

PETITION FOR REVIEW OF DENIAL OF PUBLIC RECORDS REQUEST

Submitted to: Attorney General of the State of Oregon

Pursuant to: ORS 192.411; ORS 192.407; ORS 192.422

Petitioner: Robert Samuel White

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Public body: Oregon Department of Administrative Services

Public records contact: Bryanna Duke — requests submitted through the DAS Public Records Center (GovQA portal)

Request: R000879-070126, submitted July 1, 2026

Date of petition: July 27, 2026

I. WHAT IS BEING PETITIONED

The Oregon Department of Administrative Services has not provided a complete response to R000879-070126 under ORS 192.329. The Department first closed the request on the ground that it "is not the custodian" of the records and referred me to the Oregon Parks and Recreation Department — a disposition that does not meet the statutory definition of custodian in ORS 192.311(2)(b). After reopening the request, the Department closed it a second time, on July 27, 2026, determining "no responsive records" as to both of its categories while again referring me to OPRD. It has never described the search behind either "no records" determination — one entered July 10, the other July 27 — though I asked it to twice; it has never substantiated or withdrawn the custodial determination; it has cited no exemption; and it has never acknowledged the preservation notice I served on July 7, 2026.

Two features of the Department's response frame this petition. First, the request sought the Department's communications with OPRD, the Office of the Governor, "or any other state entity" that references me — and the events underlying it centrally involve the Oregon State Police, whose March 24, 2026 visit to my residence (CAD event SP26097765) is the subject of a separate petition now before the Attorney General. The Department has answered only as to OPRD, and only by recasting the records as OPRD "agency personnel records" — a category I did not request. Second, the Department has repeatedly referred me to OPRD as "the custodian of responsive agency personnel records." A referral to a named custodian presupposes that responsive records exist; it cannot be squared with a determination that no responsive record exists at all.

I ask the Attorney General to order the Department to do what the statute already requires:

1. For the Department's own records, provide production, a specific exemption cited for each record or portion withheld, or an express statement that no responsive record exists.
2. Either substantiate the "not the custodian" determination by identifying the public body for which the Department claims to have acted as agent under ORS 192.311(2)(b), or withdraw it and the referral to OPRD.
3. Describe the search conducted: the custodians and offices searched, the systems queried, the date range, and the terms and identifiers used — including whether the search reached the Department's communications with state entities other than OPRD, and records that describe me without naming me.
4. State whether the preservation notice of July 7, 2026 was received and distributed to the custodians of the records it covers.

I am not asking the Attorney General to characterize the Department's conduct or to make any finding about the underlying matter. Each item above has a form the statute supplies: a record, a cited exemption, a described search, an estimated date, or a statement that a record does not exist.

II. THE RECORD

The request

On **July 1, 2026**, I submitted **R000879-070126** through the Department's public records portal. It sought, for the period January 1, 2024 to the present, the Department's own records concerning me — expressly including:

"Any communication between your agency and the Oregon Parks and Recreation Department, the Office of the Governor, or any other state entity that references me"; and
"Any record in which I am named or identifiably described in connection with personnel, human resources, legal, risk, or accountability matters."

The first category is not limited to OPRD. By its terms it reaches the Department's communications with the Office of the Governor and with "any other state entity" that references me — which necessarily includes the Oregon State Police, whose March 24, 2026 visit to my residence is the subject of a separate petition now before the Attorney General. Throughout, the Department has treated the request as though it asked only for OPRD personnel records.

A note on scope. The Department's portal does not permit a request to be submitted without a fixed end date; it offers no option for "to the present" or "through the date of search." The request

was entered against that constraint, and the end date entered is a placeholder to be read as through the date of the Department's search. Nothing in ORS 192.311(5) or ORS 192.324 authorizes a public body to bound a request by a fixed end date; a request is defined by what it asks for, not by the fields a vendor's form makes available. I noted this defect to the Department in writing on July 17, 2026.

R000879: closed on a custodial basis, reopened, then closed again on "no records"

On **July 6, 2026**, the Department closed R000879, stating it "is not the custodian of the requested records" and directing me to "submit your request with Oregon Parks and Recreation Department, the custodian of responsive agency personnel records."

I did not request OPRD's personnel records. I requested the Department's own communications — DAS-to-OPRD and DAS-to-Governor's-office correspondence referencing me — of which OPRD is not and cannot be the custodian. The same day, I asked the Department to reopen the request and to provide, as to its own records, production, production with exemptions identified, or an express statement that no responsive record exists. On **July 7, 2026**, the Department reopened the request: "I've reopened your request while we look into this further."

On **July 8, 2026**, I set out the statutory analysis (Section III below) showing the custodial determination was improper, and asked the Department to identify the public body for which it claims to have acted as an agent, or to withdraw the determination.

