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December 12, 2023

VIA E-MAIL ONLY: bdecker@ojrc.info

Brian Decker
Oregon Justice Resource Center
P.O. Box 5248
Portland, OR 97208

Re: Petition for Public Records Disclosure Order
Oregon Secretary of State
DOJ File No.: 165200-GA0183-23

Dear Mr. Decker:

This letter is the Attorney General's response to your petition, on behalf of the Oregon Justice Resource Center (OJRC), for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition asks the Attorney General to order the Elections Division of the Office of the Oregon Secretary of State (SOS) to disclose all investigation records from 2016 to present relating to the activities of Bracken McKey. Your petition asserts that SOS has failed to timely respond to your October 23, 2023 request for these records.

Ordinarily, any person who believes a state agency has failed to respond to a public records request within the prescribed timeframes may petition the Attorney General for appropriate relief. *See* ORS 192.407(1). However, if the public records at issue are in the custody of an elected official, then "no petition to require disclosure may be filed with the Attorney General," and if a petition is filed, "it shall not be considered by the Attorney General * * *." ORS 192.427.

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In this instance, we spoke to P.K. Runkles-Pearson, SOS Chief Legal and Risk Counsel, who informed us that the records you seek are in the custody of the Office of the Secretary of State, an elective office.[1] We therefore lack jurisdiction in this matter and must respectfully dismiss your petition. ORS 192.427

Sincerely,

Lisa M. Udland

Lisa M. Udland
Deputy Attorney General

ACF/pjn
c via e-mail only: P.K. Runkles-Pearson (SOS)

[1] Although the current Secretary of State was appointed by the Oregon Governor, when considering the application of the elected official rule in ORS 192.427, we have concluded that "it is necessary to look to the character of the office itself, rather than the means by which the individual in that office was selected." Public Records Order, Nov 3, 1995, Larson; *see also* Public Records Order, May 31, 2023, Borrud. Because the Office of the Secretary of State is an elective office, we conclude that ORS 192.427 prohibits the Attorney General from considering your petition. You may instead seek relief in circuit court. *See* ORS 192.427.