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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 "[a]ll information specific to each alleged incident of 'loud and disruptive behavior' in your office referenced in OBI letter of 11/27/00 * * * ." For the reasons that follow, we respectfully deny your petition.[2]

Your petition states that your November 2000 request was denied by former OBI Executive Director Michael Jacobs "through criminal acts of coercion, compelling me to abstain from my right to such inspection in their office lest they falsely accuse me of criminal trespass or cause that charge to be instituted against me." You also state that OBI "obstructed" your right to inspect records by "imposing an obstructive fee."

In a letter dated November 27, 2000, discussing a notice of trespass issued to you, Mr. Jacobs stated that the notice "is not an attempt to keep you from obtaining public records." The letter goes on to state that OBI had repeatedly asked you for a mailing address to allow it to mail you copies of requested records. Kelly Paige has since become Executive Director of OBI.

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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 on July 17, 1998. Today, we issued a separate order regarding that petition.

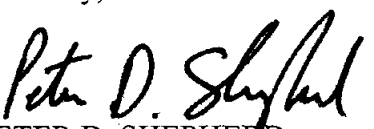
She states that OBI has no record of you providing a mailing address or explaining an inability to do so.

We note that your petition took the form of a facsimile and that you provided no return address other than a facsimile. Ms. Paige acknowledges that you have sent OIB documents via facsimile, and she states that OIB is willing consider responding to individual records request by use of that medium. However, the volume or other physical characteristics of the records may make it impracticable for the agency to send records via facsimile. Although OIB does have an obligation under law to make records available for inspection and copying, the OIB is not obliged by law to send documents in facsimile form if it is impracticable to do so. In addition, to the extent their characteristics would permit facsimile transmission, that mode of compliance with the Public Records Law would add to the cost of producing the records that you have requested.

On January 10, 2001, Mr. Jacobs wrote to you specifically in response to the public records request at issue in your petition. Mr. Jacobs asked for pre-payment of the fees OBI would incur to locate the records you requested. OBI is allowed to ask for pre-payment of fees under ORS 192.440(3). As previously noted, Ms. Paige states that OBI has no record of you paying the requested fees in order to complete processing of your request. 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.

Sincerely,



PETER D. SHEPHERD
Deputy Attorney General

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c: Kelly Paige, OIB Executive Director