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June 29, 2023

VIA E-MAIL ONLY: jeff@saveoregonschools.org

Jeff Myers
8755 SW 165th Ave
Beaverton, OR 97007

Re: Petition for Public Records Disclosure Order
Oregon Department of Education
DOJ File No.: 581070-GA0103-23

Dear Mr. Myers:

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 June 22, 2023, asserts that the Early Learning Division (ELD) of the Oregon Department of Education has failed to respond to a public records request you submitted within prescribed processing timeframes. You therefore ask the Attorney General to order ELD to disclose the requested records to you within five business days of the issuance of this order, to refund the processing fees you have paid, and to pay a $200 penalty. For the reasons that follow, 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 agencies are obligated to 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). A requester may petition the Attorney General if they believe an agency has failed to comply with the processing timelines 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).

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Agencies may also establish fees reasonably calculated to recover their actual costs for making public records available. ORS 192.324(4). If an agency has informed the requester of such a fee, its obligation to complete its response is suspended until the requester pays the fee or the fee is waived. ORS 192.329(3)(a).

Your petition stems from a request you submitted to ELD on May 13, 2023, seeking records relating to various prekindergarten grantees. ELD acknowledged your request on May 17, 2023, and thereafter provided you a fee estimate on May 23, 2023 with instructions on where to mail your check. Your petition states that you mailed your check on May 31, 2023. On June 20, 2023, ELD informed you that your check was received, but that the bank had returned it to ELD as unprocessed. ELD informed you that it was attempting to re-deposit the check. On June 22, 2023, ELD informed you that your check was successfully deposited, that ELD had begun processing your request, and that ELD was giving it high priority. Your petition asserts that ELD has failed to comply with applicable processing timeframes because ELD should have started work upon your request when your check was received, presumably in early June, rather than when it was deposited on June 22nd.

In response to your petition, we contacted Kris Remmy, an Administrative Specialist in ELD's Office of Child Care. Mx. Remmy explained that the address to which public records processing fees are mailed is a bank-managed post office box where a number of public agencies direct various payments. They explained that ELD is generally not aware that payments have been received by the bank until the bank notifies ELD that they have been deposited. However, for unknown reasons the bank forwarded your check to ELD as unprocessed in this case. ELD received your check on June 6, 2023, which was their first notice that the check had been received. According to Mx. Remmy, after several days of unsuccessful attempts to get an explanation from the bank, ELD sent your check back to the bank for deposit. They also explained that ELD was informed on June 22, 2023 that your check had been successfully deposited, at which time ELD began working on your petition. Finally, Mx. Remmy informed us that ELD notified you on June 26, 2023, that it expected to complete its response to your request by June 29, 2023.

On this record, we cannot conclude that ELD failed to process your request within the applicable timeframes. ELD's fee estimate was provided to you within seven business days of receiving your request and ELD's obligation to process your request was thereby suspended until it received payment. *See* ORS 192.329(3). Given the unusual circumstances surrounding the handling of your check, most of which appear to have been beyond ELD's control, we cannot conclude that ELD's duty to process your request began when it unexpectedly received your check from the bank on June 6th. Under the circumstances, we find that it was reasonable for ELD to wait until your check was successfully deposited on June 22nd before beginning to process your request. It follows that ELD's processing obligations resumed on June 22nd, thereby making July 3, 2023 the fifteenth business day by which ELD is required to either complete its response or provide you with an estimated completion date. *See* ORS 192.329(5). The record demonstrates that ELD complied with that requirement on June 26, 2023, when it provided you with its estimated completion date. We understand that ELD expects to complete its response to you soon and we find no evidence in this record suggesting to us that, to date, ELD has responded to your request with undue delay.

For the foregoing reasons, we cannot conclude that ELD has failed to comply with the processing timelines or other provisions contained in ORS 192.329, which is a necessary condition for granting a petition submitted under ORS 192.407. We therefore respectfully deny your petition.

Sincerely,

Lisa M. Udland

Lisa M. Udland
Deputy Attorney General

ACF:pjn
c via e-mail only: Kris Remmy (ELD)