HARDY MYERS
ATTORNEY GENERAL

PETER D. SHEPHERD
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

1162 Court Street NE
Justice Building
Salem, Oregon 97301-4096
Telephone: (503) 378-4400
TTY: (503) 378-5938

January 14, 2003

Noelle Crombie
The Oregonian, Metro South News Bureau
P.O. Box 2500
Oregon City, OR 97045

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

Dear Ms. Crombie:

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 January 7, 2003, asks the Attorney General to direct the Oregon Department of Human Services (DHS) to disclose "written findings from the investigation into the actions of employees Colin Fitzpatrick and Darlene Walsh." For the following reasons, 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. The Public Records Law allows a public body a "reasonable" time to respond to a records request. What is "reasonable" will depend upon many factors, including staff available to respond to the request and the difficulty in determining whether the records are exempt from disclosure. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETING MANUAL (2001) at 9. Any person denied the right to inspect or to receive a copy of a public record may petition the Attorney General to determine whether the record may be withheld from disclosure. ORS 192.450(1).

You made your request to DHS on December 4, 2002. Your petition states that "[s]ince Dec. 6, the Oregon Department of Human Services has repeatedly promised The Oregonian access to the agency's report on the actions of two terminated DHS staff members, and yet the newspaper has not received it." According to Clyde Saiki, DHS Chief Administrative Officer, the agency has not denied your request. Indeed, the agency intends to produce a redacted record responsive to at least part of your request. Therefore, we assume that your petition is based on a belief that DHS has constructively denied the request.

Subsequent to receiving your request, DHS asked our office for legal advice with respect to its response. While your petition asserts that responding to your request is not legally complex, disclosure of the requested record in fact raises a number of legal issues. Portions of the requested document are subject to public records exemptions and portions are not; distinguishing between the two categories and preparing a redacted version of the record has, in fact, required the exercise of judgment according to legal standards. Therefore, we find DHS' request for legal advice to be both reasonable and responsible. The Public Records Law clearly contemplates that agencies have the opportunity to review the requested records, including consultation with legal counsel, and to act on the request before the Attorney General or the courts can review the matter. *Morse Bros., Ind. v. ODED*, 103 Or App 619, 798 P2d 719 (1990).[1]

Today, we conferred again with Mr. Saiki. He states that DHS is in the process of finalizing its response to your request, which will include disclosure of portions of the requested record. Therefore, we anticipate that you will receive a response from DHS within the next week.

Because DHS has not denied your request, we deny your petition as premature.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS11656

c: Clyde Saiki, DHS

[1] We note that, during December 2002 and the current month, this office has spent time not only advising DHS about the request addressed by your current petition but also issuing a Public Records Order, dated December 18, 2002, in response to your earlier petition addressing other DHS records pertaining to the same subject matter. In addition, *The Oregonian* has sought disclosure of the same record in a matter now pending before the Employment Relations Board, and this office has been providing advice to DHS in that forum as well. In that proceeding, DHS will tender to the Employment Relations Board a redacted document.