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

July 14, 1989

David A. Rhoten
Attorney at Law
230 Oregon Building
494 State Street
Salem, OR 97301-3654

Re: Petition For Public Records Disclosure Order; Department of Insurance and Finance, Workers' Compensation Division Records

Dear Mr. Rhoten:

This letter is the Attorney General's order on your petition, submitted on behalf of Mr. Benjamin D. Koerper, for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on June 28, 1989,[1] asks the Attorney General to direct the Department of Insurance and Finance (DIF) to disclose a complete copy of the "Evaluation Section Study - Workers' Compensation Division." Specifically, you petitioned for an order to disclose the study, together with actual quotations "made by Evaluation Section employes when interviewed for the purposes of the above-referenced Study and any other supporting documents accompanying the above-referenced Study when submitted to Matt Hennessee, Administrator, Workers' Compensation Division by Employe Services of the Department of Insurance & Finance."

DIF already has provided Mr. Koerper with a copy of the Evaluation Section study. We also understand that DIF provided Mr. Koerper with, or has made available generally, an organizational chart, a sheet of published statistics related to the workload of Evaluation Section personnel, and a list of the questions used in the personal interviews. These were the only documents accompanying the study submitted to Mr. Hennessee other than a compilation of selective unattributed quotations taken from confidential employe interviews. We understand that Mr. Hennessee provided both a sampling of these unattributed comments as well as of recommendations contained

in the Evaluation Section study to Mr. Koerper and other staff members in a letter dated May 3, 1989. One purpose of Mr. Hennessee's letter was to reassure the staff that the study constituted a sincere effort to address the real concerns and opinions of staff members. Despite providing the study and supplemental information above, DIF has declined to provide your client with an unabridged copy of the quotations derived from the confidential employe interviews. For the reasons stated below, we respectfully deny your request that we order release of these recorded confidential statements.

The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exceptions. ORS 192.420. Our review of your petition discloses that all documents that you have identified have been made available to your client except for the full text of quotations taken from employe interviews associated with the Evaluation Section study. These quotes are exempt from disclosure under ORS 192.502(3).[2]

ORS 192.502(3) exempts certain confidential information from the disclosure requirements of the Public Records Law. The statute specifically exempts

> "[i]nformation submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure."

DIF has informed us that the recorded comments of interviewed employes given as part of the review upon which the Evaluation Section study was based were submitted in voluntary confidential interviews. DIF further has shown that those interviewed were promised that their remarks would be kept confidential. Employes received this promise of confidentiality both orally and in writing before interviews. The recorded statements comprise candid statements that reasonably should be considered confidential. The interview format was designed to elicit comments regarding personal opinions and experiences that would be free of qualifications or omissions induced by concerns over employment consequences, peer reaction or public embarrassment.

We are convinced that the public interest would suffer by disclosure of these recorded comments. Disclosure would undermine the perceived integrity of the review process and of management

personnel who promised confidentiality. It also would subject staff members to possible recriminations caused by revealed confidences, and therebyundermine agency morale and employes' ability to work in cooperation. Finally, disclosure would eliminate a valuable tool for assessing and improving labor relations and administrative efficiency generally.

In some circumstances, it is possible to release information submitted in confidence without revealing the source of the information, thereby preserving the source's confidentiality. Here, however, we conclude that such a procedure would not preserve confidentiality. Given the limited number of interview participants, and the familiarity of staff members with each other, further revelation of recorded comments, even in an unattributed form, would risk unreasonably the disclosure of the participants' identities and thus a breach of confidentiality. Cf. September 12, 1988, Public Records Order at 5 (Hansen) (deleting names of study's respondents would not preserve their confidentiality).

For these reasons, we conclude that the documents you seek are exempt from disclosure under ORS 192.502(3). Accordingly, we respectfully deny your petition to compel disclosure.

Sincerely,

PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

PLA:DKC:ros/7598G

cc: Matt Hennessee, Administrator
Workers' Compensation Division
Department of Insurance & Finance

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[1] We appreciate your courtesy in allowing us to exceed the seven-day deadline for issuing public records orders.

[2] These materials also may be internal advisory communications exempt from disclosure under ORS 192.502(1). Because we have concluded that the requested information is exempt from disclosure under ORS 192.502(3), we do not address the applicability of ORS 192.502(1).