



Nathan Vasquez, Multnomah County District Attorney

1200 SW 1st Avenue, Suite 5200, Portland, OR 97204-1193
P: (503) 988-3162 | F: (503) 988-3643 | www.mcda.us

June 16, 2026

via email only

Jon Bial
Deputy General Counsel
Oregon Public Broadcasting
jbial@opb.org

Heidee Stoller
Legal Counsel
Oregon Health & Science University
stollerhe@ohsu.edu

Re: Petition of Oregon Public Broadcasting seeking information from OHSU's operational and quality dashboard

Dear Mr. Bial and Ms. Stoller:

On April 16, 2026, Oregon Public Broadcasting (OPB) reporter Amelia Templeton requested from Oregon Health & Science University (OHSU) “the monthly reports & data from OHSU’s operational and quality dashboard, presented to the OHSU management system governance council,” seeking the monthly reports from 2025 and 2026 to date. OHSU acknowledged the request the next business day. On May 5, 2026, OHSU denied the request in full, asserting that the reports are privileged peer review data under ORS 41.675 and therefore exempt from disclosure under ORS 192.355(9)(a), which exempts public records “made confidential or privileged under Oregon law.”

OPB petitioned this office for review the same day as permitted by ORS 192.415. The petition challenges the exemption, asks me to evaluate the timeliness of OHSU’s response under ORS 192.329, and asks me to review the propriety of OHSU’s intake request that OPB “[p]lease advise how any responsive records or information may be used.” OHSU submitted the withheld material for review¹ along with its written responses, contending that the records are privileged in their entirety, that the privilege cannot be waived, and that its response was timely. For the reasons discussed below, I conclude that the monthly dashboard reports presented to the governance council are written reports to a peer review body, privileged under ORS 41.675 and exempt under ORS 192.355(9)(a); that no waiver occurred; and that OHSU’s response was timely.

¹ OHSU reports that the information at issue is accessed by the Management System Governance Council through a dynamic dashboard that cannot be reproduced precisely as it would have been available at any historical point in time. Instead, OHSU has made available for my review a single report containing all the data elements that would have been visible to the MSGC in the dashboard report view during the requested period on a monthly basis.

DISCUSSION

A. Peer Review Body — ORS 41.675 / 441.055(7)

ORS 192.355(9)(a) exempts from disclosure “[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law.” ORS 41.675(3) provides that “all oral communications or written reports to a peer review body [...] shall be privileged and shall not be admissible in evidence in any judicial, administrative, arbitration or mediation proceeding.” A “peer review body” includes governing bodies and committees of a health care facility licensed under ORS chapter 441 acting in connection with, among other functions, quality assurance and utilization review. ORS 41.675(1).

OHSU’s Management System Governance Council (MSGC) is the senior leadership committee within OHSU Health responsible for monthly review of the hospital’s quality and safety performance. In 2024, OHSU reorganized its quality reporting structure to route surveilled clinical data (hospital-acquired infections, surgical-site infections, and mortality measures) through the MSGC on a monthly cadence, alongside the work of OHSU Health’s Hospital-Acquired Condition Reduction Committee, Surgical Site Infection Reduction Committee, and related quality working groups. The council sets harm reduction priorities for the hospital and tracks performance against them. It is a “peer review body” for purposes of ORS 41.675(1).

OPB argues that although ORS 41.675 creates an evidentiary privilege, it does not also create an exemption from the public records law. In OPB’s view, the relevant exemption for peer review materials is created by ORS 441.055(7), which provides:

All findings and conclusions, interviews, reports, studies, communications and statements procured by or furnished to the peer review committee in connection with a peer review are confidential pursuant to ORS 192.338, 192.345, 192.355 and 192.690 and all data is privileged pursuant to ORS 41.675.

OPB acknowledges our holding in *Petition of Kastner*, MCDA PRO 23-33 (2023), in which this office concluded that ORS 41.675(1) created a public records exemption, and urges reconsideration of that decision on a more robustly briefed record. The parties raise good arguments on both sides about the difference between a privilege and a rule of admissibility and our treatment, and potential conflation, of the two in *Petition of Schmidt*, MCDA PRO 16-27 (2016). However, this is not the case to resolve that tension. The material submitted for my review is a report, containing the data elements contained in each report presented to the Management System Governance Council. The differences in wording between ORS 441.055(7) and 41.675(3) are immaterial as applied to the specific records at issue.

