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Levi Bakke
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Mallory Kenney
Oregon Department of Human Services
mallory.kenney@odhs.oregon.gov

Re: Petition for Public Records Disclosure Order
Oregon Department of Human Services
DOJ File No.: 100301-GA0202-26

Dear Mr. Bakke and Ms. Kenney:

This letter is the Attorney General's response to Mr. Bakke's petition under the Oregon Public Records Law, ORS 192.311 to 192.431. Mr. Bakke asks the Attorney General to order the Oregon Department of Human Services (ODHS) to waive the fees associated with producing records he requested. Mr. Bakke also argues that the amount of ODHS's fee constitutes a constructive denial of his request. For the reasons discussed below, 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). Agencies may establish fees reasonably calculated to recover actual costs in making public records available, but "may furnish copies without charge or a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public." ORS 192.324(4)–(5). Even if waiving or reducing the fee is in the public interest, agencies retain discretion whether to grant a waiver or reduction. *See In Defense of Animals v. OHSU*, 199 Or App 160, 189 (2005). However, an agency's decision to deny a fee waiver or reduction must be reasonable under the totality of the circumstances. *Id*. at 190. Any person denied a fee waiver or reduction by a state agency may petition the Attorney General for review. ORS 192.324(6). The agency carries the burden to sustain its decision. ORS 192.411(1).

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Mr. Bakke's petition stems from a July 2, 2026, request sent in Mr. Bakke's own capacity and as the "[a]uthorized agent of Patricia L. Bingaman." The request seeks 35 different categories of records, with some categories containing multiple subparts.[1] ODHS responded by providing a fee estimate and denying Mr. Bakke's request for a fee waiver. ODHS states that it reasonably denied the fee-waiver request because the requested records do not primarily benefit the general public. ODHS maintains that the request is principally related to matters in which Mr. Bakke has a direct personal interest and that the records sought are closely connected to ongoing litigation involving Mr. Bakke. For these reasons, ODHS concluded that the primary purpose of Mr. Bakke's request is personal rather than public and that a fee waiver or reduction was therefore not warranted under ORS 192.324.

Mr. Bakke contends that ODHS unreasonably denied his request for a fee waiver because disclosure of the requested records would primarily benefit the general public. He asserts that the request was made for journalistic purposes, involves matters of public concern relating to ODHS's operations and records practices, and is intended for public dissemination through his nonprofit news organization.

Agencies considering a request for a fee waiver or reduction must first determine whether making the records available primarily benefits the general public. *See* ORS 192.324(5). The furnishing of public records primarily benefits the public when its greatest utility is to the community or society as a whole. *See In Defense of Animals v. OHSU*, 199 Or App 160, 189 (2005). Pertinent factors include the requester's identity, the purpose for which the information will be used, the character of the information, whether the requested information is already in the public domain, and whether the requester can meaningfully disseminate the information to the general public. *Attorney General's Public Records and Meetings Manual (Manual)* at 19 (2024). If waiving or reducing processing fees is in the public interest, agencies nevertheless have discretion whether to do so. When evaluating whether an agency's denial of a fee waiver or reduction was reasonable, we consider the character of the public interest in the particular disclosure, the extent to which the fee impedes that public interest, and the extent to which a waiver would burden the public body. *Id*.

We conclude that ODHS acted reasonably in evaluating and denying Mr. Bakke's request for a fee waiver. We agree with Mr. Bakke that there is always a public interest in monitoring the performance of state agencies, including those agencies' responses to citizen complaints and public records requests. In this instance, however, the requested records do not primarily serve those purposes. Instead, Mr. Bakke's interest in these records stems from his personal advocacy for an individual named Patricia Bingaman.[2]

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[1]According to Mr. Bakke, the request at issue "contains 35 numbered categories concerning Patricia L. Bingaman, Russell H. Bingaman, Nadine's Nest Adult Foster Home, Tempie Bartells, and ODHS's records and systems, including existing aggregate public-records workload data."

[2] In reaching this conclusion, we considered the entirety of the available record, including Mr. Bakke's current petition, his prior submissions to the Attorney General, his prior requests to ODHS, ODHS's responses to various petitions filed by Mr. Bakke, and publicly available filings from lawsuits that Mr. Bakke has filed.

