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

November 27, 2024

VIA E-MAIL ONLY: 10cmangum@gmail.com

Chad D. Mangum
317 E 830 S
Farmington, UT 84205

Re: Petition for Public Records Disclosure Order
Oregon Board of Tax Practitioners
DOJ File No.: 119001-GA0120-24

Dear Mr. Mangum:

This letter is the Attorney General's response to three petitions filed by you under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petitions, which we received November 20, 2024, ask the Attorney General to find that the Oregon Board of Tax Practitioners (the "Board") failed to provide you with estimated completion dates for responding to three public records requests submitted by you in October 2024 within the timeframes prescribed by ORS 192.329(5). Your petitions also ask us to order the Board to disclose the requested records within a timeframe specified by this office, to pay a penalty of $200.00 for each violation, and to waive or reduce its fees for processing your requests. For the reasons that follow, we respectfully deny your first and second petitions. We dismiss your third petition as moot because we understand that the Board has completed its response to the underlying records request.

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 agencies are obligated to respond to records requests "as soon as practicable and without unreasonable delay." ORS 192.329(1). An agency that is unable to complete its response within 15 business days of receiving a request is required to provide a written statement that the agency is still processing the request and provide a reasonable estimated date by which the agency expects to complete its response based on the information currently available. ORS 192.329(5)(b). A requester may petition the Attorney General if an agency has failed to provide the written statement required by ORS 192.329(5)(b) within the prescribed timeframe. ORS 192.407(1)(a). The Attorney General must treat an agency's failure to comply with ORS 192.329(5) as a denial of the request, unless the agency can demonstrate

that compliance was not required for one of the reasons listed in ORS 192.329(6). *Id*. An agency that cannot comply with the prescribed timeframe must complete its response to a request as soon as practicable and without unreasonable delay. ORS 192.329(8). On appeal, the agency carries the burden to sustain its actions. ORS 192.411(1). If the Attorney General grants a petition and finds that the agency responded to the request with undue delay or otherwise failed to respond to the request, the order granting the petition may require the agency to waive or reduce its processing fees, and to pay a penalty of $200 to the requester. ORS 192.407(3).

Your first petition stems from an October 3, 2024 request seeking records relating to the requirement that out-of-state tax preparers obtain Oregon licensure before preparing Oregon tax returns, including (1) any legal opinions, statutory references, or internal memoranda that provide the legal basis for this licensing requirement; (2) any correspondence between the Board and the Attorney General's Office regarding this requirement; and (3) documents or records that the Board relied upon when issuing guidance about this requirement on its website. Your second petition relates to an October 4, 2024 request seeking (1) a settlement agreement between H&R Block and the Board relating to the licensing of out-of-state tax preparers; (2) correspondence and communications between the Board and H&R Block related to the settlement; (3) any legal opinions or internal memorandum regarding the enforcement or interpretation of Oregon licensing laws as they pertained to the settlement; (4) any administrative orders or rulings issued in connection with the case; and (5) any other pleadings, filings, or related documents. You also requested that the Board waive any processing fees associated with both requests.

The Board acknowledged both requests on October 7, 2024. The Board informed you that it would not be able to complete its response to either request within the next 10 days, but that it would send you a time estimate within 10 days. The Board also denied your request for a public interest fee waiver, informed you that the cost would exceed $25.00, and stated that the Board would provide a more detailed fee estimate if you wished to proceed with your requests. You replied that you intended to appeal the fee waiver denial, but that you still wanted the Board to provide a cost estimate and estimated completion date. We understand that the Board had not provided you with a fee estimate or estimated completion date as of the date of your petitions.

