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May 24, 2023

VIA E-MAIL ONLY: jblankfort@gmail.com

John Blankfort
63555 Bridle Ln
Bend, OR 97703

Re: Petition for Public Records Disclosure Order
Oregon Department of Forestry
DOJ File No.: 629400-GA0090-23

Dear Mr. Blankfort:

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, which we received May 17, 2023, asks the Attorney General to order the Oregon Department of Forestry (ODF) to disclose a letter it withheld in response to a public records request for all written communication between ODF and Verheyden Works LLC regarding the March 2021 Bull Springs fire. For the following reasons, 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. ORS 192.411(1).

According to your petition, ODF disclosed some records to you, but withheld a demand letter that ODF sent to Verheyden Works LLC for the recovery of fire suppression costs. ODF claims that demand letter is currently exempt under the litigation exemption, ORS 192.345(1). That provision exempts from public disclosure the "[r]ecords of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur." ORS 192.345(1). The exemption is conditional, meaning that it does not apply if the public interest requires disclosure in the particular instance. The litigation exemption also does not apply to litigation which has been concluded. *Id*.

We note that we previously considered a petition from you involving a request for ODF investigative records relating to the Bull Springs fire. *See* Public Records Order, Apr 8, 2022, Blankfort. We denied that petition, in part, after concluding that ODF was temporarily permitted to withhold the requested records under the litigation exemption. *Id*. ODF informs us that the Bull Springs fire matter is ongoing and that it still reasonably anticipates cost recovery litigation. We have reviewed the demand letter at issue and find that it pertains to that same anticipated litigation. It is therefore temporarily exempt under ORS 192.345(1) unless the public interest requires disclosure in this instance. Your petition does not explain why you believe the public interest requires disclosure at this time. Rather, we understand from your prior petition that you may need this information for purposes of private litigation. As we previously informed you, the public interest typically does not depend upon a requester's private interests, and the "availability of ordinary tools of discovery would generally negate any need for an individual to use the Public Records Law to gain access to records for purpose of pursuing private litigation." *See Attorney General's Public Records and Meetings Manual* at 33.

For the foregoing reasons, and consistent with the analysis in our prior order, we conclude that ODF is currently permitted to withhold the demand letter from public disclosure. We therefore respectfully deny your petition.

Sincerely,

Lisa M. Udland

LISA M. UDLAND
Deputy Attorney General

ACF/pjn
c via e-mail only: Jessica Prakke (ODF)