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VIA E-MAIL ONLY: levi@valorinvestigates.com

Levi Bakke
501 C Avenue
La Grande, OR 97850

Re: Petition for Public Records Disclosure Order
Oregon Department of Human Services
DOJ File No.: 100305-GA0151-25

Dear Mr. Bakke and Ms. Burnell:

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 find that the Oregon Department of Human Services (ODHS) has failed to respond to a record request within the timeframes prescribed by the Public Records Law. For the reasons discussed below, we grant Mr. Bakke's 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 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 written request is required to provide the requester with a reasonable estimated completion date. ORS 192.329(5). A requester may petition the Attorney General if they believe an agency has failed to comply with the processing timelines and other provisions contained in ORS 192.329. ORS 192.407(1). An agency's failure to provide a response required by ORS 192.329 within the prescribed timeframe shall be treated as a denial of the request, unless the agency can demonstrate that compliance was not required under ORS 192.329. ORS 192.407(1)(a). The agency carries the burden to sustain its actions. ORS 192.411(1).

Mr. Bakke's petition relates to a 21-part request that he submitted to ODHS on September 27, 2025, which stems from a series of prior requests. The 21 parts of this multi-part request broadly fall within two categories: (1) requests for records, and (2) requests for ODHS

to create records or perform specific actions.[1] According to Mr. Bakke, as of the date of his petition, he has not received an estimated completion date or any further correspondence from ODHS related to the record request portions of this 21-part request. He has, however, repeatedly communicated with ODHS on related matters, including in the same email thread that contained the original 21-part request.

The record demonstrates that ODHS did not respond to Mr. Bakke's request as required by ORS 192.329 within the prescribed timeframe; specifically, ODHS failed to provide him with a reasonable estimated completion date within 15 business days. And although ODHS has informed us that its ability to process public record requests is consistently hampered by the volume of requests it receives, ODHS has not demonstrated why compliance with the prescribed timeframe was impracticable in this instance for one of the reasons listed in ORS 192.329(6).[2]

Under the circumstances, we are required to treat ODHS' failure to timely respond to Mr. Bakke as a denial of his request. ORS 192.407(1)(a). And when an agency fails to comply with ORS 192.329, we have discretion to order the disclosure of nonexempt material within any timeframe we deem appropriate to bring the agency into compliance with ORS 192.329. ORS 192.407(3). In light of the six-week delay in ODHS' response, we elect to exercise that discretion in this instance and grant Mr. Bakke's petition.

In determining an appropriate timeframe for disclosure in this case, we note that ODHS currently estimates that it can provide some nonexempt records to Mr. Davis within 15 business days, but that it will take at least dozens of hours to locate and review records responsive to the data search portions of the 21-part request. In the time allowed for a response to this petition, ODHS has been unable to provide an estimated completion timeframe that would commence upon receipt of payment of its processing fees. But ODHS has agreed to furnish nonexempt records to Mr. Davis on a rolling basis as they become available.

Given the large volume of records requested and the considerable amount of time it will likely take to process them, we believe a timeframe of 6 weeks is reasonable in light of its willingness to furnish nonexempt records on a rolling basis. *See* Public Records Order, April 24, 2024, Davis (reasonable for agency to complete its response within 8 weeks based on 100-hour estimate to process); Public Records Order, Nov 24, 2021, Anderson (given the size and scope of the request, reasonable for agency to complete its response within 20 weeks based on 200-hour estimate to process). We therefore order the department to complete its response to Mr. Bakke within 6 weeks of receipt of payment.

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[1] With respect to the second category, which is the larger of the two, we note that the Public Records Law does not require agencies to disclose the reasoning behind their actions, provide information that does not appear in their public records, or create new records in response to a public records request. *See Attorney General's Public Records and Meetings Manual* at 6 (2024).

[2] ORS 192.329(6) states that the timeframes prescribed by ORS 192.324 and 192.329(5) do not apply if compliance would be impracticable because (a) the staff necessary to complete a response to the public records request are unavailable; (b) compliance would demonstrably impede the agency's ability to perform other necessary services; or (c) because of the volume of public records requests being simultaneously processed by the public body. An agency cannot comply with the prescribed timeframes is still required to acknowledge the request and complete the response as soon as practicable and without unreasonable delay. ORS 192.329(8).

For the foregoing reasons, we grant Mr. Bakke's petition. Without more information from ODHS about its estimated timeframe for a response, we also order ODHS to complete its response to Mr. Bakke within 6 weeks of either receiving payment or waiving some or all of its fee. We also expect that ODHS will produce nonexempt records to Mr. Bakke on a rolling basis as they become available. If ODHS elects not to comply with this order, it has seven days to announce its intention to seek judicial review. *See* ORS 192.407(3) and 192.411(2).

Sincerely,

BENJAMIN GUTMAN
Interim Deputy Attorney General

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