OPB also suggests that some responsive records may merely have been used by the governance council rather than created for its peer review work. OPB’s premise is correct, but inapplicable on the facts of this case. *See Rowen v. Gonenne*, 274 Or App 803, 816 (2015) (a record does not become privileged simply because it later passes before a peer review body). The record and context show that this dashboard was prepared at the request of, and presented to, OHSU’s Management System Governance Council.

B. Waiver

OPB next argues that public statements by OHSU's president and chief medical officer waived OHSU's ability to rely on the exemption. OHSU answers that the peer review privilege cannot be waived at all, because the waiver rule in OEC 511 reaches only privileges conferred by the Oregon Evidence Code. OPB is correct. OEC 514 expressly continues "all existing privileges" created by Oregon statute before the code's 1981 adoption, and the peer review privilege is among them. A privilege continued by ORS 40.295 is a privilege conferred by "ORS 40.225 to 40.295," and the waiver rule therefore applies to it. If the legislature had intended otherwise, it would not have included ORS 40.295 (OEC 514) as one of the statutes expressly referenced in OEC 511 to define its scope.

Two waiver standards are thus potentially in play. A public body waives an exemption to disclosure under the Oregon Public Records Law where its public statement "disclosed substantially all of the information in" the withheld record. *Oregonian Publishing Co. v. Portland School District 1J*, 152 Or App 135, 142 (1998). And a privilege holder waives a privilege by voluntarily disclosing "any significant part of the matter or communication." OEC 511.

OPB points to two statements. At a January 30, 2026 board meeting, OHSU's chief medical officer, Dr. Renee Edwards, described the structure and accountability purpose of the operational and quality dashboard. At an April 23, 2026 press conference, OHSU's president, Dr. Shereef Elnahal, stated that OHSU, as a public institution, has responded to public records requests about quality "in full according to the law." Dr. Edwards's description further established that the dashboard exists and the types of information it gathers; it did not disclose the findings, conclusions, or data in any report. Dr. Elnahal's statement also characterized his understanding of OHSU's compliance with the public records law. Whether accurate or not, this statement disclosed none of the substance of the reports. Disclosing that records exist, and describing the categories of information they contain, discloses neither "substantially all of the information" in the records nor "any significant part" of the matter. *Petition of Bial*, MCDA PRO 25-60 (2025). There was no waiver.

C. Timeliness — ORS 192.329

OHSU received OPB's request on April 16, 2026, and acknowledged it the next business day. A public body must then complete its response as soon as reasonably possible, and no later than ten business days after the date its acknowledgment was due, an outer limit of fifteen business days from receipt. ORS 192.329(5); *Petition of Friedman*, MCDA PRO 18-19 (2018). OHSU completed its response on May 5, 2026, the thirteenth business day, two business days inside the outer limit.

I do not find the response time unreasonable in this case. OHSU's records coordinator was on leave and the office carried sixty-one other open requests. By contrast, this office has found unreasonable delay where a public body took thirty-six business days merely to issue a fee estimate and projected fifty-two business days to completion. *Petition of Merrick*, MCDA PRO 21-34 (2021); *see also* *Petition of Gunderson*, MCDA PRO 20-29 (2020) (over seven months without any fee estimate; delay entirely unexplained); *Petition of Reyna*, MCDA PRO 23-38 (2023) (thirteen weeks of complete silence after the requester paid the fee estimate); *accord* *Petition of*

Page 4

June 16, 2026

Petition of OPB (Templeton)

Bulger, Att'y Gen. PRO (Jan. 6, 2026) (fourteen months without response; repeated follow-ups ignored).

D. OHSU's Question About Use

Finally, OPB asks me to review OHSU's practice of asking requesters at intake how responsive records may be used. My authority under ORS 192.415 and 192.407 does not run to auditing the content of a public body's communications in the course of fulfilling a public records request except to the extent they are relevant to the denial of a request, delay, or the reasonableness of a fee waiver determination. This question in this context is relevant to none of these and is therefore outside my authority to condemn or endorse. See, *Petition of Bial*, MCDA PRO 25-06 (2025) (declining to evaluate question presented for purposes of "potentially instructing, admonishing, or censuring" the public body).

ORDER

Accordingly, the petition is denied.

Regards,

NATHAN VASQUEZ
District Attorney
Multnomah County, Oregon

By: 

Adam Gibbs
General Counsel