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December 31, 2002

Paul B. Meadowbrook
Attorney at Law
285 Liberty Street NE, Suite 360
Salem, Oregon 97301

Re: Petition for Public Record Disclosure Order:
Department of Administrative Services; Mike Greenfield, Director

Dear Mr. Meadowbrook:

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. In your letter, which we received on December 24, 2002, you request that we order disclosure of records you requested in a December 10, 2002 letter directed to Assistant Attorney General David Landrum. The records requested in that letter are 1) email message hard copy file that Mike Greenfield testified at deposition consists of messages printed from Mr. Greenfield's DAS email directory and archived by Mr. Greenfield's secretaries for public record purposes, pursuant to ORS 192.440(2); 2) a printed copy of Sandra Herring's DAS electronic calendar, pursuant to ORS 192.440(2); and 3) an electronic copy of John Lattimer's email directory, sent and received messages that Mr. Lattimer testified at deposition he maintains, pursuant to ORS 192.440(2). 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. Any person who is denied the right to inspect or to receive a copy of any public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld. *See* ORS 192.450(1). The Attorney General may order a state agency to disclose the records only when the agency has denied a request for the records. *See* ORS 192.405(1).

Mr. Landrum, the Assistant Attorney General assigned responsibility to defend your client's civil lawsuit against Mr. Greenfield, Mr. Lattimer and DAS has informed us that your request has not been denied, but that the Department of Justice and DAS have been working to identify and collect the records responsive to it. The records collected will be reviewed with counsel to determine whether they contain information that is exempt from disclosure under the

Public Records law. Mr. Landrum anticipates that non-exempt records will be available for your inspection within the next 14 days.

The Public Records Law imposes no specific deadline for the release of requested records; the public body must release nonexempt records within a "reasonable time." We have explained that "[t]he amount of time that is reasonable will depend upon the volume of records requested, the staff available to respond to the records request and the difficulty in determining whether any of the records are exempt from disclosure." ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL at 9 (2001). We note that in your December 24, 2002 letter you requested that "you order disclosure of records requested of Mr. Greenfield in the attached December 10, 2002 letter. Although the requested records are easily accessible, neither Mr. Greenfield nor Mr. Lattimer nor their attorney, Mr. Landrum have produced these records." However, "[t]he public records custodian acts reasonably even if the custodian does not comply with timelines imposed by the requestor, so long as the custodian provides access to the nonexempt records within a reasonable period of time. It is not a denial entitling the requestor to petition the release of the records if the custodian does not provide access to the nonexempt records within the timeframe set by the requestor." *Id.*

The Attorney General may order a state agency to disclose records only when the agency has denied a request for the records. *See* ORS 192.450(1). Because DAS has not denied your request, the Attorney General does not have jurisdiction to order disclosure at this time. We therefore respectfully deny your petition as premature.

Sincerely,



STEPHANIE STRIFFLER
Special Counsel to the Attorney General

cc. David Landrum