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June 1, 2023

VIA E-MAIL ONLY: shanikofreepress@gmail.com

Zachary F. Marquart
3439 NE Sandy Blvd. #849
Portland, OR 97232

Re: Petition for Public Records Disclosure Order and Fee Waiver
Oregon Department of Transportation
DOJ File No.: 734640-GA0096-23

Dear Mr. Marquart:

This letter is the Attorney General's response to your petition for the disclosure of records under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition, which we received May 25, 2023, asks the Attorney General to find that the Oregon Department of Transportation (ODOT) failed to complete its response to a public records request within prescribed timeframes, to order ODOT to produce certain records you have requested, and to order ODOT to waive its processing fees. 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 an agency has failed to provide one of the responses required by ORS 192.329 within fifteen business days. ORS 192.407(1)(a). And, with certain exceptions, the Attorney General is required to treat any such failure as a denial of the request. *Id*. The agency carries the burden to sustain its actions. ORS 192.411(1).

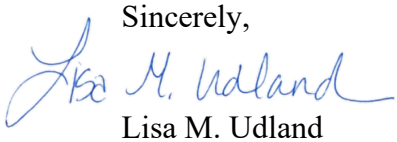
Your petition stems from a request you submitted to ODOT on May 3, 2023 seeking records about highway funds disbursed to the City of Shaniko. You also requested a public interest fee waiver. Your petition asserts that ODOT failed to provide a proper response within fifteen business days of receiving your request.

We contacted Patricia Barrett, ODOT Agreements & Contracts Coordinator, regarding your petition. She explained ODOT's position that the agency did provide you with one of the responses required by ORS 192.329 within the prescribed timeframe. Specifically, on May 15, 2023, eight business days after receiving your request, ODOT e-mailed you a form that acknowledged receipt, provided ODOT's initial fee estimate and estimated completion date of June 9, 2023, and informed you that your request for a fee waiver was still pending approval. She also explained that due to an error in the e-mail address provided by you, you did not receive ODOT's acknowledgment until the error was identified on May 18, 2023. Ms. Barrett provided us correspondence showing that on May 20, 2023, you notified ODOT that you were not able to open the acknowledgement form. In response, ODOT e-mailed you a reformatted copy of the form on May 22, 2023. According to Ms. Barrett, ODOT was not aware that you were still unable to open the acknowledgment form until it received your petition on May 25, 2023, at which time ODOT sent you another copy of the form. Finally, she explained that ODOT has now approved your request for a fee waiver and is now processing your request with the same estimated completion date of June 9, 2023.

We acknowledge your frustrations with the communication issues in this instance, but we cannot conclude that ODOT failed to respond to your request in the time and manner prescribed in ORS 192.329. On this record, we find that ODOT complied with ORS 192.329(5) by providing you with an estimated completion date within the fifteen-business day timeframe. Though its first response was initially misdirected, that error was corrected within the statutory timeframe. Thereafter, it appears ODOT responded appropriately to communications issues as they were identified. Moreover, because these issues had no impact on ODOT's original estimated completion date, we cannot conclude that they delayed or otherwise impaired your access to the requested records. Under the circumstances, we cannot order disclosure because ODOT did not fail to comply with ORS 192.329, and it has not denied any aspect of your request. *See* ORS 192.407(1)(a); and ORS 192.411 (the Attorney General's authority is generally limited to instances in which a state agency has withheld records). Finally, we observe that your request that we order ODOT to waive its processing fees is moot because ODOT approved your request for a fee waiver.

For the foregoing reasons, we respectfully deny your petition.

Sincerely,



Lisa M. Udland
Deputy Attorney General

ACF:pjn
c via e-mail only: Patricia Barrett (ODOT)