Nathan Vasquez, Multnomah County District Attorney

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November 3, 2026

via email only

James Herndon
JJ Herndon Company, LLC
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Linh T. Vu
Chief Deputy City Attorney
City of Portland
linh.vu@portlandoregon.gov

Re: Petition of James Herndon seeking lists of uncashed checks and an unclaimed property report from the City of Portland

Dear James Herndon and Linh T. Vu:

On October 15, 2026, petitioner James Herndon submitted a public records request to the City of Portland for "[t]he current list or register of outstanding, uncashed, stale-dated or voided checks and warrants issued by the City of Portland that were dated on or before October 15, 2025 and remain unpaid," and for "[t]he City's most recent unclaimed property holder report filed with the Oregon Department of State Lands under ORS 98.352, including the owner detail schedule." The City denied the request the next day, citing ORS 192.355(16), which exempts holder reports of unclaimed property "to the extent permitted by ORS 98.352," and ORS 98.352(4), which makes holder records, and a government's lists of the property it holds, confidential for set periods.

On October 17, 2026, as permitted by ORS 192.422, petitioner sought an order from this office requiring disclosure of the City's list of outstanding checks dated October 16, 2024, through October 15, 2025, and the owner detail of the City's holder reports covering property remitted on or before October 31, 2024. Petitioner argues that the exemption for a government's lists reaches only property already presumed abandoned under ORS 98.336, that the exemption for older reports has expired, that the City should have separated and released any nonexempt material under ORS 192.338, and that the City relied on a repealed rule of an agency that no longer administers the unclaimed property program.

The City argues that the records it does have are exempt under ORS 192.355(16), and that it no longer holds lists of the checks it has reported and remitted to the State Treasurer.

For the reasons below, I conclude, as the Attorney General did in *Petition of Nichol*, Att'y Gen. PRO (December 1, 1999), that ORS 98.352(4) exempts a government's list of its uncashed checks from the date the checks are issued until 24 months after the property is remitted to the State Treasurer.

DISCUSSION

A. Unclaimed Property Records – ORS 192.355(16) and ORS 98.352(4)

ORS 192.355(16) exempts "[r]eports of unclaimed property filed by the holders of such property to the extent permitted by ORS 98.352." ORS 98.352(4) provides in relevant part:

> All records are exempt from public review for 12 months from the time the property is reportable and for 24 months after the property has been remitted to the State Treasurer. All lists of records or property held by a government or public authority under ORS 98.336 are exempt from public review until 24 months after the property is remitted to the State Treasurer.

The property referred to is described in ORS 98.336(2), which presumes "uncashed warrants" held by the government to be abandoned when they "remain[] unclaimed by the owner for more than two years." A public body holding such property must report it to the State each year and deliver the property to the State Treasurer along with the report. ORS 98.352(1), (4).

i. The City's List of Outstanding Checks

Petitioner argues that the second sentence of ORS 98.352(4) reaches lists of property held "under ORS 98.336," and ORS 98.336(2) operates only on property that has gone unclaimed for more than two years. In petitioner's view, a check issued less than 24 months ago is not yet held under ORS 98.336. In isolation, this is a reasonable construction of this provision.

However, the Attorney General considered the same argument in *Nichol* and rejected it based on a review of the legislature's intent in enacting the statute. The Attorney General found that, as written, "pursuant to ORS 98.336" could describe the kind of property a government holds rather than only property that has already been presumed abandoned. The Attorney General reached this conclusion from a textual analysis whereby the contrary conclusion would render a portion of the statute surplusage.

The first sentence of ORS 98.352(4) protects "[a]ll records" for 12 months after the property becomes reportable and for 24 months after remittance. Petitioner's position is precisely the same one advanced by the petitioner in *Nichol*; adopting such a construction would make the second sentence of that section redundant. *Nichol*; *see* ORS 174.010 (a statute is to be construed, if possible, to "give effect to all" of its provisions).

Following the then-current statutory interpretation procedure, the Attorney General reviewed the legislative history for the measure. The Division of State Lands proposed the disputed second sentence of ORS 98.352(4) as part of Senate Bill 204 (1997) and explained its purpose to the Senate committee:

> The confidentiality provision allows state agencies to perform their due diligence in searching for the owners of uncashed checks before turning those checks over to the Division's Unclaimed Property Program. Currently, lists of uncashed checks do not become confidential until they are turned over to the Division. Researchers obtain those lists and contact the owners, charging a fee of 30% to 60% of the face value to help them recover their property.

