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August 25, 2026

VIA E-MAIL ONLY: clarityportland@gmail.com

Amy Kennedy
clarityportland@gmail.com

Re: Petition for Public Records Disclosure Order
Office of Administrative Hearings
DOJ File No.: 471100-GA0155-26

Dear Ms. Kennedy:

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 review the response of the Office of Administrative Hearings (OAH) to your 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).

Your petition stems from a request for records related to an October 2022 hearing before the Board of Tax Practitioners that resulted in a judgment against you. You requested a copy of the administrative record from OAH including a copy of a transcript of the hearing or, alternatively, a copy of the audio recording, which had previously been provided to your attorney of record in November 2022.

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OAH responded by providing a fee estimate and a copy of a protective order entered in the case. The order protects all personal financial information in the proceedings and requires nondisclosure of all such protected information even after the conclusion of the case. Because of this prohibition, OAH informed you that it could not release the audio in its present form. OAH's itemized fee estimate included transcription costs and time for an administrative law judge (ALJ) to segregate any confidential material. After receiving the estimate, you indicated that you wanted "an electronic copy of the existing audio recording of the proceeding, in the format OAH presently maintains it," and you stated that you did not want a transcription. OAH reiterated that it could not provide the audio "without having it first transcribed and then redacted." Your petition followed.

Your petition requests that the Attorney General require OAH to produce the nonexempt sections of the hearing recording in audio form. OAH explains that it does not possess the technical capability to directly redact an audio hearing and that attempting such a project would only increase the estimated cost to you.[1] OAH contends that transcription of the hearing records is a necessary first step to any production.

In connection with your petition, we obtained and reviewed the protective order, which precludes disclosure of confidential information, "notwithstanding the conclusion of this proceeding." The order references several statutes that protect financial information, including ORS 314.835, which protects confidential tax information. Disclosure of this confidential information may result in criminal penalties. ORS 314.991. OAH indicates that the recording you seek contains the testimony of two experts regarding the transactions on which you provided advice, and that this testimony includes confidential information protected by ORS 314.835.

Given the nature of the exempt information including the criminal-penalty risks associated with disclosure, we find OAH's approach reasonable. OAH cannot disclose the record to you in its present form. ORS 192.338 requires OAH to "separate the exempt and nonexempt material and make the nonexempt material available for examination." OAH has offered to do this by creating and redacting a transcript of the hearing. As a result, we respectfully deny those portions of your petition seeking an order requiring OAH to produce the recording of the hearing or to produce a fee estimate with no transcription costs.

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[1] OAH indicates that a hypothetical redaction of the audio would require an ALJ to review the nine hours of recording, identify with high precision each portion containing confidential tax-return information, timestamp those portions for a contractor, and then review the resulting redacted audio for accuracy.

Your petition also challenges OAH's estimated fee.[2] Specifically, you ask the Attorney General to determine "whether any proposed charge includes legal analysis or other costs that may not properly be shifted to the requester under ORS 192.324." OAH's initial fee estimate included time for an attorney (an ALJ) to review the administrative record and remove any confidential information. Under ORS 192.324(4)(b), a public body may charge the "cost of time spent by an attorney for the public body in reviewing the public records, redacting material from the public records or segregating the public records into exempt and nonexempt records."[3] Segregation must be performed by an individual capable of identifying the confidential information accurately, and we do not find that OAH acted unreasonably in determining that an ALJ is the appropriate person to make those determinations.

Your petition also challenges the timeliness of OAH's response to your records request. Upon receipt of a written public records request by an individual identified in an agency's published procedures for submitting requests, the agency is obligated to respond to the request "as soon as practicable and without unreasonable delay." ORS 192.329(1).[4] We reviewed the correspondence you provided, which shows that OAH has responded promptly and reasonably to your initial request and your subsequent emails clarifying your request. On the record before us, we cannot find that OAH has acted with undue delay. For these reasons, we respectfully deny your petition.

Sincerely,

BENJAMIN GUTMAN
Deputy Attorney General

DEP/pjn
c via email only: Michelle Morales (Office of Administrative Hearings)

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[2] Agencies may establish fees reasonably calculated to recover actual costs in making public records available. ORS 192.324(4)–(5). Although the Attorney General generally does not have the authority to review the reasonableness of a fee estimate, the Attorney General may evaluate claims that "the amount of the fee in comparison to the nature of the request suggests that the true purpose of the fee is to constructively deny the request, rather than to recoup the agency's actual costs." *Attorney General's Public Records & Meetings Manual (Manual)* 18 (2024).

[3] ORS 192.324(4)(b) also precludes a public body from charging the "cost of time spent by an attorney for the public body in determining the application of" of the public records law. This means that any factual or legal research done by the attorney to determine whether material is exempt is not chargeable to the requester. *Manual* at 17. OAH's fee estimate did not include any time associated with research to be performed by its attorneys.

[4] An agency that is unable to complete its response within fifteen business days of receiving a written request is required to provide the requester with a reasonable estimated completion date. ORS 192.329(5). A requester may petition the Attorney General if they believe an agency has failed to comply with the processing timelines contained in ORS 192.329. ORS 192.407(1).