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July 30, 2002

Jonathan M. Friedman
Attorney at Law
1020 S.W. Taylor, Suite 430
Portland, OR 97205

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

Dear Mr. Friedman:

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 July 24, 2002, asks the Attorney General to direct the Oregon Department of Transportation (ODOT) and the Oregon State Police (OSP) to produce certain records which may relate to an accident which occurred December 9, 2000 on Highway 6. For the reason that follows, 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 law requires generally that the custodian of public records furnish proper and reasonable opportunities for inspection or copying of the record in the office of the custodian. ORS 192.430. Any person 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 public record to determine if it may be withheld from disclosure. ORS 192.450(1). Under these provisions, an agency may be said to have "denied" a request to inspect or to receive a copy of a public record only if the agency receives a proper request for public records. Public Records Order, July 7, 1989 (Baker).

The Attorney General may order a state agency to disclose records only when the agency has denied a request for the records. ORS 192.450(1); *see also Morse Bros., inc. v. ODED*, 103 Or App 619, 798 P2d 719 (1990) ("The Public Records Law clearly contemplates that agencies have the opportunity to review the requested records and to act on the request before the Attorney General or the court can review the matter.")

Your petition makes no assertion that you have requested these documents from the agencies or that you have been denied an opportunity to inspect these records. In a telephone conversation with Assistant Attorney General Dale K. Hormann, you confirmed that you had not made any request to review these documents prior to petitioning this office, but said you would follow up that conversation with requests to the agencies immediately.

Absent a request for records and a denial of that request by the state agency, the Attorney General has no authority to order ODOT or OSP to make the records available to you. *See* ORS 192.450(1). Therefore, we respectfully deny your petition as premature.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS10662
c: Betty J. Pankratz, Oregon Dept. of Transportation
Sgt. David Scholten, Oregon Dept. of State Police