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December 10, 2024

VIA E-MAIL ONLY: abeyhawck@gmail.com

Alek Beyhawck
11575 SW Pacific Hwy
Tigard, OR 97223

Re: Petition for Public Interest Fee Waiver
Oregon Department of Transportation
DOJ File No.: 731020-GA0124-24

Dear Mr. Beyhawck:

This letter is the Attorney General's response to your petition under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition asks the Attorney General to find that the Oregon Department of Transportation (ODOT) unreasonably denied your request for a public interest fee waiver. For the following reasons, we respectfully deny your petition.

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 of a fee waiver or reduction by a state agency may petition the Attorney General for review. ORS 192.324(6).

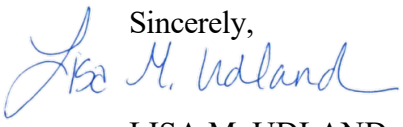
Your petition relates to a request for the entire file of ODOT's recent investigation against your company, including the initial complaint, all evidence, and the rationale for the final decision. You also requested a public interest fee waiver stating that you plan to use this information to educate the public about how ODOT is attacking owner-operators in Oregon without any basis. ODOT denied your request for a fee waiver after it concluded that you are

seeking this information primarily for your own private interests and that disclosure to you would not primarily benefit the general public. ODOT furnished you with an estimate of $100.00 for the 3 hours ODOT estimates it will take to process your broad request for the entire file, which ODOT informed you consists of the investigative report as well as related administrative materials, research, and communications. Understanding that many of those materials may not be of interest to you, ODOT also furnished you with a fee estimate of $20.00 for just the investigative report, noting that it includes the initial complaint and all of the evidence leading to ODOT's final decision. Your appeal followed and it asks us to order ODOT to waive the $100.00 fee for the entire investigative file.

In response to your petition, we contacted Winnie Dawn, ODOT's Public Records and Administrative Rules Coordinator. She explained ODOT's position that because the requested records relate to ODOT's investigation of your company, you appear to be seeking these records primarily for private commercial purposes. She also explained ODOT's position that its investigation was legitimate and disputed your claim that the requested materials will show that ODOT is attacking owner-operators without basis. She explained that ODOT has not received any other inquiries about this investigation and is not aware of any broad or heightened public interest in this matter. Finally, she explained ODOT's position that neither your initial request nor your petition demonstrates that you have the ability to meaningfully disseminate this material to the general public. Therefore, she explained, ODOT has determined that your request does not qualify for a public interest fee waiver because it does not believe that disclosing this material to you will primarily benefit the general public.

After discussing your petition with Ms. Dawn and reviewing ODOT's investigative report, we cannot conclude that ODOT unreasonably denied your request for a public interest fee waiver. Our review of the report did not disclose any basis for concluding that ODOT's investigation was improper. Your interest in this material appears primarily personal to you, and we have not identified any general or heightened interest among the public in ODOT's investigation. Moreover, we cannot conclude on this record that you have the intent or ability to meaningfully disseminate the requested material to the general public, which is a necessary condition to be eligible for a public interest fee waiver. We therefore respectfully deny your petition.

Sincerely,



LISA M. UDLAND
Deputy Attorney General

ACF:pjn
c via e-mail only: Winnie Dawn (ODOT)