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February 5, 2024

VIA E-MAIL ONLY: elizabeth@ejilaw.com

Elizabeth Inayoshi
330 NE Lincoln St, Ste 200
Hillsboro, OR 97124

Re: Petition for Public Records Disclosure Order
Department of Human Services
DOJ File No.: 100012-GA0015-24

Dear Ms. Inayoshi:

This letter is the Attorney General's response to your amended petition, on behalf of a client, for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. Your initial petition, dated January 26, 2024, sought an order from the Attorney General compelling the Department of Human Services (DHS) to disclose your client's personnel file, which you claimed that DHS had refused to provide notwithstanding your client's signed release authorization. Your amended petition, dated January 29, 2024, indicates that DHS had furnished your client's official personnel file to you, but that you believe DHS has improperly withheld additional personnel records, including your client's "supervisory working file," recent feedback forms, applications for promotion, and material related to your client's efforts to receive reasonable accommodations for a disability. Your petition explains your belief that these additional records are responsive to a request contained in a tort claim notice filed by you against DHS on October 19, 2023. You therefore request the Attorney General order DHS to produce these additional records. For the reasons discussed below, 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 its actions. ORS 192.411(1).

We discussed your petition with Caroline Burnell in DHS Public Records Unit. She provided us with a copy of your December 1, 2023 public records request, which sought your client's "personnel file from [Human Resources]." Ms. Burnell explained that DHS completed

its response to your request on December 22, 2023, by providing you with a copy of all of the personnel records available to DHS Human Resources in the Workday system. She also explained DHS' position that your tort claim notice was not a public records request and that DHS has not otherwise received, or denied, a public records request from you for the additional materials listed in your petition. However, she explained, DHS has agreed to treat your amended petition as a new public records request for these additional materials and will contact you shortly.

Under the circumstances, we cannot conclude that DHS denied a public records request from you for the additional materials you now seek. We believe DHS reasonably interpreted your December 1, 2023 public records request to be limited to your client's official personnel file maintained by Human Resources in Workday, and DHS has furnished those records to you. We also find that your October 19, 2023 tort claim notice was not a request under the Public Records Law; i.e., it was not styled as a public records request, and it was not submitted to DHS in accordance with the department's published procedure for making public record requests. *See* ORS 192.324(7). And to the extent your tort claim notice can reasonably be interpreted as a request for these additional materials, it specifically sought disclosure under ORS 652.750(2), a provision outside of the Public Records Law that requires agencies to permit employees to inspect their personnel records and to provide them with certified copies of those records within 45 days of a written request. Our authority under the Public Records Law does not include enforcing employee rights under ORS 652.750(2).

On this record, we conclude that DHS has not denied a public records request from you for these additional records. And because DHS has agreed to treat your petition as a new request for those materials, we respectfully deny your petition. ORS 192.411(1) (in general, the Attorney General may order disclosure only when a records request has been denied).

Sincerely,

Lisa M. Udland

LISA M. UDLAND
Deputy Attorney General

ACF:pjn
c via e-mail only: Caroline Burnell (DHS)