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November 20, 2003

Nathan J. Ratliff, Esq.
Ratliff & Whitney-Smith P.C.
905 Main Street, Suite 200
Klamath Falls, OR 97601

Re: *Petition for Public Records Disclosure Order*:
Real Estate Agency Records

Dear Mr. Ratliff:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on November 17, 2003, asks the Attorney General to direct the Oregon Real Estate Agency to make available "[a]ny and all records, documents or other materials that the agency has obtained in the investigation of the complaint made by Ellen Suing, File Number 2002-11-R-350P." For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. Any person who is denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld from disclosure. ORS 192.450(1).

Your request is for records and other materials that the Real Estate Agency obtained in the investigation of a complaint made by Ellen Suing. In a letter dated November 12, 2003, Mark Moseley, Manager of the Regulatory Division of the Real Estate Agency, denied your request.

The Real Estate Agency is under the supervision and control of the Real Estate Commissioner, and the Commissioner is responsible for the performance of the duties imposed on the Agency. ORS 696.375(2). The records of open investigations before the Real Estate Commissioner are exempt from disclosure under ORS 696.430:

> Except for records of open investigations, all records kept in the office of the commissioner under authority of ORS 696.010 to 696,495, 696.600 to 696.785, 696.800 to 696.855 and 696.995 shall be open to public inspection under such reasonable rules and regulations as shall be prescribed by the commissioner.

The Public Records Law exempts from disclosure "[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law." ORS 192.502(9). Thus, under the cited statutes, the records of an open investigation before the Real Estate Agency are exempt from disclosure under ORS 192.502(9).

In his November 12th letter denying your request, Mr. Moseley stated that the Agency's investigation of Ms. Suing's complaint remains open, and that the Commissioner has not issued an order. His letter states that, although an investigative report has been completed, additional investigation of the complaint may be necessary before Agency action is taken on the complaint. Finally, in his letter, Mr. Moseley offers to notify you when these records become available for inspection.

Because the requested records are exempt from disclosure under ORS 192.502(9) due to the underlying investigation remaining open at this time, we deny your petition to compel disclosure.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS13238
c: Mark A. Moseley, Real Estate Agency