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April 25, 2023

Arnold R. Huskey
SID #6674480
3405 Deer Park Drive SE
Salem, OR 97310

Re: Petition for Public Interest Fee Waiver
Department of Corrections
DOJ File No.: 291200-GA0038-23

Dear Mr. Huskey:

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 asks the Attorney General to find that the Department of Corrections (DOC) unreasonably denied your request for a public interest fee waiver. For the reasons that follow, we respectfully deny your petition.

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). And regardless of how interested the public may be in a particular matter, if the requester fails to demonstrate the ability to meaningfully disseminate the requested information, disclosure will not primarily benefit the general public. *See Attorney General's Public Records and Meetings Manual* at 24 (2019). 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).

Your petition stems from a two-part request you submitted to DOC for: (a) the existing contract or agreement or documentation of understanding between DOC and a company called Fully Loaded Electronics; and (b) all documentation regarding DOC's Nintendo Switch Program, its implementation, choice of vendor, or any other material regarding the program.

After DOC provided you with a fee estimate to process your request, you requested DOC waive its fees. In support of your request, you explained your intent to share these records with the approximately 14,000 Adults In Custody (AICs) across Oregon because they are affected by the Nintendo Switch Program. You also argued that public transparency is needed in this instance because you do not believe the contract was properly awarded and because you believe the program's cost to the state exceeded $480,000.00 in its first year. DOC denied your request after determining that disclosure to you would not primarily benefit the general public. Your petition followed.

In response to your petition, we contacted Michelle Dodson, DOC Records Officer. She expressed DOC's position that your request does not qualify for a public interest fee waiver because disclosure to you will not primarily benefit the general public. As a threshold matter, she explained, neither your initial request nor your petition demonstrates any ability to meaningfully disseminate the requested information to the general public. Although your petition indicates that you intend to post the records in the libraries of all DOC institutions, she explained that you lack any authority to do so.

Ms. Dodson also explained that DOC does not have a contract or formal agreement with Fully Loaded Electronics, and that there was no formal procurement process associated with the current program. Rather, DOC has identified Fully Loaded Electronics as an authorized vendor of specially modified and approved Nintendo Switch gear from which AICs and their families can purchase equipment directly. Therefore, she explained, the major premise of your public interest argument (i.e., public expenditures for a flawed contract) is inaccurate. Finally, she provided us with correspondence relating to your unsuccessful efforts to obtain repairs to an older, and currently unapproved, Nintendo Switch unit. Our review of those records suggests to us that your interest in the requested records is primarily personal to you.

Under the circumstances, we cannot conclude that DOC unreasonably denied your request for a public interest fee waiver. Your petition does not adequately explain how disclosure to you will primarily benefit the general public. Nor does your petition demonstrate your ability to meaningfully disseminate the information to the general public, which is a necessary condition to be eligible for a public interest fee waiver. We therefore respectfully deny your petition.

Sincerely,

Lisa M. Udland

Lisa M. Udland
Deputy Attorney General

ACF:pjn
c via e-mail only: Michelle Dodson (DOC)