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July 28, 2023

VIA E-MAIL ONLY: youalwaysplay@gmail.com

Raymond Stewart
384 20th Street
Springfield, OR 97477

Re: Petition for Public Records Disclosure Order
Department of Administrative Services
DOJ File No.: 107130-GA0118-23

Dear Mr. Stewart:

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 Department of Administrative Services (DAS) to disclose the investigative report prepared by DAS' Risk Management Division (DAS Risk) in connection with a tort claim notice filed by you. 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 exemptions from disclosure must be express. Any person denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld. ORS 192.411(1). The agency carries the burden to sustain any such denial. *Id*.

In response to your petition, we contacted Kluane Baer in DAS Risk. She informed us that the report you requested was prepared by DAS Risk in response to a notice of tort claim that you filed against your employer, the Department of Human Services. She explained DAS Risk's position that the report is currently exempt from disclosure under ORS 192.345(1) because your filing of a tort claim notice indicates to DAS Risk that litigation is reasonably likely to occur.

The Public Records Law conditionally exempts from disclosure public records held by an agency if the records either pertain to litigation to which an agency is a party or pertain to litigation that the agency shows is "reasonably likely to occur." ORS 192.345(1). One indication that litigation is reasonably likely to occur is that a person has filed a notice of tort

claim against a public body. *Attorney General's Public Records and Meetings Manual* (2019) (the "*Manual*") at 52. This office has previously determined that notes or reports prepared by an agency in response to such a notice would fall within the exemption. *Id*. (citing Public Records Order, January 12, 1990, Bischoff; Public Records Order, June 8, 1990, Madrid; and Public Records Order, October 1, 2003, Franzen). *See also* Public Records Order, August 16, 2004, Bobbitt.

Because the report you seek was prepared by DAS Risk in response to your tort claim notice, we conclude that it is exempt from public disclosure "unless the public interest requires disclosure in the particular instance." ORS 192.345(1); *Manual* at 52 – 53. This office has previously concluded that in assessing whether the public interest requires the disclosure of records covered by this exemption, "an interest in private litigation does not justify disclosure." *Manual* at 53 (citing Public Records Order, June 8, 1990, Madrid; and Public Records Order, August 16, 2004, Bobbitt). We also observe that neither your original request to DAS nor your petition identifies a public interest that requires disclosure of the investigative report, and we are not aware of a public interest requiring disclosure in this particular instance.

Under the circumstances, we cannot find that the public interest requires disclosure in this instance. We therefore conclude that DAS was permitted to withhold the investigative report from you under ORS 192.345(1) and respectfully deny your petition.[1]

Sincerely,

Lisa M. Udland

LISA M. UDLAND
Deputy Attorney General

ACF/pjn
c via e-mail only: Kluane Baer (DAS)

[1] This order only addresses your right to the investigative report under the Public Records Law. It does not address what rights you or other parties may have to the report under the rules of discovery insofar as you may seek the report for purposes of private litigation.