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June 10, 2026

VIA E-MAIL ONLY: bpoehler@StatesmanJournal.com

Bill Poehler
The Statesman Journal
925 Commercial St. SE Suite 100
Salem, OR 97302

Re: Petition for Public Records Disclosure Order
Oregon Department of Aviation
DOJ File No.: 109001-GA0118-26

Dear Mr. Poehler:

This letter is the Attorney General's response to your petition for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition asks the Attorney General to order the Oregon Department of Aviation (ODAV) to disclose certain draft findings. For the reasons that follow, 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).

Your petition stems from a request to ODOV for "draft findings of compatibility of the Aurora State Airport master plan as referenced in [a] May 7 work session." ODAV denied your request citing ORS 192.355(1) (the internal advisory exemption) and ORS 40.225 (attorney-client privilege). Your petition followed.

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Your petition explains that the Statesman Journal and other publications have published stories about the Airport Master Plan. You argue that ODAV has failed to demonstrate that the public interest in protecting any internal communications clearly outweighs the public interest in disclosure, particularly given the level of public interest in the master plan.

In response to your petition, we contacted Kenji Sugahara, ODAV's Director, and we reviewed the record ODAV withheld. The record is a draft version of ODAV's "Findings of Compliance with ORS 197.180 and OAR 738-130-0055." [1] It is a redline document containing hundreds of proposed additions and deletions, including more than 75 comments from Oregon Department of Justice (ODOJ) attorneys. Mr. Sugahara explained that the requested materials reflect ODAV's ongoing deliberative process before any proposed findings are presented to the Oregon State Aviation Board for consideration. He noted that the drafting process has been collaborative and iterative, involving multiple exchanges between ODAV and ODOJ, resulting in a series of evolving working documents, edits, comments, proposed language, and advisory communications. He further stated that each iteration of the draft has included substantial commentary, revisions, and analysis reflecting ODAV's ongoing efforts to establish a coordination process with local government partners and to determine how those efforts should be documented to satisfy applicable state land-use requirements.

When ODAV completes these draft findings, they will be presented to the Oregon Aviation Board at a public meeting to be held in the City of Salem before the end of the year. The public will have an opportunity to review the proposed findings and provide comments to the Board in person or in writing before the Board takes final action.

ORS 192.355(1) exempts from disclosure communications "within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action." The exemption does not apply "unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure." *Id*. As we have observed, "[t]he central thrust of this exemption is to encourage frankness and candor in opinions and recommendations exchanged within or between governmental bodies." *Attorney General's Public Records and Meetings Manual* at 73 (2024). A public record is exempt from disclosure under ORS 192.355(1) if it meets all of the following criteria:

1. It is a frank communication within a public body or between public bodies;

2. It is of an advisory nature (e.g., recommendations or opinions);

3. It is communicated preliminary to any final agency action;

4. It covers other than purely factual materials; and

5. In the particular instance, the public interest in encouraging frank communication clearly outweighs the public interest in disclosure.

[1] The particular version of the record we reviewed is labeled "DRAFT 3."

We have reviewed the draft and conclude that it satisfies the exemption's first three criteria. The draft findings constitute frank communications among ODAV employees and ODOJ attorneys that are advisory in nature that were communicated preliminary to any final agency actions.

We also conclude that the draft findings "cover other than purely factual materials" within the meaning of ORS 192.355(1). The record is a working draft of proposed findings that reflects the agency's evaluative process. Because the document's purpose is to develop and refine ODAV's proposed findings, the draft as a whole constitutes a recommendation rather than a factual report. As a result, there are no "purely factual materials" that can be segregated and disclosed.

ODAV contends that the public interest in protecting candid internal deliberations outweighs the public interest in disclosure, and Mr. Sugahara described the agency's need for such frank discussion as follows:

> The sensitive and contested nature of these findings makes the ability to engage in candid internal discussions particularly important. ODAV must consider the positions of multiple local partners and interest groups, address conflicting legal and policy concerns, respond meaningfully to public comments, and ensure that its ultimate findings satisfy the agency's own statutory responsibilities. To complete that work effectively, ODAV and its legal counsel must be able to candidly identify potential weaknesses, evaluate competing interpretations, test alternative approaches, propose revisions, and determine how best to address disputed issues before a final recommendation is presented to the Board.
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> Premature disclosure of these working materials would create a substantial risk of chilling those discussions. Agency staff and other public-body participants may become reluctant to document candid assessments, identify possible deficiencies, propose alternative approaches, or recommend revisions if preliminary observations could be publicly attributed to the agency as final positions or used outside the context in which they were offered. That self-censorship would materially impair ODAV's ability to develop well-informed findings, establish a workable coordination process, respond fully to public comments, and carry out its state law responsibilities.

Mr. Sugahara stated that ODAV has considered both the public interest in disclosure and the public interest in encouraging frank communications in this particular instance. He concedes that the public has a legitimate interest in reviewing and commenting on the agency's proposed findings. But he argues that the interest will be served when ODAV presents the proposed final findings to the Oregon Aviation Board at a public meeting because the public will have an opportunity to review and comment on the proposed findings before the Board takes final action.

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The internal advisory communication exemption recognizes that the public has an interest in encouraging public employees to engage in frank communication. *See* Public Records Order, July 10, 2002, Tucker ("PRO Tucker"). When balancing the public interest, one consideration is the extent to which public disclosure would "chill" employees' willingness to express their opinions and observations without inhibition. *See City of Portland v. Oregonian Publ'g Co.*, 200 Or App 120 (2005). We have also observed that the degree of the public interest in encouraging frank communications may vary according to the relationship of the communication to the work of the government. *See* PRO Tucker at 3. For example, we have concluded that the public interest in ensuring that advisors share their unrestrained opinions about new policy initiatives is usually very high because frank and candid policy discussions are central to the functions performed by many public bodies. *Id*.

In this instance, we find that ODAV has adequately demonstrated that the public interest in encouraging frank communication among its staff clearly outweighs the public interest in disclosure of the draft findings. The development of well-informed proposed findings depends on ODAV employees being able to exchange unrestrained comments, proposals, and draft language without concern that preliminary or exploratory assessments will later be treated as final agency positions. That level of candor is likely to be chilled if employees believe their internal deliberations may be publicly disclosed and potentially used for political or other purposes outside the deliberative context. *See, e.g.,* Public Records Order, August 2, 1999, Vickers (failure to protect internal assessments of perceived rule deficiencies from public disclosure would likely cause agencies to direct their employees not put their opinions in writing). Moreover, disclosure of the draft materials at issue would not meaningfully advance the public's understanding of ODAV's work because the drafts have no legal effect and do not represent final agency action. Finally, as Mr. Sugahara noted, the public will have the opportunity to review and comment on the proposed final findings prior to any Board action. For these reasons, we conclude that the public interest in encouraging frank communication clearly outweighs the public interest in disclosure in this particular instance, and we therefore respectfully deny your petition.[2]

Sincerely,

BENJAMIN GUTMAN
Deputy Attorney General

DP:pjn/
c via e-mail only: Kenji Sugahara (ODAV)

[2] Because we find that the record is exempt pursuant to ORS 192.355(1), we do not reach ODAV's additional argument that portions of the record are exempt pursuant to the attorney-client privilege.