Your petitions assert that the Board failed to comply with ORS 192.329(5) because it did not provide its fee estimates or estimated completion dates for your first two requests within the 15-business day deadlines, which we calculate to have been October 24th and 25th.[1] We understand that the Board has now provided you with its fee estimate for the remaining 64 hours of staff time, and 16 hours of attorney time, that the Board calculates it will take to complete its response to your remaining requests. We also understand that the Board has informed you that it estimates it will be able to complete its response to your first request within the next 12-14 weeks, and to complete its response to your second request within the next 3 weeks, with both

[1] Your petitions also claim that the Board has failed to comply with ORS 192.324(7), which requires public bodies to identify individuals responsible for handling public records requests. You assert that this failure provides separate grounds for relief under ORS 192.407(1)(c), the provision governing appeals of alleged violations of ORS 192.329. In short, you argue that because ORS 192.329 cross references ORS 192.324, a violation of the latter provision is a violation of ORS 192.329 and therefore appealable to this office under ORS 192.407(1)(c). Even if we accept your argument, we would have to deny you relief because ORS 192.407(3) does not prescribe a remedy or sanction for alleged violations of ORS 192.324(7), and there is no other provision in the Public Records Law granting the Attorney General authority to enforce ORS 192.324(7).

timeframes being contingent upon the Board's receipt of the estimated processing costs. *See* ORS 192.329(3).

We discussed your petition with Laura Kardokus, the Board's Executive Director and Catriona McCracken, the Board's DOJ-assigned contact counsel. They acknowledged that the Board did not provide you with an estimated completion date within 15 business days of either of your requests. However, they expressed the Board's position that compliance with ORS 192.329(5) was not required in this instance because it was impracticable to provide you with fee estimates or estimated completion dates by October 24th and 25th. ORS 192.407(1)(a). As support, they noted that both requests are extensive and seek records that have been difficult to locate and that will require considerable review time by legal counsel. And because the Board has only two staff members, they explained, it lacked the staff necessary to complete its responses to your requests, or to accurately calculate estimated costs and completion dates by the statutory deadlines. *See* ORS 192.329(6)(a). Ms. Kardokus and Ms. McCracken also explained that during that period, staff and legal counsel expended more than 25 hours responding to multiple requests for information from you, locating responsive records, and responding to your appeal of the Board's denial of your request for a fee waiver. *See* Public Records Order, Oct 15, 2024, Mangum. Therefore, they argued, it was not practicable for the Board to comply with the deadlines without demonstrably impeding the staff's ability to perform other necessary services, including responding to other records requests and to the petition you filed during that timeframe. *See* ORS 192.329(6)(b)-(c). Finally, they expressed the Board's position that its failure to comply with the notice requirement in ORS 192.329(5) has not resulted in any undue delay in the processing of your requests. They explained that the Board has continued to work on your requests throughout this period and noted that the Board's fee estimate does not seek reimbursement for the costs that the Board has incurred to date in processing those requests, which consist of approximately 20 hours of staff and attorney time.

The record demonstrates that the Board failed to provide the responses required by ORS 192.329(5) within the prescribed timeframe – specifically, it did not provide you with "a reasonable estimated date by which [the Board] expects to complete its response based on the information currently available" within 15 business days of receiving either of your requests. *Id*. We are required to treat this failure as a denial of your request unless the Board demonstrates that compliance was not required under ORS 192.329. ORS 192.407(1)(a).

Although the Board argues that compliance was not required in this instance, we need not resolve that issue. Assuming compliance was required, we conclude that the relief you seek is not warranted in this instance. The Board has not actually denied your requests, and it represents that it has expended significant time in its ongoing efforts to process them. Based on the available record, we have no reason to conclude that the Board's failure to timely notify you of its estimated completion dates resulted in any undue delay in the processing of your requests. And the Board's estimated completion timeframes appear reasonable to us given the Board's small size, the broad scope of your requests, and the amount of time that staff and legal counsel

have expended on them to date. We therefore decline to order disclosure within a different timeframe and respectfully deny your petition. *See* ORS 192.407(3)(a).[2]

Sincerely,

Lisa M. Udland

LISA M. UDLAND
Deputy Attorney General

ACF:pjn
c via e-mail only: Laura Kardokus (Oregon Board of Tax Practitioners)

[2] Because we decline to grant your petition, the additional sanctions you requested are not available in this instance. *See* ORS 192.407(3) (penalty and fee waiver or reduction provisions are contingent upon an order granting the petition).