On **July 10, 2026**, the Department gave a partial response:

- As to "any record in which I am named or identifiably described in connection with personnel, human resources, legal, risk, or accountability matters," it stated it "reviewed their files and did not locate records," and closed that portion.
- As to "any communication between your agency and the Oregon Parks and Recreation Department, the Office of the Governor, or any other state entity that references me," it stated it "is still reviewing their records and will notify you if there are records."

The same day I asked the Department to document the search that produced the "no records" determination — the custodians and offices searched, the systems queried, the date range, the terms and identifiers used, and whether the search accounted for records that describe me without naming me. On **July 12, 2026**, I set out, on the record, why a "no records" determination in that category is difficult to credit given the extensively documented nature of the matter, and asked the Department to reconcile the determination with those facts or document the search. Neither request was answered.

On **July 27, 2026**, without answering either request, the Department closed R000879. As to the one remaining category — "any communication between your agency and the Oregon Parks and

Recreation Department, the Office of the Governor, or any other state entity that references me" — it stated it "has reviewed its files and has determined there are no responsive record(s)," again directed me to submit a request to OPRD, and marked the request "now closed." Both categories of R000879 now rest on a "no records" determination — one entered July 10, one July 27 — and the Department has described the search behind neither, though I asked it to on July 10 and again on July 12. The custodial determination it entered July 6 was never substantiated or withdrawn; the July 27 closure repeats the referral to OPRD without offering any basis for it.

The closure was signed not by the Department's public records contact but by Merilee Nowak, a Project Manager in the Department's Strategic Initiatives and Enterprise Accountability office — the division the Department designates, in its own published materials, for "Accountability and Governor's Expectations" and for enterprise accountability across executive branch agencies. From that office, the Department addressed one of the request's two categories, determined that no responsive record existed, and referred me to a different agency for records of the Department's own correspondence. I state this as a matter of record — a title, a document, and what the document does. I draw no inference about anyone's intent, and the petition requires none.

The custodial basis, by the Department's own count

I do not petition as to a separate request, R000885-070726; the Department has answered it, and I recount its answer only as evidence of the frame within which R000879 was closed. R000885 asked how often the Department disposes of requests on the ground that it is not the custodian, and under what standard. On July 27, 2026 the Department answered: it has closed **thirty-one** requests on a not-the-custodian basis — six in 2026, nineteen in 2025, six in 2024 — and it applies no internal standard distinguishing a custodial determination from a "no responsive records" determination, relying only on the Oregon Department of Justice's general public records manual. The Department therefore disposes of requests on the custodial ground routinely, and by its own account without any written criterion for making that determination or for telling it apart from a "no records" determination — the two dispositions it ran together in R000879.

The Department's last word

On **July 17, 2026**, after I set out the outstanding determinations, the Department's Communications Director wrote: "I'm not able to address the specific requests in your email at this moment, but I want to reassure you that we are continuing to process your public records requests in the order they are received... periods without communication do not indicate inactivity."

The Department's most recent act is the July 27, 2026 closure of R000879. As of the date of this petition — **twenty-six days after the request was submitted** — R000879 has been closed on two undescribed "no records" determinations, with the custodial referral neither substantiated nor

withdrawn and repeated in the closure itself; no exemption has been cited; and the preservation notice of July 7, 2026 has never been acknowledged.

III. THE CUSTODIAL DETERMINATION UNDER ORS 192.311(2)(b)

The disposition of R000879 turns on a single statutory definition, and the Department's use of it does not meet it.

ORS 192.311(2)(b) defines "custodian" as "[a] public body mandated, directly or indirectly, to create, maintain, care for or control a public record." The statute then supplies one — and only one — route by which a public body in possession of a record may disclaim custody: "'Custodian' does not include a public body that has custody of a public record as an agent of another public body that is the custodian unless the public record is not otherwise available."

That agent exception is unavailable here.

As to the Department's own correspondence. R000879 sought the Department's DAS-to-OPRD and DAS-to-Governor's-office communications referencing me. In creating, sending, receiving, and maintaining its own correspondence, the Department acts as a principal on its own behalf — not as an agent holding another body's records. The agent exception does not apply, and the Department is the custodian of those records by the statute's plain definition. OPRD cannot produce records that the Department created, sent, received, or maintains; a referral to OPRD therefore cannot be a lawful response to a request for the Department's own records.

As to the DAS–Governor's-office communications specifically, the exception fails a second time on its own terms. Even if agency were somehow asserted, the exception applies only "unless the public record is not otherwise available." Those communications are not available from OPRD, which is not a party to them. The proviso defeats the exception on its face.

