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June 10, 2002

Gregory A. Hartman
Attorney at Law
Bennett, Hartman, Morris & Kaplan, LLP
851 SW Sixth Avenue, Suite 1600
Portland, Oregon 97204-1376

Re: *Petition for Public Records Disclosure Order:*
Public Employees Retirement System Board Records

Dear Mr. Hartman:

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. We received your petition on June 4, 2002. It asks the Attorney General to direct the Public Employees Retirement System (PERS) Board to release "[a]ll opinion letters furnished to the PERS Board or its agents by the Attorney General's office or by other legal counsel which were the basis for the board's and staff's determination to develop the sequential modeling system." You also ask the Attorney General to direct the disclosure of "[m]inutes as well as tape records from any executive sessions of the PERS board * * * in which the advice given by the Attorney General on this subject was discussed or in which any other discussions took place involving the sequential crediting model." For the reasons that follow, we respectfully deny your petition.

Your office made a public records request to the PERS board on May 3, 2002, and had not received a response as of June 3, 2002. You petition states that, from the lack of a response to date, "it appears that the PERS Board has denied our request."

The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exemptions and limitations. ORS 192.420. Any person denied the right to inspect or to receive a copy of a public record by a state agency may petition the Attorney General to review the record and determine if it may be withheld. ORS 192.450(1). 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).

We have spoken with PERS Deputy Director David Bailey about your request. According to Mr. Bailey, it is standard procedure for the staff to refer to the board decisions regarding disclosure of confidential legal advice. It is his understanding that the requested records constitute materials that the staff considers protected by the attorney-client privilege. Due to the press of agency business, your request was not submitted to the board at its meeting on May 14. Mr. Bailey states that your request will be presented to the board at its next meeting, on Tuesday, June 11, 2002, for its consideration and decision.

A state agency must respond to a request for public records and provide access to nonexempt records "within a reasonable time period." ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2001) at 9. PERS received your request approximately five weeks ago. Presenting your request to the board is consistent with PERS' standard approach to responding to requests for public records containing, or consisting of, confidential legal advice. The delay in submitting your request to the board for its consideration and decision was due to the press of agency business. It appears that the PERS board will consider your request on Tuesday. For these reasons, we do not find that the time PERS has taken to respond to your request to amount to a constructive denial. Since PERS has not denied your request, we deny your petition as premature.

Sincerely,

HARDY MYERS
Attorney General

AGS10330
c: David Bailey, PERS, Deputy Director