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

September 7, 2023

Martin Allen Johnson
SID #5410056
777 Stanton Blvd
Ontario, OR 97914

Re: Petition for Public Records Fee Waiver
Oregon Department of Corrections
DOJ File No.: 291200- GA0133-23

Dear Mr. Johnson:

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 relates to a records request denied by the Oregon Department of Corrections (ODOC) after it determined you were unable to pay the associated processing fees and that your request did not qualify for a public interest fee waiver. We understand your petition to assert that ODOC unreasonably denied your request for a fee waiver. We also understand your petition to be asking the Attorney General to order ODOC to prepare at no cost to you an itemized list of responsive records and associated processing fees. For the reasons discussed below, we respectfully deny your petition.

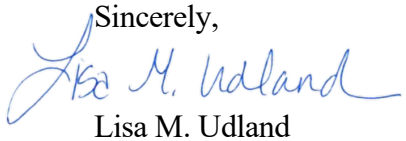
Agencies may establish fees reasonably calculated to recover actual costs in making public records available, but "may furnish copies without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public." ORS 192.324(4) and (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) ("*Manual*").

We observe that the general facts and legal issues presented by your petition are substantially the same as those considered by us in denying two petitions previously filed by you. *See* Public Records Order, Nov 15, 2022, Johnson; and Public Records Order, Jun 16, 2014,

Johnson. As in those prior instances, ODOC has adequately demonstrated in this instance that you lack sufficient funds in your trust account to pay the fees associated with processing any aspect of your request, to include identifying responsive records for the purpose of calculating a fee estimate. We also observe that the Public Records Law and ODOC's rules are largely unchanged from when we issued our prior orders. *See, e.g.,* OAR 291-037-0035(3) (requiring adults in custody to prepay and to maintain sufficient funds in their trust accounts at the time of their public records requests). Your current petition does not cite any new authority or provide any new arguments that warrant reconsideration of our prior orders. We therefore reach the same conclusion in this instance. That is, the Public Records Law does not require ODOC to identify and list all responsive records as part of generating a fee estimate, nor does it require ODOC to commit resources to calculating fee estimates that it has reasonably concluded you are unable to pay.

We also conclude that ODOC did not unreasonably deny your request for a fee waiver in this instance. There is nothing in the available record that suggests to us that disclosing the requested records to you will primarily benefit the general public. Rather, your petition suggests that you need the requested records for purposes of private litigation.[1] We have consistently held that the public interest in disclosure typically does not depend on such private concerns. *See Manual* at 23. Moreover, you have not demonstrated any meaningful ability to disseminate this 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
Deputy Attorney General

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

[1] This order only addresses your right to access the requested information under the Public Records Law. It does not address what rights you or other parties may have to obtain these records under the rules of civil discovery insofar as they may be relevant to private litigation.