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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. Schatz:

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.

waste fluids associated with natural gas extraction. According to DOGAMI, because licensees are not required to report the types of information you seek, DOGAMI believes the records you seek will contain little, if any, information relevant to the public interests you have identified. As support for its position, DOGAMI informs us that it does not even regulate four of the eight sites for which you seek records. Consistent with our prior order, we have no reason to second-guess DOGAMI's representations. We also remain unaware of any general or heightened interest in this information among the general public, and the nature of your request and related tort claim suggests to us that your primary interest in this information is personal to you. Under the circumstances, we cannot conclude that disclosing this information to you will primarily benefit the general public and therefore cannot conclude that DOGAMI unreasonably denied your request for a fee waiver. We therefore respectfully deny the first part of your petition.

We now turn to the second part of your petition, which alleges that DOGAMI has failed to process your request within the applicable processing timeframes. Agencies must 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 timeframe 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 timeframe 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). Also, if an agency has informed a requester of a fee estimate, the agency's obligation to process the request is suspended until the requester pays the fee, the fee is waived, or the fee has otherwise been ordered waived. ORS 192.329(3)(a). A requester may petition the Attorney General if they believe an agency has failed to comply with the processing timeframes or other provisions contained in ORS 192.329. ORS 192.407(1). The agency carries the burden to sustain its actions. ORS 192.411(1).

The record demonstrates that you submitted your records request to DOGAMI on November 14, 2022. DOGAMI acknowledged the request on November 29, 2022 and informed you that it was preparing a fee estimate. On November 30, 2022, you requested a fee waiver, which DOGAMI denied on December 1, 2022. You filed your initial petition seeking a fee waiver to the Attorney General that same day; that petition was denied on December 8, 2022. Thereafter, on December 21, 2022, DOGAMI provided you with its initial fee estimate and also informed you that it was not the custodian of any records relating to four of the eight sites listed in your request. DOGAMI's obligation to process your request is currently suspended until you pay the fee, or the fee is waived. ORS 192.329(3)(a).

Under ORS 192.329(5), we calculate that DOGAMI was required to complete its response or provide you with a reasonable estimated completion date by December 7, 2022,[2] unless it could demonstrate that compliance was impracticable for one of the reasons listed in

[2] This date accounts for the two-day state holiday for Thanksgiving.

ORS 192.329(6). The record indicates that DOGAMI failed to provide one of the responses required by ORS 192.329(5) by that date, and DOGAMI has not demonstrated why compliance was not required under ORS 192.329(6). Under 192.407(1)(a), we are required to treat DOGAMI's failure to comply as a denial of your request. And ORS 192.407(3) provides that when an agency fails to comply with ORS 192.329, we have discretion to order the disclosure of nonexempt material within any timeframe we deem appropriate to bring the agency into compliance with ORS 192.329.[3]

DOGAMI informs us that to process your request, it must review 148 site folders, consisting of approximately 3,800 individual files, to identify responsive records and to redact any exempt material. DOGAMI has determined that it would be more efficient and less costly to you if it simply discloses to you the entirety of the relevant site files, regardless of whether they contain any responsive information, after removing any exempt material. DOGAMI estimates it will take approximately 30 minutes to review each file and more than 80 hours to complete its response. DOGAMI also asserts that processing your request will impose a significant burden on agency staff because it is a small department with fewer than 50 employees and no dedicated public records staff. Given its limited resources, DOGAMI informs us that it is currently able to commit 8 to 10 hours per week to processing your request, and estimates that it will take up to 10 weeks complete its response upon receipt of payment. DOGAMI also expects to disclose nonexempt records to you on a rolling basis as they become available.

Under the circumstances, we decline to exercise our discretion to order DOGAMI to complete its response within a specified timeframe. In light of the broad scope of your request, your unwillingness to narrow the scope of the request, and DOGAMI's limited resources, the timeframe proposed by DOGAMI appears to comply with the law based on the information currently available. *See* ORS 192.329(5)(b). Moreover, because DOGAMI timely informed you that it was preparing a fee estimate – which would suspend DOGAMI's obligation to process your request – we cannot conclude on this record that DOGAMI's failure to comply with ORS 192.329 has resulted in any undue delay or actual prejudice to you in this instance.

For the foregoing reasons, we respectfully deny your petition.

Sincerely,

Lisa M. Udland

Lisa M. Udland
Deputy Attorney General

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

[3] We also note that if the Attorney General grants a petition under ORS 192.407, the order granting the petition may require the agency to pay a penalty of $200.00 to the requester, or waive or reduce its fee, if the agency responded to the request with undue delay or otherwise failed to respond to the request. ORS 192.407(3)(b) and (c). You have not asked us to impose a $200.00 penalty or to order DOGAMI to waive or reduce its fee in this instance. And on the available record, we do not believe either measure is warranted at this time.