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November 14, 2023

VIA E-MAIL ONLY: dhefflinger@hotmail.com

Donald Hefflinger
16032 SE Chelsea Morning Drive
Happy Valley, OR 97086

Re: Petition for Public Interest Fee Waiver
Department of Consumer and Business Services, Division of Financial Regulation
DOJ File No.: 440040-GA0165-23

Dear Mr. Hefflinger:

This letter is the Attorney General's response to two petitions under the Oregon Public Records Law, ORS 192.311 to 192.478. We understand your petitions, which we received November 7, 2023, to be asking the Attorney General to order the Division of Financial Regulation of the Department of Consumer and Business Services (DFR) to waive its fees for processing certain public records requests. For the following reasons, we respectfully deny your petitions.

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 first petition stems from a November 3, 2023, request to DFR seeking records that contain the names of three individuals. You also requested a waiver of all fees, which you supported with a general claim that disclosure is in the public interest. On November 6, 2023,

DFR denied your request for a public interest fee waiver and provided you with a fee estimate for the approximately 200 hours DFR's estimates it will take to process your request. In denying your request for a fee waiver, DFR noted that your request did not indicate how you intend to use the requested information, did not explain why you believe disclosure is in the public interest, and did not demonstrate any ability to meaningfully disseminate the requested information to the general public. To reduce the cost of DFR's fee, DFR recommended you use narrower search terms; limit the scope of your request to only the most relevant DFR employees; and specify the types of records to be searched, such as limiting the search to e-mails.

In response to DFR's denial of your request for a fee waiver, on November 7, 2023, you narrowed the scope of your original request to just one name. DFR responded to your narrowed request with substantially the same fee estimate. In its response, DFR noted that processing your modified request would require nearly the same level of effort; i.e., a division-wide search for e-mail, electronically stored information and paper records. DFR also informed you that "[w]e could run an e-mail search, as we have done for you in the past. [We] can't guarantee what documents would be captured by an e-mail search. Nevertheless, it would likely produce a few results and your expense would be zero or minimal."

We contacted Gail Gage, a compliance specialist in DFR, regarding your petitions. She indicated that the costs entailed with processing your requests, as well as the public interest considerations associated with the information you seek, are substantially the same as a request for a fee waiver that we considered in response to a petition filed by you earlier this year. *See* Public Records Order, July 13, 2023, Hefflinger. In that instance, we denied your request for a public interest fee waiver because you failed to demonstrate how disclosure to you would primarily benefit the general public, the available record suggested that your interest in the records was personal to you, and you failed to demonstrate any ability to meaningfully disseminate the requested information to the general public. *Id*.

Ms. Gage explained DFR's position that, as before, your new requests are primarily intended to serve your personal interests, rather than the public interest. She noted that neither of your current requests or petitions explains why you believe disclosure to you will primarily benefit the general public. She also reiterated that you have made numerous requests over the last six years for records relating to personal matters and that you have never demonstrated any intent or ability to meaningfully disseminate the requested information to the general public. Therefore, she explained, DFR denied your requests for a public interest fee waiver in this instance after determining that you had not demonstrated why disclosing this information to you would primarily benefit the general public. *See* ORS 192.324(5). She also explained that, as DFR has done in the past, DFR suggested ways for you to substantially reduce or even eliminate the cost to you by refining your requests in this instance. For example, she explained, DFR informed you that if you narrowed your requests to e-mails, DFR believes it can process your requests at a greatly reduced cost, and possibly at no charge.

Under the circumstances, we cannot conclude that disclosing these records to you will primarily benefit the general public. We therefore conclude that DFR did not unreasonably deny your fee waiver requests. We are not aware of any general or heightened interest among the general public in the information you seek, and neither of your petitions explains how disclosure

to you will primarily benefit the general public. Rather, the nature of your current and past requests continues to suggest to us that your primary interest in this information is personal to you. As we informed you in our prior order, such personal interests are generally not sufficient to satisfy the standard for a public interest fee waiver. And as before, your current petitions do not demonstrate any ability to meaningfully 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 petitions.

Sincerely,

Lisa M. Udland

Lisa M. Udland
Deputy Attorney General

ACF/pjn
c via e-mail only: Gail Gage (DFR)