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November 21, 1988

Burl Oliver
Health Program and Policy Unit
Adult and Family Services Division
203 Public Service Building
Salem, OR 97310

Chuck Gress
Executive Director
Oregon State Pharmacists Association
1460 State Street
Salem, OR 97301

Re: Petition for Public Records Disclosure Order; Adult and Family Services Division

Dear Mr. Oliver and Mr. Gress:

This letter is the Attorney General's order on Mr. Gress'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 14, 1988, asks the Attorney General to direct the Adult and Family Services Division (AFSD) of the Department of Human Resources to produce a copy of a transcript of the public hearing held on October 21, 1988, at 9:00 a.m., the purpose of which was to "solicit comments from the public regarding the proposed preferred provider organization (PPO) for pharmaceutical services." AFSD refused to provide a copy of the transcript, which had not been prepared at the time Mr. Gress requested disclosure by the agency. For the reasons stated below, we deny the petition as premature. However, AFS informs us that the hearing transcript has been prepared, and that the agency will make the record available for inspection and copying by Mr. Gress.

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. None of the statutory exemptions are applicable to the transcript of a public hearing.

However, the Public Records Law applies only to records which are in existence. ORS 192.410(4) defines a "public record" for purposes of ORS 192.410 to 192.505 as

> ". . . any writing containing information relating to the conduct of the public's business, prepared, owned, used or retained by a public body regardless of physical form or characteristics." (Emphasis added.)

The Public Records Law does not require a public body to create records that do not already exist. Where a transcript of a public hearing has not been prepared, the Public Records Law does not require the agency to create one. 44 Op Atty Gen 239, 277 (1984) (Attorney General's Public Records and Meetings Manual); Letter of Advice dated June 1, 1987, to Jim Kenney, Supervisor, Urban-Renewal Section, Department of Revenue (OP-6126) at 4-5.

AFSD informs us that at the time of the request to the agency for a transcript of the October 21 hearing, a tape recording of that hearing was available, but a transcript had not yet been prepared. For this reason, we deny Mr. Grees' petition.

We now understand, however, that the agency has completed preparing the transcript. That transcript is a public record subject to disclosure. Accordingly, AFSD will allow Mr. Gress to inspect that transcript pursuant to ORS 192.420, and AFSD will provide a copy to Mr. Gress pursuant to ORS 192.440. AFSD may charge for its actual cost in making that record available.

Respectfully submitted,

James E. Mountain Jr.

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

JEM:cm
cc: Amy Veranth, Assistant Attorney General
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