ELLEN F. ROSENBLUM
ATTORNEY GENERAL

LISA M. UDLAND
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

Justice Building
1162 Court Street NE
Salem, Oregon 97301-4096
Telephone: (503) 378-6002

April 28, 2023

**VIA E-MAIL ONLY:** whmacken@gmail.com

William H. MacKenzie
5964 Suncreek Drive
Lake Oswego, OR 97035

Re: Petition for Public Records Disclosure Order
*Oregon Department of Education*
DOJ File No.: 581090-GA0039-23

Dear Mr. MacKenzie:

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 Department of Education (ODE) to disclose the following information:

1. How much money did Oregon's State School Fund distribute to the school districts sponsoring virtual charter schools for the 2021-2022 school year? Please break down that figure to show how much each school district received.
2. The Mitchell School District is a sponsor of three virtual charter schools * * * . Please break out how much money Oregon's State School Fund distributed to the Mitchell School District for each of these schools for the 2022-23 school year.
3. Please forward copies of the current contracts between the Mitchell School District and each of the three virtual charter schools it sponsors.
4. What percentage, and how many dollars, of per pupil funding provided by the state to each of these three schools was retained by the Mitchell School District in the 2021-2022 school year?
5. Is there any other school district in Oregon that sponsors more than one charter school? If yes, please provide the names of the districts and the charter schools they sponsor.

In response to your request, ODE informed you that it does not possess any records containing the specific information you requested and referred you to the Mitchell School District. Your appeal followed.

We contacted Emily Nazarov, ODE Government and Legal Affairs manager, regarding your petition. She reiterated ODE's position that it is not the custodian of any records that contain the specific information you seek. She also noted that, under the Public Records Law, ODE is not required to create new records or to answer questions in response to a public records request. *See Attorney General's Public Records and Meetings Manual* at 7 (2019) ("*Manual*"); and Public Records Order, Sep 20, 2021, Volin (the law only applies to records that exist at the time of a public records request).

We note that while your request was framed largely as a series of questions to ODE, ODE effectively treated it as a records request, which was appropriate since the Public Records Law does not require ODE to answer questions. Under the circumstances, we have no reason to second-guess Ms. Nazarov's representation that ODE is not the custodian of records that contain the specific information you requested.[1] And because we cannot order ODE to disclose records for which it is not the custodian, we must respectfully deny your petition. *See* ORS 192.311(2) (defining "custodian"); and ORS 192.324 (the law applies only to a public body that is the custodian of requested records).

Sincerely,

Lisa M. Udland

Lisa M. Udland
Deputy Attorney General

ACF:pjn
c via e-mail only: Emily Nazarov (ODE)

[1] Although ODE is not the custodian of records containing the specific information that you requested about virtual charter schools, we observe that detailed information about State School Fund distributions to school districts is available on ODE's website. *See* https://www.oregon.gov/ode/schools-and-districts/grants/pages/school-district-and-esd-payment-statements.aspx (accessed April 27, 2023). ODE's website also hosts a list of virtual charter schools in Oregon that identifies their sponsoring district. *See* https://www.oregon.gov/ode/learning-options/schooltypes/charter/pages/default.aspx (accessed April 27, 2023).