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June 30, 2023

VIA E-MAIL ONLY: dhefflinger@hotmail.com

Donald Hefflinger
16032 SE Chelsea Morning Drive
Happy Valley, OR 97086

Re: Petition for Public Interest Fee Waiver
Department of Consumer and Business Services, Division of Financial Regulation
DOJ File No.: 440040-GA0104-23

Dear Mr. Hefflinger:

This letter is the Attorney General's response to your petition under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition, which we received June 26, 2023, asks the Attorney General to order the Division of Financial Regulation of the Department of Consumer and Business Services (DFR) to waive its fees for processing a public records request. For the following reasons, we dismiss your petition as premature.

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).

According to your petition, on May 5, 2023, you submitted a request to DFR seeking certain records that contain the names of two individuals. Your petition states that DFR denied your request for a public interest fee waiver for these records because "there was insufficient showing of a public interest" to support your request. Your petition expresses your belief that these records will show that someone reported false information to DFR that led to your termination from a banking position. Your petition also asserts that the public needs to know who gave these false statements.

In response to your petition, we contacted Gail Gage, a compliance specialist in DFR. As a preliminary matter, she explained that although DFR has received several records requests from you since April 2023, DFR has no record of receiving a request from you for the records at issue on May 5, 2023. Rather, she explained, DFR first received a request from you for these records on May 25, 2023 as part of a larger, five-part records request. She indicated that given the large scope of your May 25th request, DFR provided you a fee estimate for the cost of processing that request. DFR also denied your request for a public interest fee waiver in that instance after determining that you had not demonstrated why disclosing these records to you would primarily benefit the general public. *See* ORS 192.324(5).

According to Ms. Gage, on June 20, 2023, you narrowed your request to just the subset of records identified in your petition. She also explained that on June 26, 2023, you confirmed that your June 20th request was in lieu of the larger request you submitted on May 25th. Ms. Gage informed us that DFR is still processing your June 20th request and that it has not provided you with a fee estimate for that request. DFR therefore believes your petition is premature because you withdrew your May 25th request and DFR has not denied your request for a public interest fee waiver in relation to your June 20th request.

Under the circumstances, we are unable to grant your request for a public interest fee waiver. DFR reports that it has only one open records request from you and that it has not denied your request for a fee waiver in relation to that request. Because DFR has not denied your request for a public interest fee waiver in relation to your only pending request, we must respectfully dismiss your petition as premature. *See* ORS 192.324(6).

Sincerely,

Lisa M. Udland

Lisa M. Udland
Deputy Attorney General

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