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June 29, 2004

Richard Aguirre
Statesman Journal
c/o Sarah R. Troutt, Esq.
McClinton & Troutt LLC
698 12th Street SE, Suite 210
Salem, Oregon 97301

Re: *Petition for Review of Denial of a Fee Waiver Request*:
Governor's Records

Dear Mr. Aguirre and Ms. Troutt:

This letter is the Attorney General's order on Mr. Aguirre's petition for review of a denial of a fee waiver request under the Oregon Public Records Law, ORS 192.410 to 192.505. The petition, which we received on June 22, 2004, asks the Attorney General "to order the office of Governor Kulongoski and the employees of the Governor's Office to waive or reduce the fee the Governor's Office proposes to charge the Statesman Journal" for the production of specified records. For the reasons that follow, we respectfully deny your petition.

The Public Records Law authorizes a custodian of public records to waive or reduce fees that it would otherwise charge to reimburse for its actual cost in responding to a request for records, if the custodian concludes that waiver or reduction "primarily benefits the general public." ORS 192.440(3), (4). If a requester believes that a state agency has unreasonably denied a request for a fee waiver or reduction, that person may petition the Attorney General for review of the denial. ORS 192.440(5). In delineating the Attorney General's authority to review such a denial, the Public Records Law states that the Attorney General has "the same authority in instances when a fee waiver or reduction is denied as it has when inspection of a public record is denied." ORS 192.440(5).

The Attorney General has no authority to review the actions taken in response to a request for public records that are in the custody of an elected official, or in the custody of another person but as to which the elected official claims the right to withhold disclosure. ORS 192.480. The Public Records Law specifically states that in either of

those situations, "no petition to require disclosure may be filed with the Attorney General or * * * or if a petition is filed it shall not be considered by the Attorney General * * * after a claim of right to withhold disclosure by an elected official." *Id.* ORS 192.440(5) extends this limit on the Attorney General's jurisdiction to his authority to respond to a petition alleging the unreasonable denial of fee waiver request.

We spoke with MardiLyn Saathoff, Governor Kulongoski's Legal Counsel, about Mr. Aguirre's petition, and she confirmed that the Governor's Office is treating the requests for records and for a fee waiver or reduction as being for records covered by ORS 192.480.[1] For this reason, the Attorney General lacks jurisdiction to substantively respond to Mr. Aguirre's petition, and the petition is denied.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

PDS: AGS14233
c: MardiLyn Saathoff, Governor's Office

[1] Ms. Saathoff also told us that the *Statesman Journal*'s counsel had asked to discuss the newspaper's request for a fee waiver or reduction with her, and that, until she learned of the petition to this office, she had considered the discussion to be ongoing. In other words, Ms. Saathoff is treating the newspaper's request as an open issue.