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May 17, 2023

VIA E-MAIL ONLY: ak@alankessler.law

Re: Petition for Public Records Disclosure Order
Oregon Legislative Assembly – Office of Legal Counsel
DOJ File No.: 156001-GA0050-23

Dear Mr. Kessler:

This letter is the Attorney General's response to your petition, on behalf of a client, for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition appeals the denial of a records request made by your client to the Oregon Legislative Assembly. Because the Legislative Assembly is currently in session, we conclude that we lack jurisdiction to consider your petition at this time.

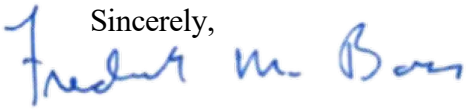
Under the Oregon Public Records Law, persons who have been denied access to public records in the custody of a "state agency" may petition the Attorney General for review. ORS 192.411. A "state agency" is defined as "any state officer, department, board, commission or court created by the Constitution or statutes of this state *but does not include the Legislative Assembly or its members, committees, officers or employees* insofar as they are exempt under section 9, Article IV of the Oregon Constitution." ORS 192.311(6) (emphasis added). The referenced constitutional provision provides, in relevant part, that legislators "shall not be subject to *any* civil process" while the Legislative Assembly is in session. Or Const, Art IV, § 9 (emphasis added).

We conclude that the public records petition process – which entails the enforcement of the Public Records Law – implicates "civil process" within the meaning of the Oregon Constitution.[1] And as the Legislative Assembly is currently in session, its members are presently

[1] ORS 192.411(1) places the burden on the state agency to sustain its action in denying a records request. Upon receipt of a petition, the Attorney General is also required to notify the agency involved and the agency is required to transmit the public record for the Attorney General's review along with a statement of reasons for why it should not be disclosed. *See* ORS 192.422(2). The process is an integral step in the civil litigation process for disputes under the Oregon Public Records Law. If the Attorney General denies a petition in any respect, the petitioner is entitled to initiate de novo litigation. ORS 192.411. If the Attorney General grants a petition in any respect, the public body that is the subject of the order is entitled to initiate litigation. *Id.* And if the Attorney General fails to issue an order within seven days, the petitioner is entitled to initiate litigation as though the petition has been denied. ORS 192.418(1). With limited exceptions that are not relevant here, a petitioner cannot litigate without filing a petition. *See Morse Bros., Inc. v. Oregon Department of Economic Development*,103 Or App 619 (1990). The

exempt from such process. Or Const, Art IV, § 9. By being so exempt, the Legislative Assembly, its members, committees, officers, and employees are also expressly excluded from the Public Records Law definition of a "state agency" at this time. ORS 192.311(6). It follows that we presently lack jurisdiction to consider your appeal because our authority under ORS 192.411 is limited to denials by state agencies. We therefore must respectfully dismiss your petition.

Sincerely,



for

Lisa M. Udland
Deputy Attorney General

ACF:pjn
c via e-mail only: Dexter Johnson (Office of Legislative Counsel)

outcome of the petition process also has other effects upon the rights of the parties. *See, e.g.,* ORS 192.411(3) (detailing when the Attorney General shall or shall not represent the agency in subsequent litigation); and ORS 192.431(3) (detailing petitioner's right to attorney fees if the agency fails to comply with an order by the Attorney General to disclose records). We therefore conclude that compelled participation in the petition process at this time would be inconsistent with ORS 192.311(6).