



**MIKE SCHMIDT**, District Attorney for Multnomah County

1200 SW First Ave, Suite 5200 • Portland, Oregon 97204 • 503 988-3162 • FAX 503 988-3643  
www.mcda.us

March 6, 2023

VIA EMAIL ONLY

Maureen Wright  
maureen.wright.work@gmail.com

Melissa Rawlinson  
Miller Nash, LLP – Counsel for PCC  
Melissa.rawlinson@millernash.com

Re: Petition seeking records from Portland Community College

Dear Ms. Wright and Ms. Rawlinson:

On February 22, 2023, petitioner Maureen Wright submitted a number of public records petitions relating to records requests made to Portland Community College (PCC). This order addresses a request made to PCC on December 7, 2022, for “[a]ll the electronic and written records between to BA Dean Batazhan and Cole Chatterton related to their one-to-one meeting(s) and its (their) related follow-up related electronic and written transmissions.”

Petitioner initially appealed to this office concerning this request on December 15, 2022, asking that we find PCC had unduly delayed its response. We denied that petition on December 16, 2022, as only seven days had elapsed between the request and the appeal. *Petition of Wright*, MCDA PRO 22-89 (2022) (citing *Petition of Wright*, MCDA PRO 22-88 (2022)). In the order explaining our denial of the 18 petitions filed at that time, we wrote:

we are aware of no published opinion from this office or the Attorney General finding that a period of less than 10 business days for a response violated this section under any circumstances. Indeed, the general consensus surrounding “without unreasonable delay” appears to be in the one- to two-month range depending on the context of a particular request. See e.g., *Petition of Sordyl*, MCDA PRO 16-24 (2016) (one month not unreasonable); *Petition of Kellington*, Att’y General PRO (3/23/2009) (two months not unreasonable on these facts); *Petition of Ringo*, Att’y General PRO (1/16/2009) (no response other than acknowledgement of request for two months was unreasonable); *Petition of Forrester*, Att’y Gen. PRO (July 2, 2010) (one month delay unreasonable where no unusual circumstances other than vacations by staff ordinarily assigned to handle public records duties).

*Wright*, 22-88 at 1-2.

Subsequent to our December 16, 2022, order, to which PCC’s counsel was copied, petitioner received no response on this matter and has again appealed to the district attorney under ORS 192.407. On March 1, 2022, after receiving the notice of appeal, PCC acknowledged receipt

of the request, and promised petitioner an update on the status of records on March 6, 2023. Consistent with the authority cited above, we now find PCC's response timeline in this matter to be in violation of ORS 192.329(5) and ORS 192.329(1) and grant the petition.

### DISCUSSION

ORS 192.329 provides that a public body must comply with two independent timelines when responding to a public records request.

The first, in ORS 192.329(1), provides that “[a] public body shall complete its response to a written public records request [...] as soon as practicable and without unreasonable delay.”

The second, in ORS 192.329(5), provides that “[a]s soon as reasonably possible but not later than 10 business days after the date by which a public body is required to acknowledge receipt of the request under ORS 192.324, a public body shall complete its response to the public records request; or provide a written statement that the public body is still processing the request and a reasonable estimated date by which the public body expects to complete its response based on the information currently available.” ORS 192.324(2) gives the public body five days from the receipt of the request to acknowledge the request. Read together, the ordinary course under ORS 192.329 requires a written response from the public body within 15 business days of the receipt of the request.

Here, PCC has breached both timelines. PCC received petitioner's request on December 8, 2022. It received our order denying the initial petition on December 16, 2022. It then took no further action until March 1, 2023, a delay of two and a half months.

PCC argues that its delay in responding to this matter is excusable because of understaffing in its human resources department and the volume and nature of petitioner's public records requests. We disagree. While we have agreed in the past that the volume, frequency, and confusing wording of petitioner's many, and often overlapping, public records requests can justify some amount of delay, it cannot excuse two and a half months of non-action.

If a public body lacks the personnel available to handle its routine flow of public records requests, it must look to other, external, options. *Petition of Buchal*, MCDA PRO 18-38 (2018) (noting that the schedule we imposed on a public body “may well require additional staffing, or outsourcing, [...] to continue to meet its timeliness obligations on other pending or yet-to-be-received records requests.”) Although this particular petitioner is responsible for an outsized number of public records requests to PCC, one cannot say that her requests are unexpected or out of the ordinary. See, *Id.* at 3 (“We emphasize *unexpected*; an agency must devote sufficient resources to respond to its routine flow of public records requests in a timely manner.”) See also, *Petition of Monahan*, MCDA PRO 16-23 (2016) (agencies may not justify their delay by chronically understaffing records responses).

Pursuant to ORS 192.407(1)(a) we find that PCC has failed to provide a response required by ORS 192.329 within the prescribed period. ORS 192.407(3) provides three discretionary options for the district attorney as a remedy for such a violation: an order to produce records within a specified period; a \$200 penalty; or a mandated fee waiver or reduction.

In this case we find as aggravating factors that PCC was on heightened notice of this request through a prior official proceeding, the length of the delay (84 days between request and acknowledgment), and that PCC only took action on this request after receiving notice from this office of a second petition challenging the delay. As mitigating factors we note significant staffing short falls in the department tasked with responding to these requests. We do not find the volume of requests from Ms. Wright to be a mitigating factor; PCC is responsible for tracking and properly responding to public records requests. Its failure to adopt more robust processes for doing so does not mitigate it having lost track of a particular request. Given these circumstances, we find that a punitive fee waiver is the appropriate sanction in this case.

**ORDER**

Accordingly, the petition is granted. PCC shall produce all records responsive to petitioner's request, at no charge to petitioner, by 5:00 pm on Monday March 13, 2023.

Regards,

A handwritten signature in black ink, appearing to read 'Mike Schmidt', with a stylized flourish at the end.

MIKE SCHMIDT  
District Attorney  
Multnomah County, Oregon