A "not the custodian" determination and a "no responsive records" determination are distinct under Oregon law, with different meanings and different consequences. I have not conflated them, and I repeatedly invited the Department to say expressly, if it is true, that it holds no responsive records of its own. For three weeks it did not; it maintained a custodial referral it never substantiated, never identifying the public body for which it claims to have acted as an agent. On July 27, 2026 it closed the request on "no responsive records" instead — while again referring me to OPRD. The custodial determination was therefore neither defended nor withdrawn; it was quietly replaced, and the referral persists. What the Department has never done, at any stage, is describe the search on which either "no records" determination rests.

There is a further incoherence in the Department's position. To refer a requester to another public body "as the custodian of responsive agency personnel records" is to represent that responsive

records exist and are held by that body — one does not identify a custodian for records one believes do not exist. Yet the Department's closures rest on the opposite proposition: that there are no responsive records at all. Both cannot be true. Compounding this, the referral has run to OPRD alone and has been framed around OPRD "personnel records," though the request reached the Department's own communications with the Office of the Governor and with any other state entity that references me — the Oregon State Police among them. A determination reached on that narrowed frame does not answer the request that was made.

IV. GROUNDS FOR THE PETITION

Count 1 — The custodial closure of R000879 is improper (ORS 192.311(2)(b); ORS 192.329(2))

For the reasons in Section III, the Department is the custodian of its own DAS-to-OPRD and DAS-to-Governor's-office communications, and the agent exception in ORS 192.311(2)(b) does not apply. A referral to OPRD is not one of the dispositions a complete response permits under ORS 192.329(2). The Department's July 27, 2026 closure does not cure the defect: it repeats the referral to OPRD while offering no basis for it, and it never substantiated or withdrew the custodial determination entered July 6. That the Department closes requests on this basis routinely — thirty-one times over three years, by its own count, and without any written standard for doing so — does not make the determination correct here; it indicates the determination was applied to R000879 without the record-specific analysis ORS 192.311(2)(b) requires. I ask the Attorney General to require the Department either to identify the public body for which it claims to have acted as an agent under ORS 192.311(2)(b), or to withdraw the custodial determination and the referral.

Count 2 — The "no records" search is undescribed (ORS 192.329)

Under ORS 192.329, a response is complete only on a reasonable search, and a "no records" determination is a statement about a search. The Department has now entered that determination twice: on July 10 as to records "in which I am named or identifiably described in connection with personnel, human resources, legal, risk, or accountability matters," and on July 27 as to "any communication between your agency and [OPRD], the Office of the Governor, or any other state entity that references me." It has declined to describe either search, though I asked it to on July 10 and again on July 12.

I have not asked the Attorney General to find that responsive records exist. I have asked that each search be described — custodians and offices, systems and repositories, date range, and terms and identifiers — and, in particular, that the Department confirm whether it searched for records that

describe me without *naming* me, since a name-only search would not reach a category expressly defined to include identifiable description. The description matters because the determinations are difficult to credit on their face. The Department of Administrative Services is the state's central shared-services, risk-management, and enterprise-accountability agency for the executive branch. The events underlying this matter have been documented in correspondence with OPRD and escalated to the Office of the Governor, with which I filed a formal complaint on November 18, 2025. That an agency of that function located no record of its own referencing me — and no communication referencing me with OPRD, with the Office of the Governor, or with the Oregon State Police, each named in the request — is a determination the statute entitles me to test through a described search. In particular, the Department should state whether it searched for its communications with state entities other than OPRD at all, since every response it has given speaks only of OPRD.

Count 3 — The estimate ORS 192.329(5) requires was never provided (ORS 192.329(5))

ORS 192.329(5) requires that, no later than ten business days after the date by which acknowledgment is due, a public body either complete its response or provide a written statement that it is still processing the request together with a reasonable estimated date of completion. As to R000879's category for the Department's communications referencing me, the Department stated on July 10 that it was "still reviewing" and then, seventeen days later and without any intervening estimate, closed the category on July 27. The statutory window closed without the estimate the statute requires.

Count 4 — No exemption has been cited for anything (ORS 192.329(2)(b))

Where records are withheld, ORS 192.329(2)(b) requires the public body to assert the specific exemption it believes applies. The Department has claimed no exemption over any record in either matter. It cannot withhold by silence or by referral.

Count 5 — Undue delay (ORS 192.407)

On July 17 the Department stated only that it was "continuing to process" the request "in the order [it was] received" and that "periods without communication do not indicate inactivity." That is not a disposition. R000879 was then closed twenty-six days after submission, on two "no records" determinations whose searches the Department has refused to describe and on a custodial referral it has refused to substantiate. ORS 192.407 authorizes an order requiring disclosure within seven days, a \$200 penalty where the public body responded with undue delay or failed to respond, and a fee waiver or reduction on the same finding.