In 2023, Patricia Bingaman was involved in a guardianship proceeding in Union County involving her husband, Russell Bingaman. In that matter, Russell Bingaman's children petitioned to be appointed co-guardians of Mr. Bingaman. The children alleged that Patricia Bingaman did "not have a good relationship" with Russell Bingaman and had been interfering with his care at an adult foster home. The court agreed with the children and appointed them as guardians and conservators of Mr. Bingaman.

Mr. Bakke, who is not an attorney, filed a series of motions in the case in support of Ms. Bingaman as an "interested party." In an order striking Mr. Bakke's filings from the record, the court explained that Mr. Bakke was acting as an unlawful proxy for Ms. Bingaman:

> The closest the Court has to an explanation of why Mr. Bakke appeared out of the blue and began filing these motions is contained in [a] letter * * * by Ms. Bingaman * * * in which she explains that she discussed her feelings on the case with him and he took it upon himself to search the issue and involve himself in the case. * * * While Mr. Bakke claims to be filing these documents as a "pro se litigant" the overall situation is that Ms. Bingaman is having Mr. Bakke act as a proxy for her own positions to continue to litigate issues in which she feels she was wronged in this protective proceeding, in which the protected person is now deceased and the actual issues for this particular proceeding have mostly been concluded. This behavior by both Ms. Bingaman and Mr. Bakke is extraordinarily inappropriate and the Court is admonishing Ms. Bingaman for engaging in this type of behavior. It will not be tolerated further.

Following the Union County litigation, Mr. Bakke continued his advocacy for Patricia Bingaman by filing complaints concerning Russell Bingaman's care with federal and state authorities, including the Adult Protective Services division of ODHS. Mr. Bakke also submitted multiple public records requests to ODHS concerning the handling of his complaints, appeals, and "requests for reinvestigation."

Mr. Bakke's correspondence with Ms. Bingaman concerning ODHS reveals that he views himself as her advocate in these matters:

> Patty,
>
> Below you will find a very stern reply to DHS being absolutely absurd. Including a near 200 Page attachment (exhibits A-G). I will also be emailing DHS "leader" demanding they throw out the same people who have perpetrated this fraud and assign new investigators.
>
> They are playing the wrong game with the wrong person!

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Mr. Bakke also filed suit against ODHS in Marion County. Although styled as a public records lawsuit, Mr. Bakke's complaint repeated many allegations that he and Ms. Bingaman made in the Union County guardianship proceeding and in his various regulatory complaints. The Marion County court granted judgment for ODHS on May 13, 2026, and dismissed the case.

Currently, Mr. Bakke and Ms. Bingaman are co-plaintiffs in a federal civil rights lawsuit brought against several ODHS employees and the adult foster home that housed Mr. Bingaman. In that litigation, which reiterates the same claims made by Mr. Bakke in the Union and Marion County proceedings, Mr. Bakke seeks compensatory and punitive damages for himself. Mr. Bakke's 35-part records request to ODHS pertains directly to the issues raised in this personal litigation.

In his petition, Mr. Bakke explains that he is an investigative journalist who publishes the results of his work on a website. We reviewed Mr. Bakke's website, and he has published several articles and documents concerning Ms. Bingaman and ODHS, including editorial content expressing his views of the law and the various court proceedings he has initiated:

> "I consider the exercise of power documented here corrupt. That's my judgment of the [Union County judge's] conduct."

While we express no opinion about Mr. Bakke's legal conclusions, we note that some of the information provided on his website is dated and omits critical context. For example, Mr. Bakke explains that he has sought Oregon Supreme Court review of the Union County judge's decision:

> "His opinion is not just wrong; it is a fundamental misapplication of the law that sidesteps due process to silence inconvenient truths. I have since filed a Petition for a Writ of Mandamus with the Oregon Supreme Court to compel the lower court to follow the law."

Because the post does not explain that the Oregon Supreme Court denied the petition, a reader may not understand the petition's current status or the proper application of the law according to Oregon's highest court.

While there may be some public benefit to the information Mr. Bakke publishes and his commentary on legal matters, we conclude that Mr. Bakke's records request to ODHS is primarily a personal matter related to litigation in which he seeks damages for himself. And, as we have long observed, the "availability of ordinary tools of discovery would generally negate any need for an individual to use the Public Records Law to gain access to records for purposes of pursuing private litigation." *See Manual* at 41 (2024).

