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January 4, 2002

Paul B. Meadowbrook
Attorney at Law
285 Liberty St. NE, Suite 360
Salem, OR 97310

Re: Petition for Public Record Disclosure Order:
Department of Administrative Services

Dear Mr. Meadowbrook:

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. In your letter, which we received on December 28, 2001, you request that we order disclosure of records you requested in a December 5, 2001 letter to Mike Greenfield, Director of the Oregon Department of Administrative Services (DAS). The records requested are 1) all documents, records and e-mails in Ms. Sandra C. Herring's office that concern or refer to certain matters involving PERS; 2) all documents, records and e-mails in Mr. Greenfield's office that concern or refer to those PERS matters or to the discharge or reasons for discharging Ms. Herring; 3) all documents, records and e-mails in Mr. John Lattimer's office that concern or refer to the PERS matters or the discharge or reasons for discharging Ms. Herring; and 4) all documents, records and e-mails in the Office of Budget and Management that concern or refer to the PERS matters. For the following reasons, 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. Any person who is 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 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. *See* ORS 192.450(1).

John Lattimer, Chief Information Officer of DAS's Information Resources Management Division, has informed us that DAS has not denied your request, but has been working to identify and collect the records responsive to it. The records collected are being reviewed with counsel to determine whether they contain information that is exempt from disclosure under the Public Records Law. DAS anticipates that non-exempt records will be available for your inspection within the next 10 days.

The Public Records Law imposes no specific deadline for the release of requested records; the public body must release nonexempt records within a "reasonable" time. We have explained that "[t]he amount of time that is reasonable will depend upon the volume of records requested, the staff available to respond to the records request and the difficulty in determining whether any of the records are exempt from disclosure." ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL at 9 (2001). We note that in your December 5 letter you requested "that DAS make [the requested records] available for my inspection within five days." However, "[t]he public records custodian acts reasonably even if the custodian does not comply with timelines imposed by the requestor, so long as the custodian provides access to the nonexempt records within a reasonable period of time. It is not a denial entitling the requestor to petition for release of the records if the custodian does not provide access to the nonexempt within the timeframe set by the requestor." *Id.*

The Attorney General may order a state agency to disclose records only when the agency has denied a request for the records. *See* ORS 192.450(1). Because DAS has not denied your request, the Attorney General does not have jurisdiction to order disclosure at this time. We therefore respectfully deny your petition as premature.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS09327
c: John Lattimer, Chief Information Officer, Department of Administrative Services