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DEPARTMENT OF JUSTICE

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January 21, 2003

Keli Kubat
9268 SE Clinton St. #16
Portland, OR 97266

Re: *Petition for Public Records Disclosure Order*:
Oregon Department of Human Services, Disability Determination Services Records

Dear Ms. Kubat:

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.[1] Your petition, which we received on January 13, 2003, asks the Attorney General to direct Disability Determination Services (DDS) to make available "a copy of form SSA-2506-BK (9-2000) covering the period of time from 1/1/95 to 2/10/01 and all records considered by [Dr. Paul] Rethinger relevant and underlying his assessment on the SSA form identified." For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. Any person 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. ORS 192.450. DDS is part of the Vocational Rehabilitation Division of the Oregon Department of Human Services. OAR 582-070-0005. DDS makes initial determinations of eligibility for Social Security Disability Insurance and Supplemental Security Income as provided by federal law.[2] OAR 582-070-0005; 20 CFR 404.1503. Dr. Rethinger performs evaluation services for DDS under contract. Your petition states that Dr. Rethinger denied your request in a January 6, 2003 telephone conversation. Without determining whether Dr. Rethinger's denial constitutes a denial

[1] This order does not address your request to this office for records, stated at the end of your petition. We will respond to your request separately, in accord with the requirements of the Public Records Law.

[2] We spoke with Ken Forbes, DDS Systems Operations Manager, about your petition. Mr. Forbes stated that SSA opened a case file for you when you applied for federal disability benefits. SSA transferred the case file to DDS to make the initial eligibility determination for SSA. Upon completion of its initial eligibility determination, DDS returned the case file to SSA. According to Mr. Forbes, any records related to Dr. Rethinger's evaluation that you requested from DDS are now in the possession and custody of the SSA administrative law judge currently handling your appeal, along with the remainder of the case file. DDS has no records regarding your case in its possession.

by DDS, we explain why the records you request are exempt from disclosure under the Public Records Law.

An Assistant Regional Counsel for SSA has informed our office in writing that SSA is responsible for the maintenance of all records of the SSA disability program, including the records you requested from DDS, and that none of those records may be disclosed except as provided by regulations promulgated by SSA. *See* January 16, 2003, Letter from Terrye E. Shea, enclosure. Disclosure of records maintained by SSA is governed by 20 CFR parts 401 and 402.[3] Neither 20 CFR part 401 nor 20 CFR part 402 authorizes DDS to disclose the requested records. *See* 20 CFR 401.15 and 402.125. Instead, those regulations provide for disclosure of records by the SSA. The enclosed SSA letter and the cited parts of Volume 20 of the Code of Federal Regulations address how you may request records from SSA.

If federal law or regulations prohibit the disclosure of public records, those records are exempt from disclosure under the Public Records Law. ORS 192.502(8). Because disclosure of the records you requested from DDS is subject to restrictions established in SSA regulations, and those regulations do not authorize DDS employees to disclose the records that you request, we conclude that they are exempt from disclosure under ORS 192.502(8). For this reason, we deny your petition as moot.[4]

Sincerely,

Peter D. Shepherd

PETER D. SHEPHERD
Deputy Attorney General

c: Lloyd Horsley, DDS
Ken Forbes, DDS
Enclosure: a/s

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[3] SSA's disclosure of records under the federal Privacy Act, 5 USC 552a, is governed by 20 CFR part 401. Disclosure under the Freedom of Information Act, 5 USC 552, is governed by 20 CFR part 402.

[4] The attorney you refer to in your petition, Sanford Zeitz, has informed this office that he has formally withdrawn his representation of you in this matter. If you have an attorney, you should consult your attorney about obtaining the documents you are seeking from the administrative law judge handling the SSA hearing.