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November 17, 1988

Harold Lasley, Manager
Civil Rights Section
Department of Transportation
412 Transportation Building
Salem, Oregon 97310

Max Rae
Attorney at Law
265 Commercial Street, S.E./Suite 280
Salem, OR 97301

Re: **Petition for Public Records Disclosure Order**
Department of Transportation, Civil Rights Section Records

Dear Messrs. Lasley and Rae:

This letter is the Attorney General's order on Mr. Rae's petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. The petition, which we received on November 10, 1988, asks the Attorney General to direct the Oregon Department of Transportation (ODOT) to disclose all records comprising the investigation file regarding Lorraine Goucher, including notes of all interviews conducted by the agency. For the reasons stated below, we grant the petition.

The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exceptions. ORS 192.420. Mr. Rae's petition raises the issue whether the records sought fall within the exemption from disclosure set out in ORS 192.502(3).

ORS 192.502(3) exempts from disclosure:

"Information submitted to a public body in confidence and not otherwise required by law to be

submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure."

In explaining this exemption, we have stated:

> "The purpose of this exemption is to encourage citizens to provide relevant information voluntarily to governmental agencies with some reasonable assurance that the information will be kept confidential. It is designed to protect the confidentiality of information which may lead to a further investigation - the 'hot lead.'"

44 Op Atty Gen 239, 251 (1984)(Attorney General's Public Records and Meetings Manual).

We have been advised that the employer's representative who conducted the inquiry informed the employes questioned that their responses would be kept confidential. However, that representative concluded that the employes would have cooperated in the employer's investigation even without her offer of confidentiality. As we cannot determine that the employes submitted the information to the department in confidence - the first element of the confidential information exemption - that exemption does not apply.

There may be situations in which records of a public employer's investigations of allegations of discriminatory or harassing behavior within its workforce are exempt from public disclosure. The exemptions set forth in ORS 192.501(1), covering records pertaining to litigation; ORS 192.501(13), regarding personnel disciplinary actions; ORS 192.502(1), exempting nonfactual advisory communications within public bodies; and ORS 192.502(2), relating to information of a personal nature, may apply to such investigations, depending on the circumstances. The requirement that an employer take "immediate and appropriate corrective action" in response to acts of sexual harassment among its employes in order to avoid legal responsibility for those acts, OAR 839-07-555(2), may obligate public employers (and indeed all employers) to investigate interactions among employes. The circumstances of the investigations may raise issues under all of these exemptions. The circumstances of this particular investigation, however, do not satisfy all of the elements of any of these exemptions for these notes and records.

Accordingly, we grant the petition for disclosure. The agency has seven days from the issuance of this order in which to comply.

Very truly yours,

James E. Mountain Jr

JAMES E. MOUNTAIN, JR.
Special Counsel to the
Attorney General

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