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May 18, 2021

VIA EMAIL ONLY

Nabil Khlafa  
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D. Raghav Shan  
Oregon Health & Science University  
Legal Department  
3181 S.W. Sam Jackson Park Road, L585  
Portland, Oregon 97239

Re: Petition of Nabil Khlafa seeking a determination of undue delay in OHSU's response to his public records request

Dear Mr. Khlafa and Mr. Shan:

Petitioner, Nabil Khlafa, has asked this office under the public records law to do two things: 1) address his concern that OHSU is improperly destroying records relating to his request; and 2) order OHSU to release records to him without further delay.

On January 11, 2022, Mr. Khlafa, an employee of OHSU, made a public records request of OHSU for all records it possessed relating to his employment. His request enumerated many categories of documents he felt responsive including communications between OHSU's human resources department, three different departments, and nine individuals. The initial request was not bounded in time and expressly included emails, recordings, text messages and any other type of record. OHSU responded the next day with requests to clarify each portion of the request. An exchange ensued in which OHSU responded to each message from Mr. Klafa either the same day or next day as it worked to clarify, narrow, and focus this request. Additional detail of the timeline is discussed in more detail below as relevant to the specific legal issues presented.

In response to Mr. Khlafa's appeal, OHSU argues first that Mr. Khlafa's accusation of document destruction is both baseless and not justiciable by this office and, second, that there was no undue delay in responding to this request given the expansive scope of the request and OHSU's continued efforts to work through it.

For the reasons discussed below, we deny the petition.

## **DISCUSSION**

### **A. Records Retention / Destruction**

Petitioner specifically states in his petition: "My concerns are after I have shared my intention of possibly taking legal action against OHSU, this employer is possibly in the process of discarding, deleting or destroying some or all of these records." As OHSU observes, this office's jurisdiction under the public records law does not extend to adjudicating disputes about

records retention. There is no evidence that OHSU is engaged in any misconduct here. But, in any event, we are without legal authority to grant any relief on this claim.

B. Timeliness – ORS 192.407

A public body must acknowledge a properly presented public records request within five business days of its receipt. ORS 192.324(2). The public body must then complete its response, or provide a written estimate as to when it will do so, within fifteen business days from the initial receipt of the request. ORS 192.329(5). This timeline does not apply to a public body if the staff necessary to complete its response are not available; if compliance would demonstrably impede its ability to perform other necessary services; or if it is impracticable because of the volume of requests being simultaneously processed. ORS 192.329(6).

OHSU promptly acknowledged petitioner’s request. The fifteenth business day from receipt of the request, excluding all time between a request for clarification and petitioner’s response and all time between a fee estimate and payment, was March 8, 2022. On March 7, 2022 OHSU provided petitioner with a status update, indicating that it was in the process of gathering emails, and would provide another update once they were gathered. This update complied with the first part of ORS 192.329(5) in that it was a “written statement that the public body is still processing the request” but it did not include “a reasonably estimated date by which the public body expects to complete its response.”

By April 5, 2022, OHSU had performed an initial review of the data pulled for this request and determined that there were over 15,000 potentially responsive documents that needed to be reviewed. At that point OHSU communicated to petitioner that it expected it would take “many months” to complete its review. OHSU’s communication logs show OHSU was working towards completion of the request throughout this period.

We need not engage with OHSU’s arguments that it qualified for an exemption to the requirement to respond within fifteen business days. Even if we were to find it was not exempted, its regular engagement and updates on the status of the request show that OHSU was working diligently and in good faith towards completion of an extraordinary document request. Any estimated completion date suggested on March 8, 2022, the fifteenth business day, would have been arbitrary, as the data pull had not yet been completed. As such, this is not a case where we would exercise our discretionary authority under ORS 192.407 to impose sanctions.

**ORDER**

Accordingly, the petition is denied.

Very truly yours,



MIKE SCHMIDT  
District Attorney  
Multnomah County, Oregon