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August 23, 2024

Andrew Anderson
SID #23279853
3920 E. Ashwood Rd.
Madras, OR 97741

Re: Petition for Public Records Disclosure Order
Oregon Liquor Control Commission
DOJ File No. 845600-GA0078-24

Dear Mr. Anderson:

This letter is the Attorney General's response to your petition for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.431. Your petition asks the Attorney General to find that the Oregon Liquor Control Commission (OLCC) has constructively denied a records request submitted by you in January 2021 because you believe OLCC has failed to provide you with all of the materials you seek. We understand your petition to be seeking an order compelling OLCC to furnish you with any nonexempt records it has not yet disclosed. For the reasons discussed below, we respectfully deny your petition.

Your petition relates to an extensive, five-part request for all OLCC correspondence, records, and licensing and compliance materials that relate to yourself, your ex-wife, and at least six businesses, from 2015-2021. OLCC states that it completed its response in October 2023. However, you believe OLCC's response was incomplete because OLCC furnished fewer than 1,900 e-mails despite what you characterize as a 2021 promise that you would receive nearly 20,000 e-mails. You also assert that OLCC did not disclose any of the additional records identified in your 2021 request, suggesting to you that OLCC did not conduct an adequate search for responsive records. You also claim that OLCC did not cite any exemptions from disclosure when completing its response.

We discussed your petition with Eric Spooner, OLCC Public Records Coordinator. He explained OLCC's position that it completed its response to your request in October 2023. Specifically, he explained that OLCC conducted a thorough search for records responsive to each part of your request, that it has disclosed to you all nonexempt records that it located, and that it does not possess any additional nonexempt records responsive to your request. He explained that although OLCC indicated in 2021 that it had located approximately 20,000 potentially responsive records, OLCC later determined that nearly 90% of them were either not

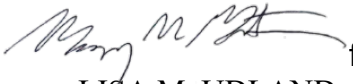
responsive or duplicative. He explained that after completing its review, OLCC identified and disclosed 2,665 responsive records to you. He indicated that some of the records furnished to you contained redactions of material that OLCC determined was exempt under ORS 192.355(1) (internal advisory communications), ORS 192.355(40) (lists of e-mail addresses), and ORS 192.355(4) (public employee personal contact information). He also explained that OLCC withheld fewer than ten responsive records in their entirety after determining that they were exempt from disclosure as attorney-client privileged communications. *See* ORS 40.225.

ORS 192.329(2) provides, in relevant part, that an agency's response to a records request is complete when it has done *all* of the following: (1) furnishes copies of all requested records within its custody that it determines are not exempt from public disclosure; (2) complies with the requirement in ORS 192.338 to separate and disclose nonexempt material from records that contain both exempt and nonexempt material; (3) asserts any exemptions from disclosure that the agency relied upon to withhold or redact responsive records; and (4) informs the requester that they may seek a review of the agency's decision to withhold responsive material.

In this instance, OLCC acknowledges that it redacted material from at least some of the records it disclosed to you, and that it withheld a relatively small number of records in their entirety. In completing its response, OLCC was therefore required to identify the exemptions it relied upon to withhold that material and to notify you of your right to seek a review of OLCC's decision. ORS 192.329(2)(b). There is nothing in the available record, however, demonstrating that OLCC did either of these things. OLCC's October 2023 response was therefore technically not complete. That said, we find that OLCC has effectively cured its first error by now identifying the exemptions it relied upon to withhold certain material from you. And as your current and prior petitions demonstrate, your right to seek a review of OLCC's actions was not prejudiced by OLCC's failure to inform you of that right in this instance. Consequently, there is no meaningful relief we can grant at this time to cure the defects with OLCC's October 2023 response. If you disagree with any of the exemptions asserted by OLCC, you are also free to petition our office to review those decisions.

More importantly given the focus of your petition, we cannot conclude that OLCC constructively denied your request by failing to disclose more records to you. Mr. Spooner represents that OLCC does not possess any additional records responsive to your 2021 request, and he has adequately described why you received fewer records than OLCC initial search might have suggested. As we have no reason to second guess his representation that OLCC has no more responsive records to disclose, we are unable to grant the relief you seek and must therefore respectfully deny your petition.

Sincerely,



for
LISA M. UDLAND
Deputy Attorney General

ACF:pjn
c via e-mail only: Eric Spooner (OLCC)