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August 22, 1988

John C. Sellers
6715 SW Cherry Hill Drive
Beaverton, Oregon 97005

Re: Request for Public Records Disclosure Order
Department of Environmental Quality

Dear Mr. Sellers:

This letter is the Attorney General's response to your August 15, 1988 petition for disclosure of Department of Environmental Quality (DEQ) records. You invoke the Public Records Law, ORS 192.410 to 192.505, and ask the Attorney General to order the DEQ to disclose ten itemized types of information relating to DEQ's practices, procedures and policies for hiring handicapped and severely handicapped persons. Your petition presents us with a unique threshold issue: Has the DEQ denied you a reasonable opportunity to inspect the public records and record information outlined in your petition?

Under the Records Law, the Attorney General's role is " . . . to determine if [a record of a state agency] may be withheld from public inspection," when a "person denied the right to inspect or receive a copy of any public record of a state agency" petitions for our review. ORS 192.450. (Emphasis added.) In most public record cases, the person petitioning for disclosure and the state agency agree on at least one thing, i.e., that the agency has "denied" disclosure of all or part of a record. Consequently, most public record disclosure petitions present this office with a legal issue of whether a particular record or certain record information is exempt from the disclosure requirements of the Public Records Law.

This case presents an unusual initial conflict: You, the petitioner, state that the agency has denied you disclosure; the agency reports that it has allowed disclosure.

Fortunately, we need not resolve this preliminary factual dispute. It appears to us that the factual dispute between you and the agency is based upon mutual misunderstanding and miscommunication. The DEQ suggests, as we quite agree, that to alleviate this problem, the agency and you should restart and complete the disclosure process with the guidance of the agency's assigned legal counsel, Assistant Attorney General Arnold Silver.

The DEQ advises us that it will review with you not only your requests for disclosure but also the requested records that physically can and legally must be made available for your inspection. We believe that this is a reasonable course that should be followed.

Given the broad scope and the complexity of the disclosure requests you presented to the DEQ, we believe it is reasonable to characterize your Public Records Law proceeding as being in the "pre-denial" stage. Accordingly, at this time, we deny your August 15, 1988 petition for an Attorney General's order as premature; but we recognize that you may renew or refile a petition after completion of the disclosure process at the agency level. To enhance the prospects for a mutually satisfactory resolution of this matter, we suggest that you contact the DEQ to schedule a date, time and place for your inspection of record information listed on your petition.

Respectfully submitted,

James E. Mountain Jr

JAMES E. MOUNTAIN, JR.
Special Counsel to the
Attorney General

JEM:cm
cc: Donny R. Adair, Personnel Director, Department of Environmental Quality
Michael Huston, Assistant Attorney General
Arnold Silver, Assistant Attorney General
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