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October 11, 2001

Gregory M. Perry
7770 NW Canyon
Corvallis, OR 97330

Re: Petition for Public Records Disclosure Order:
Oregon Department of Education

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. Your petition, which we received on October 5, 2001, asks the Attorney General to order the Oregon Department of Education (ODE) to produce a copy of the following records:

> Average Oregon Statement Assessment Test scale scores for grades 3, 5, 8 and 11 at all public schools in the State of Oregon for the period 1995-2001. Also, the number of students at each school sitting for each exam, the percent of students on free and reduced lunch, the percent of students attending school, the percent mobility calculation, and the average educational level of parents.

For the reasons that follow, 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. The law requires generally that the custodian of public records furnish proper and reasonable opportunities for inspection and copying of the records in the office of the custodian. ORS 192.430. Any person 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 public record to determine if it may be withheld from public inspection. ORS 192.450(1).

You told Assistant Attorney General Gary Cordy that you sent a request for records via email to ODE employee Phyllis Rock in July, and followed up on that request with telephone messages to ODE employees Steve Slayter and Wayne Neuberger in July and/or August. The email that you sent to Ms. Rock, on July 6, 2001, stated:

I need to obtain the OSAT scale scores for Reading & Literature, Mathematics, Writing, and Math Problem Solving in Corvallis District 509J for all grades and schools for the 2000 and 2001 test years. Also, I need to obtain the state average scores. Thanks.[1]

With respect to the records that you requested from ODE in your July 6 email, Ms. Rock states that she forgot to follow-up on your request after receiving the email, but did not intend to deny your request. Neither Mr. Slayter nor Mr. Neuberger recall receiving a records request from you via telephone calls or messages. We do not find this circumstance to constitute a constructive denial of your request. Moreover, Mr. Neuberger informs us that ODE has all of the records requested in your July 6 email on CD ROM and can make that information available to you. A staff person from ODE's Office of Assessment and Evaluation will contact you shortly to inquire as to whether you wish to receive the records via CD ROM or paper copy.[2]

Because ODE has not denied your request for records, we deny your petition as premature.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS08743
c: Wayne Neuberger, ODE

[1] Your July 6 request to Ms. Rock is considerably narrower in scope than your petition. Absent a request to, and a denial by, a state agency for public records, the Attorney General has no authority to order a state agency to disclose records. ORS 192.450(1). Accordingly, to the extent that your petition addresses records beyond those requested in your July 6 email to Ms. Rock, your petition is premature.

[2] An agency may charge a fee to reimburse the agency for its actual cost in making records available, including its photocopy costs and the time spent by agency personnel. ORS 192.440(3).