Nichol (quoting Testimony of Paul Cleary, Director, Division of State Lands, Senate Committee on Civil Law, Business and Government Operations, SB 204, January 27, 1997). In part based on this legislative context, the Attorney General concluded that the legislature intended the sentence to protect a government's lists "during the period when they were held by the agency, as well as when the records were held by DSL." *Id.*

Petitioner acknowledges the adverse holding in *Nichol* and offers three reasons to reach a different one here. The first is that an Attorney General order does not bind this office. That is correct, but this office treats the Attorney General's orders as persuasive authority. This is all the more the case in interpreting the legal underpinnings of state agency processes, as is the case here.

The second is that the text should control. ORS 174.020(1)(a) directs that a statute be construed to "pursue the intention of the legislature if possible," and legislative history is consulted after text and context "even if the court does not perceive an ambiguity in the statute's text." *State v. Gaines*, 346 Or 160, 171-72 (2009). The plain text of the statute is where the inquiry begins, but that is weighed against other evidence of the legislature's intent. Petitioner's read would render the language added in 1997 functionally irrelevant, and the 1997 legislature believed it was doing *something* with the passage of SB 204.

The third reason petitioner offers is that *Nichol* predates the current administrative rule governing this process.[1] This exemption is created by statute; Oregon Administrative Rules cannot independently make a record confidential unless a statute expressly authorizes the agency to do so. *Petition of Loiselle*, Att'y Gen. PRO (March 6, 1996), n 3 ("Absent a specific statutory provision making the records confidential (or authorizing the department to do so), the department's administrative rule would not trigger the exemption[.]") The inverse is equally true: a statute making a record confidential cannot be overridden by an administrative rule. A rule is relevant context, as the Attorney General used it in *Nichol* for insight into the intent of the proponent of the legislative change; it has no legal authority one way or the other with respect to ORS 192.355(16).

ii. The Holder Report

Petitioner also sought the City's "most recent" holder report. Whether that is the report the City filed in the fall of 2025 or one it filed in October 2026, the property it covered was remitted within the past 24 months. The first sentence of ORS 98.352(4) exempts "[a]ll records" for 24 months after remittance.

iii. Property Remitted More Than 24 Months Ago

Part (b) of petitioner's requested relief seeks details of checks remitted on or before October 31, 2024, which would all necessarily be more than 24 months past remittance and thus no longer

[1] The City's October 16 denial cited former OAR 141-045-0105(1)(c), a Division of State Lands rule that exempted a government's lists of uncashed checks "from the issued date." The Division repealed this rule effective July 2, 2021, when the program moved to the State Treasurer. OAR 141-045-0105(1)(c) (2019), *repealed by* DSL 2-2021 (eff. July 2, 2021). The Treasurer's rule now says those lists are confidential "for 24 months after the Property is remitted to the Treasurer" and is silent about their status prior to submission to the Treasurer. OAR 170-145-0045(4).

exempt under ORS 98.352(4). The City responds that it does not have any "uncashed, stale-dated or voided checks and warrants that remain unpaid, or a list of those items." Thus, the City does not possess any records responsive to this item and has given a written statement to that effect. This completes its response to this portion of the request ORS 192.329(2)(d); *Petition of Cashman*, MCDA PRO 22-47 (2022).

iv. Segregation – ORS 192.338

ORS 192.338 requires a public body to separate exempt from nonexempt material when a public record "contains material which is not exempt under ORS 192.345 and 192.355, as well as material which is exempt from disclosure." Petitioner argues that the City should have released whatever portion of the record is not exempt. ORS 98.352(4) does not exempt particular items of information within a list or report. It exempts "[a]ll records" and "[a]ll lists of records or property." The exemption attaches to the report as a whole, not to individual pieces of information within the report. See, e.g., *Petition of Reyna*, MCDA PRO 22-40 (2022) (distinguishing between exemptions that apply to "reports" and those that apply to "information.")

ORDER

Accordingly, the petition is denied.

Regards,

NATHAN VASQUEZ
District Attorney
Multnomah County, Oregon

By: _____
Adam Gibbs
General Counsel

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