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August 17, 2001

Steven Carter
The Oregonian
1320 SW Broadway
Portland, OR 97201-3499

Re: Petition for Public Records Disclosure Order:
Department of Human Services Records

Dear Mr. Carter:

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 August 10, 2001, asks the Attorney General to direct the State Office for Services to Children and Families (now the Department of Human Services) to make available the following information: a visitation plan for Alexis Lopez and her mother; risk assessments done as part of a visitation plan; copies of the last (most recent) personnel reviews of Alexis' caseworker and the human services assistant who supervised Alexis' visits with her mother; warnings received about the possible danger of visits between Alexis and her mother; and information about security precautions taken during visits between Alexis and her mother. For the reasons that follow, we 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. If a public record contains exempt and non-exempt material, the public body must separate the materials and make the non-exempt material available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material. *Turner v. Reed*, 22 Or App 177, 186 n 8, 538 P2d 373 (1975).

In a letter to Toni Peterson dated July 19, 2001, you requested the state agency to provide you with the information described in your petition to this office. Ms. Peterson responded by letter dated July 27, 2001, stating: "We do recognize your request under the Oregon Public Records Law and will process it in accordance with the provisions of that law. We are consulting with our legal counsel regarding your request and will respond to you as quickly as possible."

Your petition states that Ramona Foley stated to you in a phone conversation on August 7, 2001, that she was refusing your request for information. Ms. Foley has informed Assistant Attorney General Nancy Simmons that you had several telephone conversations and at least one

meeting with her and other DHS staff. Ms. Foley states that she spoke with you about DHS practice and about the confidentiality of DHS files relating to children and families. Ms. Foley states, however, that she did not deny your request for public records. The fact that Ms. Foley may have declined to discuss with you the specifics of the Lopez case does not constitute a denial of your request for public records.

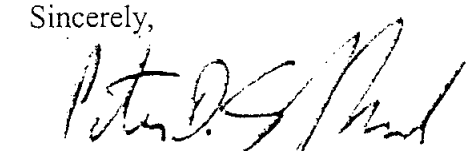
ORS 192.430(1) requires a custodian of public records to provide "proper and reasonable opportunities for inspection and examination of the records in the office of the custodian." The Attorney General may order a state agency to disclose records only when the agency has denied a request for the records. ORS 192.450(1). "The Public Records Law clearly contemplates that agencies have the opportunity to review the requested records and to act on the request before the Attorney General or the courts can review the matter." *Morse Bros., Inc. v. ODED*, 103 Or App 619, 62, 798 P2d 719 (1990). Whether the time that an agency takes to review records and act on a particular request is reasonable will depend on factors such as the volume of the 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 7-8 (1999). A state agency may consult with legal counsel before taking action on a public records request. This office has concluded that in doing so the agency "does not thereby actually or constructively deny the request." Public Records Order, May 9, 1989, Hribernick.

Your paper has reported on legal developments stemming from the death of Alexis Lopez. Each of these developments has generated its own demand for disclosure of information, over which your petition for disclosure has been laid. Since shortly after the death of Alexis Lopez, DHS officials have been actively engaged with our office in an ongoing effort to segregate records that may be disclosed for various purposes from those that cannot be disclosed.

And these records are voluminous. Today I visited the conference room in which the sorting is taking place; The records occupy the entire surface of the conference table to a thickness of several inches (some stacks are over a foot high) and there are more materials stacked around the room awaiting review. The documents that you request are not necessarily discrete pieces of paper, complete unto themselves. A complete answer to your request may require disclosure of parts of more than one document. Thus, the job is not as "simple" as fanning through the materials to extract documents you have described.

As we have detailed, the public records law allows the agency a reasonable time within which to respond to a request. Because the delay to date is not unreasonable under all of the circumstances outlined above, we respectfully deny your petition as premature.

Sincerely,



PETER D. SHEPHERD
Deputy Attorney General

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c: Ramona Foley, DHS
Toni Peterson, DHS