DAN RAYFIELD
ATTORNEY GENERAL

BENJAMIN GUTMAN
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

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

May 1, 2026

VIA E-MAIL ONLY: jeff@saveoregonschools.org

Jeff Myers
8755 SW 165th Ave
Beaverton, OR 97007

Re: Petition for Public Records Disclosure Order
Department of Administrative Services
DOJ Files: 107062-GA0076-26

Dear Mr. Myers:

This letter is the Attorney General's response to your petition under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition asks the Attorney General to review the response of the Department of Administrative Services (DAS) to your records request. For the reasons discussed below, we respectfully deny your petition.

Your petition stems from a records request to DAS seeking records related to a $62,000,000 Oregon Cares Fund grant to The Contingent that was authorized by the Oregon Legislative Emergency Board on July 14, 2020. Your request specifically sought documents pertaining to a "Council of Trust" associated with the grant. DAS responded to your request by indicating that it had no records relating to the Council of Trust and no legal authority to obtain those records from any other body. Your petition followed.

Your petition contends that the Council of Trust was effectively created through government action because its role and decision-making authority were expressly outlined in the materials presented to the Legislative Emergency Board when it approved $62 million in CARES Act Coronavirus Relief Fund grants on July 14, 2020. Those materials stated that the that The Contingent would recommend grant awards to a Council of Trust, composed of Black leaders from across Oregon, and that the Council was required to approve all funding decisions. You argue that because the Emergency Board relied on this governance structure in authorizing the expenditure of public funds, the Council of Trust was delegated government authority, making it an advisory body or council "created or authorized by government action." As such, you contend that the Council's records qualify as public records subject to disclosure under Oregon's Public Records Law.

DAS explains that although the Legislative Fiscal Office (LFO) July 14, 2020, review materials referenced a "Council of Trust" in connection with a proposed grant to The Contingent, neither the Emergency Board's actual approval nor the subsequent grant agreement made any mention of such a council. DAS states that the only record in its possession referring to a Council of Trust is the LFO review document itself, which it has already disclosed. DAS further asserts that it has no knowledge that a Council of Trust was ever formed, and to the best of its understanding, no such entity exists.

DAS also indicates that it has no ability to obtain additional documents from The Contingent under the terms of the expired grant agreement. DAS explains that the agreement allowed access to The Contingent's records only for the limited purpose of audits or examinations, and that DAS is not conducting an audit and has no legal authority to compel production of the records sought. Moreover, because the grant agreement contains no reference to a Council of Trust and imposed no requirement that The Contingent use such a body in making funding decisions, DAS contends that any records relating to a Council of Trust fall outside the scope of the agreement.

In connection with your petition, we reviewed the meeting materials associated with the July 14, 2020, meeting of the Emergency Board. The materials contain an analysis from the LFO that describes the role of a "Council of Trust" in approving funding decisions:

> The Black United Fund and The Contingent will review applications and make recommendations to a Council of Trust, which will be composed of Black leaders from across Oregon. The Council of Trust must approve all funding decisions. Council members will serve until the funds are expended or for a one-year term if additional funding opportunities become available.

Contemporary reporting suggests that a Council of Trust "composed of 11 Black leaders from across Oregon" oversaw the distribution of the grant funds by The Contingent.[1]

Although a Council of Trust appears to have existed, we cannot find legal authority to suggest that it is a public body[2] or that DAS can access its records. The meeting materials of the Emergency Board are not law. We listened to the record of the July 14, 2020, meeting. The Emergency Board voted on and approved only the language included in the July 14, 2020, Certificate, which increased funding to DAS for purposes of making The Contingent Grant, but did not mention a Council of Trust:

> Increased the Federal Funds expenditure limitation established for the Department of Administrative Services at the April 23, 2020, meeting of the Emergency Board by $62,000,000 from funding made available to states through the Coronavirus Relief Fund for a grant to The Contingent, an organization with pre-existing state contract relationships, in partnership with the Black United Fund, to be used for Black relief and resiliency.

---

[1] *Covid-19 Relief Directed to Black Community*, The Portland Observer (Aug 15, 2020) *available at* COVID-19 Relief Directed to Black Community (accessed Apr 28, 2026).

[2] We also observe that is not uncommon for nonprofits to rely on non-governmental community advisors to assist with grant making decisions.

Moreover, the Emergency Board has no statutory authority to create new public bodies or new councils within existing bodies,[3] and we have not located any other statute or rule creating a Council of Trust as part of DAS or as a public body of the State.

You argue that DAS also has the authority to obtain the requested records from The Contingent due to the structure of the grant program. You note that the LFO's analysis expressly states that DAS was the state agency responsible for transmitting the funds and ensuring that The Contingent complied with federal Coronavirus Relief Fund spending, reporting, and legal requirements. As discussed above, the meeting materials, including the LFO's analysis, are not law. The Emergency Board chose to implement the policy discussed in the LFO's analysis by increasing funding to DAS "for a grant to The Contingent." By law, grant funds are "for the purpose of supporting or stimulating a program of the recipient" when "no substantial involvement by the contracting agency is anticipated other than monitoring compliance with grant conditions." [4] As a result, DAS's authority to monitor The Contingent is limited by the grant agreement and its express conditions.

We reviewed The Contingent Grant agreement. The agreement does not mention the Council of Trust, and it does not permit DAS to obtain records from the Contingent for purposes of responding to a public records request. The agreement allows DAS to examine The Contingent's records only "to perform examinations and audits * * *." DAS observes that the grant agreement has expired and that DAS is not undertaking an examination or audit.

In light of the constraints in the grant agreement, we consider whether DAS is the custodian of any public records relating to the Council of Trust. Under ORS 192.311(5)(a), a "public record" is any writing containing information related to the conduct of public business that is "prepared, owned, used or retained by a public body." A "custodian" is a public body "mandated, directly or indirectly, to create, maintain, care for or control" such a record. ORS 192.311(2)(b). On the record before us, we cannot conclude that DAS is the custodian of any records relating to the Council of Trust. DAS has not "prepared, owned, used or retained" any such records, is not mandated to "care for or control" them, and lacks legal authority to compel The Contingent to produce documents in response to a public records request. For these reasons, we respectfully deny your petition.

Sincerely,

BENJAMIN GUTMAN
Deputy Attorney General

DEP:pjn
c via e-mail only: Bryanna Duke (Department of Administrative Services)

---

[3] The Emergency Board meets during the interim between sessions of the Legislative Assembly. Its limited powers permit it to appropriate funds for certain defined purposes. *See generally* ORS 291.326(1). *See also Planned Parenthood Assn. v. Dept. of Human Res.*, 297 Or 562, 569-70 (1984) ("Neither the constitution nor the statute conferring the Emergency Board's powers ascribe to it a legislative function. The powers of the Emergency Board are to allocate emergency funds and to amend the budgets of state agencies * * *.").

[4] ORS 279A.010(1)(k)(A)(ii).