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In examining whether ODHS acted reasonably in denying Mr. Bakke's waiver, we also considered the extent to which the request would burden the agency. *Manual* at 19. ODHS frequently exercises its discretion to grant full fee waivers to media, researchers, and other requesters pursuing records in the public interest. But ODHS processes more than 10,000 records requests each year, and its resources are not limitless. The agency must also consider the burden of responding to the request and the effect of that burden on its ability to respond to other requesters.

In this instance, we find that the burden imposed on ODHS is substantial. The July 2, 2026, request at issue in this petition seeks 35 separate "items" with each item containing multiple different requests. For example, "item 30" (included fully in the footnote below) seeks records concerning seven incidents spanning ten distinct dates and date windows.[3]

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[3] ITEM 30 -- ODHS's intake and disposition of the dated certified enforcement demands, the "hands tied" position, the legislative-inquiry ROSE entries, and the June 2026 GAO/OCR complaint routing.
(a) ODHS's intake, routing, and disposition of Patricia Bingaman's two certified enforcement complaints -- the September 8, 2025 "Demand for Immediate Enforcement Action" to Aaron Lenox (to which ODHS gave no response within the five business days it demanded) and the February 2, 2026, formal licensing complaint to Erin Smith -- and ODHS's internal communications about them. (b) Any ODHS record reflecting the position, attributed to Aaron Lenox, that ODHS "could not address" the Bingaman grievances or that its "hands were tied" and Patricia Bingaman should "take it to the legislature." (c) Any "Legislative request" ROSE entry or legislative-inquiry record generated by the named officials Patricia Bingaman wrote (Governor Kotek, Representative Bobby Levy, Senator Todd Nash, and Representative Nancy Nathanson) or the Long-Term Care Ombudsman forwarding a constituent inquiry to ODHS. (d) All records of Patricia Bingaman's June 2026 Governor's Advocacy Office / ODHS 0170 / DE 0170 / Governor Kotek Constituent Services / HHS OCR complaint concerning Nadine's Nest Adult Foster Home and the withheld Russell Bingaman records, including GAO Complaint #70128, the June 26, 2026 GAO letter signed by Jason Wenig, any intake number, complaint number, case number, routing decision, referral, assignment, handoff, triage note, supervisor note, case note, closure note, draft response, final response, and all internal or external communications about where the complaint was sent and what was said about it. This includes all emails, Teams or instant messages, text messages, phone logs, call notes, voicemails, call recordings, transcripts, calendar entries, task records, ticket records, and attachments reflecting communications between or among GAO, the Governor's Office / Constituent Services, APD, Safety, Oversight, and Quality, Foster Licensing, OLRO, ROSE, PRU, Legal, District 13/14, Aaron Lenox, Erin Smith, John Yeates, Eric Stone, Tempie Bartell, Nadine's Nest, or any person assigned to investigate or respond to Patricia Bingaman. This specifically includes the July 1, 2026, phone call between Patricia Bingaman and Lynette Ross / Foster Licensing, any ODHS recording or transcript of that call, and all follow-up records created because Lynette Ross stated ODHS knew the complaint number, did not realize no one had reached out, needed to determine "where things landed," and that many people were out because of the holiday.
Custodians/Systems: Aaron Lenox; Erin Smith; AFH licensing intake; the Licensing. Complaint and AFH. Action Request mailboxes; GAO / Governor's Advocacy Office; Jason Wenig; Lynette Ross; APD Safety, Oversight, and Quality; Foster Licensing; Governor Kotek Constituent Services; CALMS/CAMS complaint entries for the 9/8/2025, 2/2/2026, and June 2026 complaints; complaint #70128 tracking records; ODHS 0170 / DE 0170 intake records; OLRO. Rose for any "Legislative request" entry; Outlook/Exchange; Teams; state-issued and personal devices/accounts used for public-business correspondence.
Date window: February 1, 2022, to present; for Complaint #70128 and holiday-staffing records, June 10, 2026, through July 10, 2026, is the mandatory core window.
Staffing / holiday-availability records requested: records sufficient to show how many GAO employees and how many APD Safety, Oversight, and Quality / Foster Licensing employees responsible for Complaint #70128 were unavailable, on leave, not scheduled to work, or covered by an out-of-office notice on Wednesday July 1, 2026; Thursday July 2, 2026; and Friday July 3, 2026. This includes unit calendars, coverage rosters, leave calendars, staffing schedules, out-of-office messages, Teams presence records, assignment queues, and routing or backlog records. I do not seek medical information; if ODHS claims any privacy exemption, produce the non-medical portions and the daily count, names/titles/units of unavailable staff involved in this complaint, and the coverage/routing records with any legally exempt medical detail redacted.
Basis to expect responsive records: Patricia Bingaman's September 8, 2025, certified demand to Lenox (delivered 9/15/2025) and February 2, 2026, certified complaint to Smith (delivered 2/5/2026) are at Bates 11155-11162; the "take it up to the legislature ... their hands were tied" statement is recorded at Bates 10273. The GAO source file includes an HHS OCR complaint portal filing dated June 10, 2026 at 12:34 PM, with an uploaded complaint description; the GAO response letter dated June 26, 2026 states ODHS received Patricia Bingaman's ODHS 0170 complaint, assigns Complaint #70128, identifies Nadine's Nest Adult Foster Home and the unreleased Russell Bingaman records, says GAO forwarded the customer service complaint "to the program," and

