DAVE FROHNMAYER
ATTORNEY GENERAL
STATE OF OREGON

JAMES E. MOUNTAIN, JR.
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400

May 15, 1989

Richard A. Munn
Director
Department of Revenue
955 Center Street NE
Salem, OR 97310

Katherine Ann Mendonca
412 N.W. "B" Street
Grants Pass, OR 97526

Re: **Petition for Public Records Disclosure Order; Oregon Department of Revenue Records**

Dear Mr. Munn and Ms. Mendonca:

This letter is the Attorney General's order on Ms. Mendonca's petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. The petition, which we received on May 8, 1989, asks the Attorney General to direct the Oregon Department of Revenue (department) to make available for inspection and produce copies at the petitioner's expense of the following "records":

"1. Probable cause disclosure.

"2. Disclosure of how the money orders in my file addressed to Mr. Fall, were obtained and from whom they were obtained.

"3. Disclosure of the Oregon Department of Revenue's list of personal property owned by Katherine Ann Mendonca.

"4. Disclosure of the regulation procedure manual for Oregon's revenue agents.

"5. Disclosure of the name of the revenue agent that started the initial investigation on my case."

For the reasons that follow we grant the petition in part, and deny it in part.

The Public Records Law confers a right to inspect any public record, subject to certain exceptions. ORS 192.420. A "public record" is "any writing containing information relating to the conduct of the public's business." ORS 192.410(4).

Items 1, 2 and 5 of the petition are not requests for records (writings), but requests for information. Exhibit 2 of the petition indicates that on May 1, 1989, Ms. Mendonca inspected her personal file in the Salem office of the Department of Revenue and found no records containing the information sought. Evidently, no such records existed at that time. Since then, the Department of Revenue has generated a memorandum which appears to contain the information requested. That memorandum, dated May 10, 1989, is now a public record, and we understand that the department will provide it to Ms. Mendonca for inspection and copying.

Item 3 requests a list of personal property owned by Ms. Mendonca. The department informs us that Josephine County's assessment of her personal property for property tax purposes was the subject of an administrative appeal to the department. The department has informed us and the records of that appeal disclose that the assessment was made upon the best information available to the assessor, because Ms. Mendonca refused to file personal property tax returns, listing her personal property, as required by ORS 308.290. The personal property list thus does not exist. Nor does the Public Records Law require an agency to create records, even when it is possible to do so. Accordingly, we deny this part of the petition.

Item 4 requests disclosure of the "regulation procedure manual" for the department's revenue agents. The manual is a public record. We grant this part of the petition subject to the department's power and duty to delete any information prohibited or exempt from disclosure under ORS 192.502(8), 314.835 and 314.840. We understand that the department will make the manual available to Ms. Mendonca upon her request at the offices of the Department of Revenue, 955 Center Street, N.E., Salem, OR 97310. Ms. Mendonca should call Revenue Supervisor Mary Jekabsons at 378-8983 to make the necessary arrangements.

The department informs us that the manual consists of approximately 396 pages. A public body may establish fees reasonably calculated to reimburse it for the actual cost of making records available. ORS 192.440(2). The Department of Revenue's fees are set forth in OAR 150-192.440, a copy of which is enclosed. According to our calculations, the fee for copying the entire manual would be at least $98. The department may require Ms. Mendonca to pay its photocopy costs before it provides her a copy of the manual.

Sincerely,

PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

PLA:TEB:RDW:cws/2823t
Enclosure