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December 19, 2001

John Summer, D.D.S.
Medical Dental Bldg., Suite 810
833 S.W. 11th Avenue
Portland, OR 97205

Re: *Petition for Public Records Disclosure Order:*
Board of Dentistry

Dear Dr. Summer:

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 4, 2001, you "petition for [your] right to inspect all records of the Oregon Dental Board which pertain to me and to the investigations of me under ORS 192.450." 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).

ORS 192.430 authorizes state agencies to adopt reasonable rules and regulations necessary for the protection of the records and to prevent interference with the regular discharge of duties of the custodian. Moreover, the Public Records Law permits a public body to establish and recover fees reasonably calculated to reimburse it for its actual cost in making public records available, including the time spend by agency staff in locating and reviewing the requested records in order to delete exempt material. *See* ORS 192.440(3).

Pursuant to this authority, the Board of Dentistry has adopted an administrative rule, OAR 818-001-0082, which provides in pertinent part:

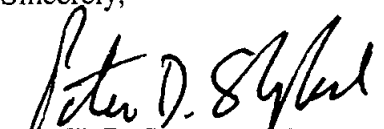
(3) The Board establishes the following fees:

(a) $25 per hour for the time required to locate and remove non-public records or for filling special requests;
(b) Up to ten (10) pages at no cost; more than 10 pages, $0.50 for each page plus postage necessary to mail the copies[.]

Your written request to the Board is dated November 5, 2001, though it appears that the Board did not receive it until November 23, 2001. In it you "request copies of all records pertaining to me and any investigations of my actions pursuant to the Freedom of Information Act (5 U.S.C. Sec 552) and to the privacy act (5 U.S.C. 552a)," and you state your willingness to "pay charges for reasonable duplication costs at 10 to 25 cents per page." Ms. Sharon Ingram, Executive Assistant to the Board, responded by letter dated November 26, 2001, enclosing a copy of the rule quoted above. Ms. Ingram closed the letter with the statement: "In light of the fee information, please let me know whether you are still interested in obtaining copies of the Board's records." According to Ms. Ingram, the Board received no response from you to this letter.

The Board's letter informing you of its fee schedule and inquiring whether you wish it to proceed to process your request in light of that information is not a denial of your request. Because the Board has not denied your request, your petition to this office is premature, and the Attorney General does not have jurisdiction to order disclosure. For this reason, we respectfully deny your petition.

Sincerely,



PETER D. SHEPHERD
Deputy Attorney General

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c: Sharon Ingram, Executive Assistant, Board of Dentistry