



DEPARTMENT OF JUSTICE

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March 14, 2024

**VIA E-MAIL ONLY:** [ohollarenr@lanepowell.com](mailto:ohollarenr@lanepowell.com)

Ryan O'Hollaren  
Lane Powell  
601 SW Second Ave, Ste 2100  
Portland, OR 97204

Re: Request for Reconsideration - Petition for Public Records Disclosure Order  
*Building Codes Division, Oregon Department of Consumer and Business Services*  
*Oregon State Fire Marshall*  
DOJ File Nos.: 440918-GA0188-23 and 260001-GA0190-23

Dear Mr. O'Hollaren:

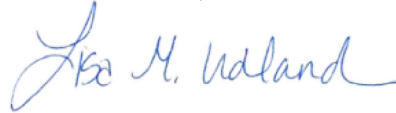
This responds to your February 21, 2024 letter requesting that this office reexamine its order responding to a recent public records petition submitted by your client, Carl Malamud. *See* Public Records Order, December 22, 2023, Malamud.

Mr. Malamud's petition sought an order compelling the Building Codes Division of the Department of Consumer and Business Services (BCD) and Oregon State Fire Marshall (OSFM) to disclose integrated "digital copies" of various Oregon building codes. We understand Mr. Malamud to be seeking unofficial digital versions of the building codes that are published by, and available for purchase from, various private entities that develop model specialty codes. Mr. Malamud's petition was denied because BCD and OSFM informed us that they have not purchased and do not otherwise possess the unofficial digital versions of the integrated codes he requested. Your letter asserts that the contracts with the publishers of the unofficial digital versions of the integrated codes give BCD and OSFM at least constructive possession of the digital versions.

We have reviewed the underlying contracts and conclude that they do not give BCD or OSFM constructive possession or an ownership interest in the unofficial *digital* versions of the

documents Mr. Malamud seeks.<sup>1</sup> And because both agencies report that they do not actually possess the unofficial digital versions of those integrated codes, we cannot conclude that either is a custodian of the unofficial digital versions within the meaning of the Public Records Law. *See* ORS 192.311 (defining “custodian” in relevant part as a “public body mandated, directly or indirectly, to create, maintain, care for or control a public record.”). As noted in our initial order, both BCD and OSFM maintain hard copy versions of the unofficial integrated codes that are available for public inspection. *See* ORS 192.324(3) (“If the public record is not available in the form requested, the public body shall make the public record available in the form in which the public body maintains the public record.”)

Sincerely,



LISA M. UDLAND  
Deputy Attorney General

ACF/pjn

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<sup>1</sup> You argue that Section 11 of the Terms and Conditions of those contracts gives BCD and OSFM the right to request copies and to reproduce the digital versions of the integrated building codes. We do not interpret Section 11 to apply to the integrated building codes at all, regardless of format, because that section only applies to contractor “accounting records \* \* \* and any other records relating to [c]ontractor’s performance \* \* \*.” And even if Section 11 were interpreted to encompass the digital versions of the unofficial integrated codes, we do not believe the right to “access” contractor performance records under that section, in itself, makes the digital versions “public records” or constitutes a constructive ownership interest in the digital versions within the meaning of the Oregon Public Records Law. *See Attorney General’s Public Records and Meetings Manual* at 8 (2019) (citing Public Records Order, March 23, 2005, Har (contractual right to access contractor records is not sufficient by itself to qualify records as “public records,” nor does it amount to an “ownership” interest in such records)).