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February 22, 2023

VIA E-MAIL ONLY: mottaghi@att.net

Abbas S. Mottaghi
2011 SW Arnold St.
Portland, OR 97219

Re: Petition for Public Records Disclosure Order
Division of Financial Regulation, Department of Consumer and Business Services
DOJ File No.: 440030-GA0022-23

Dear Mr. Mottaghi:

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 order the Division of Financial Regulation (DFR) of the Oregon Department of Consumer and Business Services to disclose all records that DFR considered in making its final decision regarding a series of insurance complaints filed by you against American Family Insurance (AFI). For the reasons discussed below, 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 exemptions from disclosure must be express. Any person denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld. ORS 192.411(1). The agency carries the burden to sustain its actions. *Id*.

In response to your petition, we received a memorandum from T.K. Keen, DFR Administrator, detailing DFR's response to your request. He indicated that you filed several complaints against AFI in 2022. He explained that after investigating your complaints, DFR was unable to conclude that AFI violated the Oregon Insurance Code or the terms of your insurance policy. DFR also concluded that that it did not have regulatory authority over several of your concerns.

Thereafter, you requested DFR provide all documentation it received and reviewed to make its final decision regarding your complaints. According to Mr. Keen, DFR responded by disclosing 10 documents to you, consisting of the confirmation of receipt of your initial complaint, five letters from AFI to DFR responding to each of your complaints, and four letters previously sent to you by DFR responding to your complaints. DFR withheld some records from you after determining that they are exempt from disclosure under ORS 731.264(2), which provides that "[d]ata gathered pursuant to an investigation by the director of a complaint is confidential [and] *may not* be disclosed * * * ." (Emphasis added.) And records made confidential under state law are expressly exempt from disclosure under the Public Records Law. *See* ORS 192.355(9)(a).

According to Mr. Keen, the records you seek were compiled by DFR as part of its investigations into your complaints. He explained DFR's position that the only exception in the statute permitting DFR to disclose any investigative records to you is if "the director considers [disclosure] necessary in investigating * * * apparent violations of the Insurance Code or other law." ORS 731.264(2). He explained that DFR determined that it was permitted to produce some investigative records to you in this instance because disclosure was necessary to further its investigations. However, he explained, DFR has determined that disclosing additional investigative records to you would not further DFR's investigations and would therefore exceed DFR's limited authority to disclose such records.

Because the records you seek were gathered as part of DFR's investigations into your complaints, they are confidential under ORS 731.264(2) and may not be disclosed unless DFR determines that disclosure to you is necessary to further its investigations. Under the circumstances, we have no reason to second-guess the determination, statutorily entrusted to DFR, that disclosing additional investigative records to you is not necessary in this instance.[1] We therefore respectfully deny your petition.

Sincerely,

Lisa M. Udland

Lisa M. Udland
Deputy Attorney General

ACF:pjn
c via e-mail only: Gail Gage (DFR)

[1] We note that we have consistently interpreted ORS 731.264(2) to make investigatory information confidential and exempt from disclosure to complainants as well as to the general public. *See* Public Records Orders, Apr 12, 2021, McDonald; and Jan 13, 2021, Miller. We have also consistently interpreted the statute to apply to *all* records compiled during an investigation. *See id*. (correspondence from insurance company exempt); and Public Records Order, Jun 14, 2017, Ledbetter (*citing* Public Records Orders, Aug 1, 2008, Troyer (all records in the complaint file are exempt, including correspondence between complainant and agency); Nov 6, 1992, Ostrander (all information gathered is exempt); and Sep 25, 1991, Tozer (internal memoranda relating to an investigation are exempt)).