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June 20, 2023

VIA E-MAIL ONLY: hborrud@oregonian.com

Hillary Borrud
The Oregonian
1500 SW 1st Ave
Portland, OR 97222

Re: Petition for Public Records Disclosure Order
Oregon Secretary of State
DOJ File No.: 137048-GA0001-23

Dear Ms. Borrud:

This letter is the Attorney General's response to your petition for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition asks the Attorney General to order the Oregon Secretary of State (SOS) to disclose records relating to its review of a $500,000 donation to the Democratic Party of Oregon. SOS asserts the records are exempt from public disclosure at this time due to an ongoing criminal investigation.

Any person who has been denied the right to inspect or to receive a copy of any public records of a state agency may petition the Attorney General to determine whether the records may be withheld from public disclosure. *See* ORS 192.411(1). However, if the public records at issue are in the custody of an elected official, then "no petition to require disclosure may be filed with the Attorney General," and if a petition is filed, "it shall not be considered by the Attorney General * * *." ORS 192.427.

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Because your petition seeks records in the custody of the Office of the Secretary of State, an elective office,[1] we lack jurisdiction to consider your appeal and must respectfully dismiss your petition.

Sincerely,

Lisa M. Udland

Lisa M. Udland
Deputy Attorney General

ACF:pjn
c via e-mail only: PK Runkles (SOS)

[1] Due to the recent resignation of the elected Secretary of State, an unelected Acting Secretary currently holds the office. However, as we noted in response to a recent petition filed by you, when considering the application of ORS 192.427, we have concluded that "it is necessary to look to the character of the office itself, rather than the means by which the individual in that office was selected." Public Records Order, Nov 3, 1995, Larson; Public Records Order, May 31, 2023, Borrud. Because the Office of the Secretary of State is an elective office, we conclude that ORS 192.427 prohibits the Attorney General from considering your petition. You may instead challenge SOS' denial in circuit court. *See* ORS 192.427.