CHARLES S. CROOKHAM
ATTORNEY GENERAL

JACK L. LANDAU
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400

March 19, 1992

Tom Bender
38755 Reed Road
Nehalem, OR 97131

Re: Petition for Public Records Disclosure Order:
Department of Transportation
DOJ File No.734-620 0093

Dear Mr. Bender:

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 March 13, 1992, asks the Attorney General to direct the Oregon Department of Transportation (ODOT) to make available for inspection, and to produce copies of, the records identified in your "First Request for Documents," certified as delivered February 25, 1992. For the reasons that follow, we respectfully deny your petition as premature.

The Attorney General may order a state agency to disclose records only where the agency first has denied a request for public records. ORS 192.450(1). The Oregon Department of Transportation responded to your request by a March 3, 1992, letter from Kenneth E. Husby, Region 2 Administrator, stating that the request would involve extensive staff time to locate and process the records requested. This does not constitute a denial.

Mr. Husby's letter also states that an estimate of the charges to process your request would be made, and that a prepayment would be necessary. The Public Records Law authorizes an agency to establish fees "reasonably calculated to reimburse it for its actual cost in making such records available." ORS 192.440(2). "An agency preliminarily may estimate charges for responding to a records request, and require prepayment of the estimated charges before acting on the request." Attorney General's Public Records and Meetings Manual 7 (1989). These

charges may include a charge for the time spent by agency staff in locating the requested records, reviewing the records to delete exempt material, supervising a person's inspection of original documents in order to protect the records, or copying the records. See Public Records Order, April 7, 1989, Martin.

We understand that you have asked ODOT to waive any charges for making available and copying the requested records. ORS 192.440(4) allows agencies to waive or reduce their charges "if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public." Because ODOT has not yet calculated the cost to the agency of making the records available, any review of the decision to deny your request for waiver is also premature.

For these reasons, we respectfully deny your petition as premature.

Sincerely,

PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

PLA:AV:DKH:bjs:cfs/JGG028ED
c: Kenneth E. Husby
ODOT