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November 14, 2025

VIA E-MAIL ONLY: wstinman@ebglaw.com

William Stinman
1125 NW Couch Street, Suite 500
Portland, Oregon 97209

Re: Petition for Public Records Disclosure Order
Oregon Health Authority
DOJ File No.: 443029-GA0158-25

Dear Mr. Stinman:

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 Oregon Health Authority (OHA) to disclose an unredacted version of a record provided to you in response to a recent public records request. 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. 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).

According to your petition, OHA provided you with a redacted version of the "Health Care Market Oversight (HCMO) Program Determination of Covered Transaction Status" form for Coquille Valley Hospital and Coquille Valley Hospital District, Transaction #016 (the "Optional Determination Form"). This Optional Determination Form was submitted to OHA on November 1, 2023, by Davis Wright Tremaine LLP on behalf of Coquille Valley Hospital, Coquille Valley Hospital District, and a newly formed entity named Coquille Valley Health. In disclosing this Optional Determination Form to you in response to your public records request, OHA informed you that it made redactions to this form based on ORS 192.355(4). Your petition followed.

In your petition, you assert that ORS 192.355(4) is not applicable because "there should not be anything confidential about a public body (Coquille Valley Hospital District) describing a transaction, why or why not an acquisition is taking place, why or why not the transaction is covered, and if exclusion criteria are met." You also assert that the public interest "weighs strongly in favor of a public body making this information available to the public" because one of the purposes of the HCMO Program was to promote transparency.

In response to your petition, we contacted Sarah Bartelmann, Cost Programs Manager at OHA. She informed us that OHA's position is that the non-public information contained in the Optional Determination Form was submitted in confidence and therefore exempt under ORS 192.355(4). That provision exempts from disclosure:

> Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

Id.

The purpose of this exemption is to encourage the voluntary submission of information to agencies with some reasonable assurance that it will be kept confidential. *See Attorney General's Public Records and Meetings Manual* at 86 (2024). For the exemption to apply, the following conditions must be satisfied:

1. The source must have submitted the information on the condition that it would be kept confidential;

2. The source must not have been required by law to provide the information;

3. The information itself must be of a nature that reasonably should be kept confidential;

4. The public body obliged itself in good faith not to disclose the information; and

5. The public interest would suffer by the disclosure.

OHA informs us that the attorney at Davis Wright Tremaine who submitted this Optional Determination Form sought pre-filing assurances from OHA that it would hold the form in confidence and also requested confidentiality at the time the form was submitted. OHA states that it agreed to maintain the information in the Optional Determination Form as confidential until it was otherwise made public or OHA was required by law to disclose it.

In addition, OHA also notes that, in accordance with OAR 409-070-0042(1), transacting parties are *not* required by law to submit one of these forms to OHA. And it is OHA's position that the select information that was redacted in the Optional Determination Form at issue here should reasonably be kept confidential. This is because, according to OHA, none of the redacted

information has been publicly disclosed and it contains sensitive information and legal analysis provided to OHA for the sole purpose of making a determination on the transaction at issue. Moreover, OAR 409-070-0042(5) requires that "[c]onfidential material provided by any party in connection with an optional determination must be maintained as confidential." And if the transaction described in the Optional Determination Form had been subject to further review by OHA's HCMO Program, and the entities were required to file a Notice of Material Change Transaction outlining the terms of the proposed transaction, ORS 415.501(13)(c) requires OHA to "maintain the confidentiality of all confidential information and documents that are not publicly available that are obtained in relation to a material change transaction" and prohibits OHA from "disclos[ing] the information or documents to any person, including a member of the review board, without the consent of the person who provided the information or document."

Lastly, OHA contends that disclosure of the redacted information in the Optional Determination Form would have a chilling effect on entities voluntarily submitting information to OHA's HCMO Program, which is tasked with examining and monitoring the competitiveness of the health care market, and approving or denying mergers, acquisitions, and affiliations among hospitals, insurers, and provider organizations. According to OHA, the chilling effect associated with the public disclosure of this voluntarily submitted, confidential material by transacting entities harms the public interest by depriving OHA of essential information used to mitigate the increasing cost of health care in Oregon.

Under the circumstances, we conclude that OHA has met its burden of sustaining its decision to redact the non-public information in the Optional Determination Form. We readily conclude that the Optional Determination Form was filed voluntarily and with the expectation that the non-public information would be kept confidential. We also find that, through multiple assurances made to the transacting entities in accordance with OAR 409-070-0042(5), OHA obliged itself in good faith not to disclose that information.

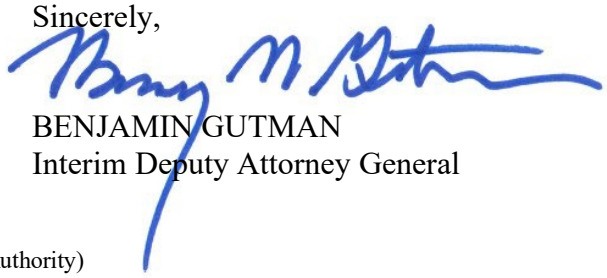
Regarding the third condition, we conclude that the redacted information in the Optional Determination Form is of a nature that reasonably should be kept confidential. The redacted material contains sensitive information about entity governance and operations as well as confidential legal analysis conveyed in frank communications to OHA for the sole purpose of making a determination on the transaction at issue. In accordance with ORS 192.338 and ORS 192.355(4), OHA has already disclosed the nonexempt and publicly available information contained in the Optional Determination Form. Rather than withholding the form in its entirety, OHA selectively redacted the confidential information in accordance with ORS 192.355(4). Further, requiring disclosure of confidential information submitted by transacting entities in OHA's optional determination forms would undercut OHA's statutory requirement to keep this same information confidential under ORS 415.501(13)(c) if OHA determines that the transaction at issue requires further review as a material change transaction. And OHA shared that many do.

We also conclude that the public interest would suffer by disclosure in this instance. The public has a strong interest in ensuring the health care market remains competitive and affordable in Oregon. And because voluntary submissions of optional determination forms are a significant source of enforcement information for OHA, the public also has a strong interest in protecting

transacting entities who submit those optional forms. Based on the information provided by OHA, it is reasonable to assume that some number, and perhaps a significant number, of those transacting entities would have been less forthcoming with information if there was no reasonable assurance of confidentiality. Similarly, it is reasonable to conclude that future reporting would be stifled, at the expense of public health care costs, if we required OHA to disclose confidential information after transacting entities requested confidentiality. We are also unable to discern any public interest that would be meaningfully advanced by disclosing the redacted information to you in this instance.

For the reasons discussed above, we conclude that OHA was permitted to redact the non-public information from the Optional Determination Form under ORS 192.355(4). We therefore respectfully deny your petition.

Sincerely,



BENJAMIN GUTMAN
Interim Deputy Attorney General

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c via e-mail only: Sarah Bartelmann (Oregon Health Authority)