DAN RAYFIELD
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

August 4, 2025

VIA E-MAIL ONLY: steve@highroadconstructionsolutions.com

Steven Templin
PO Box 582
Pleasant Hill, OR 97455

Re: Petition for Public Records Disclosure Order
Oregon Department of Transportation
DOJ File No.: 734152-GA0102-25

Dear Mr. Templin:

This letter is the Attorney General's response to your July 21, 2025, petition for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition asks the Attorney General to order the Oregon Department of Transportation (ODOT) to disclose records relating to active contract claims made against ODOT. For the reasons that follow, 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).

Your petition indicates that you made a records request to ODOT for its most current monthly claims status report. The request you sent further explains your understanding "that this report includes general information regarding construction claims submitted on ODOT projects and is distributed monthly to internal ODOT staff." In response to your petition, ODOT asserted that the records were exempt from disclosure pursuant to ORS 192.345(1). Specifically, ODOT explained that:

> The ODOT monthly claims status report is compiled by ODOT to track litigation or pending litigation and discuss these matters with ODOT's attorney. The information in the reports contain[s] ODOT's summaries of the claims to aid in those purposes. Therefore, because the report is generated for litigation purposes, the report is covered under ORS 192.345(1).

Your petition states that you are a former ODOT Resident Engineer. You seek the claims report in support of your consulting business. You would like to identify contractors who may benefit from your expertise in resolving their dispute with ODOT. You believe the report contains basic information about the claims including a general description of the claim. You question the basis for ODOT's denial because you believe the report "is a general summary of multiple claims—not material prepared for a specific legal proceeding—and therefore should not be protected by the attorney work product doctrine."

In response to your petition, we spoke with the Attorney General's contact counsel for ODOT. She explained ODOT's position that the report pertains to litigation that ODOT believes is reasonably likely to occur. ODOT said the report is generated in response to claims made against it by contractors for the purpose of responding to those claims and any associated litigation. We also spoke with ODOT's assigned litigation counsel. He indicated that he receives the report and participates in a monthly meeting with ODOT to discuss the report and related claims in anticipation of litigation. ODOT's litigation counsel stated that there is a reasonable likelihood of the claims resulting in litigation.

We reviewed the report at issue. It contains summary level information prepared by ODOT about "active claims" made against ODOT. The report discusses the status of each claim and has notes related to ODOT's internal decision making. The report we reviewed also contained a note about setting up a meeting with ODOT's trial counsel to discuss a particular issue associated with one of the claims.

The Public Records Law conditionally exempts from disclosure public records held by an agency if the records either pertain to litigation to which an agency is a party or pertain to litigation that the agency shows is "reasonably likely to occur." ORS 192.345(1). One indication that litigation is reasonably likely to occur is that a person has filed a notice of tort claim against an agency. *Attorney General's Public Records and Meetings Manual* (2024) (the "*Manual*") at 42 – 43. This office has previously determined that records and reports prepared by an agency in response to such a notice would fall within the litigation exemption. *Id*. (citations omitted); *see also* Public Records Order, July 28, 2023, Stewart. We find that the filing of a contract claim with ODOT is akin to the filing of a tort claim notice and an indication that litigation is reasonably likely to occur.

///

///

///

///

///

Because the ODOT claims report was prepared in response to claim notices received by ODOT, we conclude that the report is exempt from disclosure "unless the public interest requires disclosure in the particular instance." ORS 192.345(1); *Manual* at 42 – 43. Your petition states that you are seeking the records to support your consulting business. We have previously concluded that in evaluating whether the public interest requires the disclosure of records covered by this exemption, a private interest "does not justify disclosure." *Id*. at 43 (citations omitted). We have also noted that the confidentiality provided by the exemption is designed to "place governmental bodies, as parties or potential parties to litigation, on an even footing with private parties." *Id*. at 42. Under the circumstances, we cannot conclude that the public interest in disclosure outweighs the interest in preserving the confidentiality of these litigation records. We therefore conclude that ODOT was permitted to withhold the records from you under ORS 192.345(1) and respectfully deny your petition.

Sincerely,

LISA M. UDLAND
Deputy Attorney General

DEP:pjn
c via e-mail only: Winnie Dawn (Oregon Department of Transportation)