DAN RAYFIELD
ATTORNEY GENERAL

BENJAMIN GUTMAN
INTERIM DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

Justice Building
1162 Court Street NE
Salem, Oregon 97301-4096
Telephone: (503) 378-6002

November 5, 2025

VIA E-MAIL ONLY: cass.mcleod-skinner@obce.oregon.gov

Jane Smith[1]
Petitioner

Cassandra C. McLeod-Skinner, J.D.
530 Center Street NE, Suite 620
Salem, OR 97301

Re: Petition for Public Records Disclosure Order
Oregon Board of Chiropractic Examiners
DOJ File No.: 811001-GA0134-25

Dear Ms. Smith and Ms. McLeod-Skinner:

This letter is the Attorney General's response to Ms. Smith's petition for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. The petition, which we received October 16, 2025,[2] asks the Attorney General to order the Oregon Board of Chiropractic Examiners (the "Board") to disclose records related to the Board's investigation of a complaint made by Ms. Smith against a licensed chiropractor. The Board denied the request after determining that Ms. Smith had not demonstrated by clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure. *See* ORS 676.175(2)(a). For the reasons that follow, we respectfully deny the 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. If a responsive record contains both exempt and nonexempt material, the agency shall separate and disclose the nonexempt material. ORS 192.338. 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 192.401 and 192.411(1).

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[1] Under the unique circumstances presented by this denied petition, we have agreed to anonymize the petitioner's name.
[2] We thank Ms. Smith for granting an extension of time in which to respond.

The petition stems from a request made by Ms. Smith to the Board for records related to the Board's investigation of a licensed chiropractor (the Licensee).[3] The petition explains that Ms. Smith made a complaint against the Licensee. After investigating the complaint, the Board closed the case without discipline. The Board informed Ms. Smith that there was insufficient evidence to find that the Licensee violated a statute or administrative rule. Ms. Smith then made her records request, which the Board denied by citing the confidentiality provisions of ORS 676.165 and 676.175.

In general, an agency that withholds public records from inspection carries the burden of demonstrating that the material it withheld falls within an exemption. ORS 192.411(1). However, ORS 192.401(2)(a) establishes an exception to this general rule in the context of certain appeals to the Attorney General:

> The person seeking disclosure of a public record of a health professional regulatory board, as defined in ORS 676.160, that is confidential or exempt from disclosure under ORS 676.165 or 676.175 shall have the burden of demonstrating to the Attorney General by clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure, including but not limited to the public interest in nondisclosure.

This special appeal provision applies to the records sought by Ms. Smith because the Board is a health professional regulatory board. *See* ORS 676.160(12). Thus, if the records at issue are confidential or exempt from disclosure under ORS 676.165 or 676.175, Ms. Smith has the burden of demonstrating by clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure. ORS 192.401(2)(a). ORS 676.165 provides, in relevant part, that "[i]nvestigatory information obtained by an investigator and the report issued by the investigator shall be exempt from public disclosure." ORS 676.175 provides that "[a] health professional regulatory board shall keep confidential and not disclose to the public any information obtained by the board as part of an investigation of a licensee or applicant, including complaints concerning licensee or applicant conduct and information permitting the identification of complainants, licensees or applicants."

In connection with this appeal, we reviewed the petition and exhibits submitted by Ms. Smith. We reviewed a letter submitted by the attorney for the Licensee. And we obtained the investigative file maintained by the Board including the testimony and exhibits submitted by the witnesses. Having reviewed the entire file, we conclude the Board's investigative records are covered by ORS 676.165 and 676.175. As a result, they are exempt from public disclosure unless Ms. Smith demonstrates "that the public interest in disclosure outweighs * * * the public interest in nondisclosure." ORS 676.175.

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[3] ORS 676.175(1) makes confidential "information permitting the identification" of a licensee targeted by an investigation. Thus, we are not publicly identifying the Licensee in this order.

In her petition, Ms. Smith explains that she has "no information as to why the" Board closed her complaint due to insufficient evidence. She argues that release of the records "will elucidate the extent to which the Board carried out its mandate to protect the public." Ms. Smith submits that the "most compelling evidence" supporting public disclosure are various statements made to her by the Board's investigators during the investigation. Ms. Smith argues that these statements demonstrate a belief by the investigators that her allegations were serious and credible. Ms. Smith also suggests the Licensee should be subjected to heightened public scrutiny in this instance because he was publicly disciplined by the Board in another matter, and she believes the Board's disciplinary decision in that other matter was influenced by her complaint. Finally, Ms. Smith submitted records showing that the Licensee may have criminal convictions in the state of Georgia, and she states he has additional criminal and traffic convictions in two other states.

In response to the petition, the Board asserts that Ms. Smith's "stated reason for requesting the records included to understand why the investigation took the time it did and ended without sufficient evidence to take disciplinary action and to help [her] obtain closure and heal from a traumatic experience." The Board argues this is a personal, not public, interest, and that Ms. Smith did not present sufficient information to demonstrate by clear and convincing evidence that the public interest in disclosure outweighed other interests in nondisclosure.

