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DEPARTMENT OF JUSTICE

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January 13, 2003

William Birhanzl
FAX: (503) 774-0645

Re: *Petition for Public Records Disclosure Order:*
Oregon Board of Investigators Records

Dear Mr. Birhanzl:

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 asks the Attorney General to direct the Oregon Board of Investigators (OBI) to make available for inspection the photographs of all currently licensed investigators and operatives.[2] For the reasons that follow, we respectfully deny your petition.

On July 17, 1998 you made a request to OBE to inspect various records contained in each investigator's and operative's OBI file, including the photographs identified in your petition. Those photographs are identified in your 1998 request under letter "[B]." Your petition states that your request was denied by former OBI Executive Director Michael Jacobs.

On August 4, 1998, Mr. Jacobs wrote to you in response to three public records requests you made, including the request referenced in your petition. In that letter Mr. Jacobs indicated that he would make available copies of the records requested, provided that you pre-paid for the costs incurred in processing your request. OBI is allowed to ask for pre-payment of fees under ORS 192.440(3). Kelly Paige has since become Executive Director of OBI. She states that OBI has no record of you paying the requested fees in order to complete processing of your request.

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[1] While you addressed your petition to the Attorney General, you faxed it to the Financial Fraud Section of the Civil Enforcement Division instead of to the Attorney General's office. Because your petition was not identified as such until January 6, 2003, we are treating your petition as being received on that date.

[2] Separately, you petitioned this office for an order regarding an alleged denial of a public records request that you submitted to the same agency in November, 2000. Today, we issued a separate order regarding that petition.

Because it appears from the record that you have not paid the fees as requested, we conclude that OBI has not denied your request.

Under these circumstances, the Attorney General has no authority to order the agency to disclose the records referenced in your petition. *See* ORS 192.450(1). Therefore, we deny your petition as premature.[3]

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS11645
c: Kelly Paige, OBI Executive Director

[3] We note for your information that the photographs you requested are exempt from disclosure under current law. ORS 703.473; ORS 192.502(9).