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January 24, 2025

VIA E-MAIL ONLY: jason.schupp@betterins.org

Jason Schupp
9006 Bush Creek Circle
Frederick, MD 21704

Re: Petition for Public Records Disclosure Order
Division of Financial Regulation, Department of Consumer and Business Services
DOJ File No.: 440030-GA0010-25

Dear Mr. Schupp:

This letter is the Attorney General's response to your petition under the Oregon Public Records Law, ORS 192.311 to 192.431. Your petition asks the Attorney General to order the Division of Financial Regulation (DFR) of the Oregon Department of Consumer and Business Services (DCBS) to disclose copies of all currently active licenses issued by DCBS to captive insurance companies. 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. In addition to the express exemptions contained in ORS 192.345 to 192.355, any other records or information that is confidential, privileged, or prohibited from being disclosed under other Oregon laws is also exempt from public disclosure. ORS 192.355(9)(a). 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. *Id*.

Your records request to DCBS, dated January 13, 2025, sought copies of currently active licenses issued by DCBS to captive insurance companies. DCBS denied your request on January 16, 2025, claiming that the records you requested are exempt from disclosure under ORS 735.156. Your petition followed.

In response to your petition, we contacted Gail Gage, a compliance specialist in DFR. She explained DCBS' position that the certificates you seek are confidential under ORS 735.156, a provision that provides that all "documents, materials and other information in the possession of [DCBS] under ORS 735.150 to 735.190 are confidential and subject to public disclosure only as provided in ORS 705.137."[1] Specifically, she explained, the certificates you seek are issued and maintained under the authority set forth in ORS 735.158(6),[2] which makes them confidential under ORS 735.156.

We find that the certificates of authority you seek fall within the plain meaning of "documents, materials and other information in the possession of [DCBS] under ORS 735.150 to 735.10." ORS 735.156.[3] They are therefore confidential and "subject to public disclosure only as provided in ORS 705.137." *Id*. As it does not appear that any provision of ORS 705.137 would permit DCBS to disclose the requested certificates to you, we conclude that they are exempt from public disclosure under ORS 192.355(9)(a).

You argue that the confidentiality provisions of ORS 735.156 do not apply because you believe DCBS' possession of the certificates arises under ORS 731.406(2), a provision that makes all certificates of authority the exclusive property of the state.[4] We are not convinced by this argument. ORS 731.406(2) does not address DCBS' creation, issuance, maintenance, or possession of the certificates of authority; it simply clarifies that the state, not the insurer, owns them.

Finally, you argue that there is a public interest in the disclosure of the certificates. However, we cannot order disclosure on the basis of the public interest in the certificates because the application of ORS 735.156 is not conditioned upon the balancing of the public interest. In other words, ORS 735.156 creates an unconditional exemption, meaning that the legislature has effectively balanced the public interest. *See Attorney General's Public Records and Meetings Manual* at 25 (2024).

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[1] ORS 705.137(1) provides that "a document, material or other information that [DCBS] possesses or controls for the purpose of administering * * * the Insurance Code and that is described in statute as confidential * * * is not subject to disclosure under" the public records law.

[2] ORS 735.158(6) provides that "[i]f the director is satisfied that the documents and statements filed by the applicant captive insurer meet the requirements of ORS 735.150 to 735.190, the director may issue a certificate of authority that authorizes the captive insurer to transact insurance in this state."

[3] *See also* ORS 735.176 (providing that "any captive insurer for which the Director of [DCBS] issues a certificate of authority under ORS 735.150 to 735.190 must comply with sound actuarial principles as determined by the director and must submit reports demonstrating such compliance to the director."); ORS 735.158(7) ("A certificate of authority issued under this section expires annually * * * .").

[4] ORS 731.406(2) provides: "Although issued to the insurer the certificate of authority is at all times the property of this state. Upon any suspension, revocation or termination thereof the insurer promptly shall deliver the certificate of authority to the Director of the Department of Consumer and Business Services."

For the foregoing reasons, we respectfully deny your petition.

Sincerely,

LISA M. UDLAND
Deputy Attorney General

DEP:pjn
c via e-mail only: Gail Gage (DCBS)