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December 19, 2025

**VIA E-MAIL ONLY:** heus@quinnheus.com

Theodore P. Heus
9450 SW Gemini Dr.
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Beaverton, OR 97008-7105

Re: Petition for Public Records Disclosure Order
*Workers Compensation Board*
DOJ File No.: 438100-GA0178-25

Dear Mr. Heus:

This letter is the Attorney General's response to your petition seeking disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition asks the Attorney General to order the Workers' Compensation Board (the Board) to disclose records of certain claims adjudicated by the Board's Hearings Division. For the reasons discussed below, we 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. 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*.

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The Board's Hearings Division is tasked with "providing an impartial forum for deciding * * * cases, disputes and controversies" arising under Oregon's Worker's Compensation Law. ORS 656.708. Any party can "request a hearing on any matter concerning a claim" by making a written request to the Board. ORS 656.283(1). The Board must "refer the request for hearing to an Administrative Law Judge (ALJ) for determination as expeditiously as possible." ORS 656.283(3)(a). Upon conclusion of the hearing, the ALJ issues a written order. ORS 656.289. A party can seek review by the Board of the ALJ's order. The Board may "affirm, reverse, modify, or supplement the order of the ALJ * * * as it determines to be appropriate." ORS 656.295. The Board's publishes its Orders on Review,[1] but it does not publish ALJ orders when no appeal is made to the Board.

Your petition stems from a request made to the Board for those unpublished ALJ orders.[2] The Board responded to your request by providing a fee estimate to produce the requested records in a redacted fashion. The Board told you that it would be redacting "any and all information that can be used to identify a worker" because the Board believes that information constitutes "claim records" exempted from public disclosure by ORS 192.355(20). Your petition followed.[3]

ORS 192.355(20) exempts "[w]orker's compensation claim records of the Department of Consumer and Business Services"[4] subject to certain discretionary exceptions.[5] Your petition challenges the Board's assertion that information contained in the unpublished ALJ orders constitutes "claim records" falling within the exemption provided by ORS 192.355(20). You argue that Oregon Public Record's Law requires exemptions to be construed narrowly. You further argue that the plain meaning of "claim records" was not intended to include information contained in the final order of an administrative law judge.

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[1] The Board's Orders on Review are available on the Board's website Workers' Compensation Board : WCB Orders : Orders : State of Oregon

[2] Your request sought "[a]ll Opinion and Orders on Reconsideration that award an attorney fee of any amount issued by the Hearings Division from January 2, 2024, through December 31, 2024."

[3] Both your petition and the Board's response reference potential redactions to records that may be provided by the Board in the future. You have not paid the Board's fee, and the Board has not yet provided any redacted records. Because we have not reviewed any proposed redactions, we express no opinion about what information should or should not be redacted from the unpublished ALJ orders. We address only the narrow issue presented by the parties of whether an unpublished ALJ order can contain "claim records" exempted by ORS 192.355(20).

[4] The Board "is created within the Department of Consumer and Business Services." ORS 656.712. And the Hearings Division is "within the" Board. ORS 656.708.

[5] ORS 192.355(20) exempts claim records "except in accordance with rules adopted by the Director of the Department of Consumer and Business Services, in any of the following circumstances:

(a) When necessary for insurers, self-insured employers and third party claim administrators to process workers' compensation claims.
(b) When necessary for the director, other governmental agencies of this state or the United States to carry out their duties, functions or powers.
(c) When the disclosure is made in such a manner that the disclosed information cannot be used to identify any worker who is the subject of a claim.
(d) When a worker or the worker's representative requests review of the worker's claim records.

The legislature has not defined "workers' compensation claim records" for purposes of ORS 192.355(20). In evaluating the scope of the exemption, we have observed that it was created to prevent discrimination against persons who previously filed workers' compensation claims. *See* Attorney General's Public Records and Meetings Manual at 104 (2024). Consistent with this observation, we have previously interpreted the term to apply broadly to any information that may reveal the identity of a claimant, including both substantive information about claims and claimants, and administrative information about claims, such as the names of claimants, employers, and insurers. *Id*. (citing Public Records Order, Jul 9, 1998, Scheminske).

You seek to distinguish our order in *Scheminske* by observing that the *Scheminske* records requester sought "all *active* worker's compensation litigation cases now *pending* at the Board." You note that your request "seeks only final agency orders issued in 2024 by the Hearings Division." Our interpretation of "claim records" in *Scheminske*, however, rested on the nature of the information to be protected, not the procedural posture of the party's claim (pending vs. resolved). We observed that the "legislative history demonstrates an intent to protect from disclosure the identity of workers who have claims [because] disclosure of that information could result in the type of discrimination that this exemption was created to eliminate." Public Records Order, Jul 9, 1998, Scheminske. Relying on this legislative history, we affirmed the Board's position that claim records "include any information that would establish that a worker has filed a worker's compensation claim or action taken on or in respect to that claim." *Id*.; *see also* Public Records Order, Oct 1, 2021, Jacoby (finding that releasing "a compilation of information about a particular workers' compensation claim and its processing * * * would confirm the identity of the claimant and thereby risk the discriminatory effects that the exemption [provided by ORS 192.355(20)] seeks to avoid"). For these reasons, we conclude that the unpublished ALJ orders you seek fall within the exemption provided by ORS 192.355(20).

Your petition also observes that the Board has chosen to publish its Orders on Review. These orders contain the claimant's name and "even the most private medical information or incident." You state "this is strong evidence that [the unpublished ALJ] orders issued by the hearings division should not be considered 'claim records.'" You argue that if the Board believed that orders were "claims records" exempted by ORS 192.355(20), then it would not publish its Orders on Review.

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The Board contends, however, that the disclosure of the Orders on Review is a permissible exercise of statutorily provided discretion. ORS 192.355(20)(b) permits disclosure of claims records if "necessary for the director or other governmental agencies of this state * * * to carry out their duties, functions or powers" in "accordance with rules adopted by the Director of the Department of Consumer and Business Services." ORS 192.355(20)(b).[6] In *Scheminske*, we explained that the publication by the Board of the Orders on Review containing claims records was an exercise of this discretion:

> The [claims records] information is published pursuant to [ORS 192.355(20)(b)], which allows disclosure when the information is necessary for the Director or another governmental agency to perform its duties. The orders on Review are binding on the Administrative Law Judges. [The Board] advised us that the orders are published because those are the best methods of distributing the information to the parties who appear before the board and who need to be advised of the law that will be applied to their cases.

Public Records Order, Jul 9, 1998, Scheminske. In contrast, the Board explains there has been no determination by the agency to release the claims records information in the unpublished ALJ orders you seek because they are not binding. Under these circumstances, we do not believe the agency's discretionary decision to publish the Orders on Review constitutes an admission that orders are not claims records.

For the foregoing reasons, we find that information contained within the unpublished ALJ orders can constitute "[w]orker's compensation claim records" within the exemption provided by ORS 192.355(20), and we respectfully deny your petition.

Sincerely,

BENJAMIN GUTMAN
Deputy Attorney General

DEP:pjn
c via e-mail only: Autumn Blake (Workers Compensation Board)

[6] DCBS has adopted a rule permitting the director or his designee to provide access to claim records "when necessary for the director to carry out the director's duties, functions, or powers." OAR 436-001-0700.