disclosing the requested records to you will primarily benefit the general public. DOGAMI represents that, to the extent it possesses responsive records, they are not likely to meaningfully inform the public interests you have identified. We have no reason to second-guess this representation considering that DOGAMI does not regulate the disposal of waste fluids associated with natural gas extraction and processing. Your request and related tort claim also suggest that your primary interest in this information is personal to you, and we are not aware of any general or heightened interest in this information among the general public. Finally, in response to your petition, we invited you to explain your ability to meaningfully disseminate this information to the general public and we have not received a response from you. We have consistently found that, regardless of how interested the public may be in a particular matter, "if the requester fails to demonstrate the ability to meaningfully disseminate the requested information, disclosure will not primarily benefit the general public." *Attorney General's Public Records and Meetings Manual* at 24 (2019) (citation omitted).

For the foregoing reasons, we cannot conclude that disclosing the requested information to you will primarily benefit the general public, which is a necessary condition to be eligible for a public interest fee waiver. We therefore conclude that DOGAMI did not unreasonably deny your request for a fee waiver and respectfully deny your petition.[2]

Sincerely,

Lisa M. Udland

Lisa M. Udland
Deputy Attorney General

ACF:pjn
c via e-mail only: Sarah Lewis (DOGAMI)

[1] We observe that in its response to your tort claim notice, DEQ informed you that the water quality permits associated with the operations you have identified were issued by DEQ and not DOGAMI. DEQ also informed you that because none of the chemical compounds reportedly found in your well water have federal or state standards or health advisory levels, DEQ does not have the authority to investigate those compounds.

[2] This order only addresses your right to a public interest fee waiver under the Public Records Law. It does not address what rights you may have to access the requested information under the rules of discovery insofar as you may be seeking it for purposes of private litigation.