Count 6 — The preservation notice is unacknowledged

On July 7, 2026, I served the Department with formal notice of the duty to preserve all records potentially responsive to the request. I have received no acknowledgment that the notice was received or that it was distributed to the custodians of the records it covers. I ask for an order requiring the Department to state, in writing, whether the notice was received and to whom it was distributed, and — if any responsive record has been destroyed, purged, or overwritten since July 7, 2026 — to identify what and when. A statement that a record no longer exists is a complete and adequate answer. Silence is not.

V. A CORRECTION I MAKE ON MY OWN INITIATIVE

In my correspondence with the Department, I cited ORS 192.415 as the review provision applicable to this matter. That citation was wrong. The Department of Administrative Services is a state agency, and review of a state agency's denial lies with the Attorney General under ORS 192.411; ORS 192.415 is the district attorney route for public bodies that are not state agencies. I also, in that correspondence, attributed the estimated-completion-date requirement to ORS 192.324(2)(b); the correct provision is ORS 192.329(5). I identified and corrected the forum citation in writing to the Department on July 17, 2026, and I correct the second citation here. I state both for the same reason: the record should be right, and I would rather correct my own errors than leave them standing.

VI. RELIEF REQUESTED

I ask the Attorney General to order the Oregon Department of Administrative Services to:

1. For the Department's own records — including its communications referencing me with OPRD, with the Office of the Governor, and with any other state entity, and records in which I am named or identifiably described in the categories requested — **produce** all non-exempt responsive records, **cite the specific statutory exemption** for each record or portion withheld, or **state expressly that no responsive record exists**.
2. **Either identify the public body for which the Department claims to have acted as an agent under ORS 192.311(2)(b), or withdraw the custodial determination and the referral to OPRD.**
3. **Describe the search conducted** — custodians and offices, systems queried, date range, and terms and identifiers — and confirm whether the search reached the Department's

communications with state entities other than OPRD, and records that identifiably describe me and not only my name.

4. **State whether the preservation notice of July 7, 2026 was received and distributed**, and identify any responsive record destroyed since that date and when.
5. **Impose the penalty available under ORS 192.407** if the Attorney General determines the Department responded with undue delay or failed to respond.

VII. EXHIBITS

#	Document	Date
1	R000879-070126 — request as received (DAS portal), full text	July 1, 2026
2	DAS closure of R000879 on custodial basis, referral to OPRD	July 6, 2026
3	Petitioner's request to reopen R000879 (custodian of its own records)	July 6, 2026
4	DAS notice reopening R000879	July 7, 2026
5	Petitioner's correspondence-channel note and preservation notice	July 7, 2026
6	R000885-070726 — request as received (DAS portal), full text	July 7, 2026
7	Petitioner's custodial-determination analysis under ORS 192.311(2)(b)	July 8, 2026
8	DAS acknowledgment of R000885 ("reviewing"), no completion estimate	July 8, 2026
9	DAS partial response to R000879 — "no records" / "still reviewing"	July 10, 2026
10	Petitioner's request to document the search; timeline for remaining portion	July 10, 2026
11	Petitioner's letter on why "no records" is difficult to credit	July 12, 2026
12	Petitioner's outstanding-determinations letter	

#	Document	Date
		July 17, 2026
13	Petitioner's letter documenting the portal date-field constraint	July 17, 2026
14	Petitioner's correction of statutory citation (192.411, not 192.415)	July 17, 2026
15	Petitioner's inquiry to the Communications Director re the records function	July 17, 2026
16	Communications Director's response ("continuing to process... in order received")	July 17, 2026
17	DAS closure of R000879 — "no responsive record(s)" as to DAS communications referencing me, referral to OPRD, request "now closed"	July 27, 2026
18	DAS response to R000885 (cited as evidence only) — thirty-one not-custodian closures (2024–2026); DOJ public records manual as sole guidance; no internal standard	July 27, 2026

VIII. STATEMENT

I am not asking the Attorney General to find that anyone did anything wrong. I am asking the Attorney General to require the Department of Administrative Services to answer a public records request.

The Department closed a request for its own correspondence by declaring itself "not the custodian" of records only it can hold, and pointed me to an agency that cannot produce them. When I asked it to name the principal it was acting for, it went quiet. When it said it found no records describing me, and I asked how it searched, it went quiet. It then closed the request a second time, declaring it found no record of its own communications referencing me — with OPRD, the Governor's office, or any other state entity — again pointing me to OPRD, and again without describing the search. When I asked, separately, how often it disposes of requests this way and under what standard, it answered: thirty-one times in three years, under no standard of its own.

The request went to the Department of Administrative Services, was closed from its Strategic Initiatives and Enterprise Accountability office, and was answered by a referral to a different agency for records of the Department's own correspondence — records that agency does not hold, for a request that reached well beyond it. I note the office by its name, and nothing more.

Each thing I have asked for is a thing the statute already requires: a record, a cited exemption, a described search, an estimated date, or a statement that a record does not exist.

Respectfully submitted,

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