In total, Mr. Bakke's July 2, 2026, request seeks approximately 300 categories of records that would require searches across multiple custodians, offices, accounts, devices, and time periods. The burden associated with processing these requests is heightened because they are difficult to comprehend. On his website, Mr. Bakke explains that he uses a variety of AI technologies including "Grok, Claude, and OpenAI," and that his goals include moving to an "agentic workflow." Whatever their potential benefits, Mr. Bakke's use of these technologies has produced prose that is unusually dense and difficult to interpret, as exemplified by the following sentence from his petition:

> Further examples, all but (h) traced in Exhibit 18: (f) ODHS said it "does not have a way to show calls that were possibly made" (Exhibit 26, page 4), and Items 10, 16 and 18 ask for the call and search records that would test that answer; (g) its October 10, 2024 thread on my inquiries was filed under "Media" and involved its Communications staff (Exhibits 40 and 41), and Items 8, 17, 28 and 32 ask for the routing and response records; (h) its no-records answer on a lockout policy (Exhibit 33, page 3) did not address who reviewed the July 2024 restriction, and Items 22 and 31 ask for that decision trail; (i) its January 15, 2026 letter to Mrs. Bingaman gave no disposition of her Items 2 and 5 (Exhibit 33), and Items 11 and 25 and part of Item 34 ask for those categories; and (j) the August 10 request follows the July 27 to 31, 2026 messages it lists (Exhibit 5, items 1 and 3 to 6).

This passage is representative of Mr. Bakke's petition and his requests to ODHS. Within a single 156-word sentence, Mr. Bakke cross-references multiple exhibits, page citations, request-item numbers, and a separate diagram intended to explain the relationship among them. Just attempting to interpret requests like these demands a substantial commitment of agency time and resources.

In summary, we conclude that it would be ***unreasonable*** for a state agency to bear the cost of responding to requests of this scope and complexity sent by an individual in connection with private litigation in which he seeks personal relief. For this reason, we respectfully deny Mr. Bakke's petition challenging ODHS's fee waiver determination.

Mr. Bakke also challenges the amount of the fee quoted by ODHS. There is no provision in the Public Records Law authorizing the Attorney General to review the reasonableness of an agency's fee estimate. See *Manual* at 18. However, we have interpreted ORS 192.411(1) to permit the Attorney General to evaluate an agency's fee "where 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." *Id.* (citation omitted).

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names APD Safety, Oversight, and Quality unit manager Lynette Ross as the person or team who would contact Patricia Bingaman by June 30, 2026; the July 1, 2026 call transcript records Lynette Ross / Foster Licensing acknowledging the complaint number, stating she did not realize nobody had reached out, saying she needed to find out "where things landed," and explaining that many people were out because of the holiday.

ODHS provided Mr. Bakke with a fee estimate of $48,150. ODHS explained that it used electronic data search capabilities to conduct a preliminary search of its systems using the terms provided in the public records request. This preliminary search returned approximately 18,000 records. ODHS calculated two minutes per record for responsiveness review, PDF formatting, and necessary redactions. The estimate also included the time required to retrieve and organize the responsive records before review. For other parts of the request where manual compilation was needed, ODHS staff estimated the time required to respond based on staff experience and the scope of the requests. Given the scope of Mr. Bakke's request, we conclude that ODHS has sufficiently explained how its fee was reasonably calculated to recover its actual cost to compile and review the requested records. For these reasons, we respectfully deny the petition.

Sincerely,

BENJAMIN GUTMAN
Deputy Attorney General

DEP:pjn