We have previously recognized that the interests in nondisclosure promoted by ORS 676.165 or 676.175 include:

1. The interest of licensees in being protected from embarrassment, particularly with respect to complaints that do not have merit.
2. The interest of complainants and witnesses in avoiding retaliation or unwanted attention, particularly with respect to matters concerning medical treatment.
3. The public interest in encouraging complaints and frank disclosures to the Board.[4]

In this instance, both Ms. Smith and the Licensee provided testimony and submitted exhibits to the Board concerning personal matters that an ordinary person would find highly embarrassing if publicly disclosed. There has been no publicity surrounding this matter that would tend to diminish these privacy interests. Thus, this situation is distinct from other instances in which we have ordered disclosure after concluding, in part, that the subject of a disciplinary investigation had a reduced expectation of privacy due to the extent of information that was already publicly available.[5] As a result, we find there is a substantial public interest in nondisclosure of the Board's investigation.

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[4] *See* Public Records Order, May 25, 2023, Tierney and Krishnaswami; Public Records Order, Nov 12, 2014, Budnick and Braatz; and Public Records Order, Oct 19, 2010, Van der Voo and Braatz.

[5] *See, e.g.,* Public Records Order, Jun 22, 2017, Brosseau and Hale (minimal privacy interest in withheld disciplinary records where substantially all of the information they contained was publicly available); Public Records Order, Aug 25, 2017, Brosseau and Hale (law enforcement officers' privacy interest diminished where the fact of their discipline and alleged misconduct was already publicly disclosed).

We turn next to whether Ms. Smith has overcome this substantial interest by presenting clear and convincing evidence of a public interest in disclosure. In her petition, Ms. Smith argues that release of the investigative records is needed to ascertain whether the Board conducted a proper investigation and reached the correct outcome. Under the Public Records Law, the "public interest" in disclosure is the interest that the public has in knowing how public business is conducted and what state officials are doing on the job. *See In Defense of Animals v. OHSU*, 199 Or App 160, 175-76 (2005) (citations omitted). We have previously determined, however, that this generic public interest in understanding how the Board conducts business cannot be sufficient, on its own, to overcome the presumption of confidentiality that attaches to information made confidential or exempt from disclosure under ORS 676.165 and 676.175. *See* Public Records Order, Oct 19, 2010, Van der Voo and Braatz.

As Ms. Smith indicates in her petition, during her interview with the Board, one of the investigators told her that her complaint raised a public safety issue. We find this unsurprising because the testimony provided by Ms. Smith about the Licensee's conduct was concerning. But the investigators also explained to Ms. Smith that this was just the beginning of the process. After interviewing Ms. Smith, the investigators interviewed the Licensee and gathered additional evidence related to the complaint. Upon completion of the investigation, they submitted their findings to the Board, which then reached its decision. Under these circumstances, we do not find the statement made by the investigator at the outset of the investigation to be clear and convincing evidence sufficient to overcome the presumption of confidentiality.

Ms. Smith also urges us to consider certain evidence, including voicemails and text messages, she submitted in connection with her complaint to the Board. Ms. Smith states that this evidence demonstrates that the Licensee "is a threat to public safety." We reviewed the entirety of the evidence and the investigative reports provided to the Board. Given the totality of the evidence presented, we do not see a clear and convincing reason to subject the Board's decision to additional public scrutiny.

Ms. Smith also submits evidence of potential criminal convictions for DUII and other driving-related offenses by the Licensee prior to his licensing by the Board. These alleged convictions were not the subject of the complaint made by Ms. Smith. According to its published policy, the Board requires applicants to disclose their criminal history and submit to a fingerprint-based state and federal criminal background check. Presumably, any issues with the Licensee's background were addressed by the Board prior to his licensure. If not, the Board is now on notice of these allegations and could, if appropriate, open a new investigation. Regardless, we do not find these allegations to provide clear and convincing evidence that the investigation into Ms. Smith's complaint should be disclosed.

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Ms. Smith also suggests that her complaint led to increased discipline of the Licensee in a separate matter. Ms. Smith correctly notes that the Licensee has been publicly disciplined by the Board in an unrelated matter. This other matter was adjudicated while Ms. Smith's complaint was being investigated. In the unrelated matter, the Board issued the Licensee a Notice of Proposed Discipline.[6] A few months later, the Board issued an Amended Final Stipulated Order in the other matter. The discipline imposed in the final order was more severe than proposed in the initial notice. Ms. Smith submits this increased discipline may have resulted from her complaint. We did not find evidence supporting this contention. In its final order, the Board specifically articulated the concerns resulting in the final discipline. The order does not mention the allegations brought by Ms. Smith, and we have no reason to doubt the Board's stated rationale for the discipline imposed.

Ms. Smith also argues that the behavior in the unrelated matter and the allegations in her complaint suggest a "pattern of misconduct" by the Licensee that requires heightened scrutiny. We have previously found that "multiple consistent allegations" of misconduct implicate a more significant public interest. *See* Public Records Order, May 25, 2023, Tierney (public allegations of similar misconduct made by eight patients against a medical professional required heightened scrutiny of board's disciplinary decision). We find some similarities, but also significant differences, between the complaint filed by Ms. Smith and the public disciplinary action. Thus, we do not find that the prior disciplinary action provides sufficient clear and convincing evidence to overcome the strong presumption of confidentiality in the Board's investigative materials. For these reasons, we respectfully deny the petition.

Sincerely,

BENJAMIN GUTMAN
Interim Deputy Attorney General

DEP:pjn:of1

[6] This notice and the final order are publicly available on the Board's website.