HARDY MYERS
ATTORNEY GENERAL

PETER D. SHEPHERD
DEPUTY ATTORNEY GENERAL



DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97301-4096
Telephone: (503) 378-4400
TTY: (503) 378-5938

July 30, 2001

Paul R.J. Connolly
Connolly & Doyle, LLP
Attorneys at Law
2731 Twelfth St. S.E.
P.O. Box 3095
Salem, OR 97302

Re: Petition for Public Records Disclosure Order:
Secretary of State Records

Dear Mr. Connolly:

This letter is the Attorney General's order on your petition, filed on behalf of your client, Pat Turnidge, for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on July 25, 2001,[1] includes two exhibits: Exhibit A, your public records request dated July 24, 2001 directed to the Secretary of State; and Exhibit B, the Secretary's responsive letter dated July 25, 2001. Your petition characterizes the Secretary's letter as "a response deemed to be a denial of the right to inspect or to receive a copy of public records," and you petition the Attorney General to "review the denial and to permit inspection and receipt of certified copies of the materials." For the following reason, 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).

[1] ORS 192.450(1) requires this office to issue an order on a public records petition "within seven days from the day the Attorney General receives the petition."

Your July 24 letter requests the Secretary "to permit the inspection and photocopying, and to provide a certified copy of" thirteen categories of records apparently related to the Secretary's development of a legislative redistricting plan. After listing the documents requested, you ask that the Secretary "advise me in writing no later than July 25, 2001 at 3:00 p.m. whether you will permit the inspection of said documents and when." In his July 25 reply, Paddy McGuire, Deputy Secretary of State, describes the efforts of the Secretary's staff to compile the materials responsive to each of your requests. He states that their "review has already produced several thousand[s] of pages of material for you to inspect," and that "[a]dditional material will be produced as employees return from travel." Mr. McGuire provides you with the name and phone number of a contact person "to arrange a time to come in and inspect the files and other materials." Later that same day, you submitted your petition to the Attorney General.

Unfortunately, you do not explain what specific aspects of the Secretary's detailed response you "deem[ ] to be a denial" of your extensive public records requests. We have reviewed Mr. McGuire's letter and can identify only two statements that might be construed as "a denial of the right to inspect or to receive a copy of public records." The first is in response to your request number 1 for "[a]ll documents relating in any way to the analysis, preparation and promulgation of the Secretary of State's year 2001 Draft Plans for House District and for Senate Districts (hereinafter 'SOS Draft Plans')." After explaining that much of the material responsive to the request is readily available for inspection, Mr. McGuire writes that "[s]ome other material that we have relied upon, such as maps and atlases are available for your inspection but may not be copied because of copyright protections." The second, similarly, is part of the response to your request number 4 for "[a]ll software programs used by SOS or its staff used in making any decision about the SOS Draft Plans specifically or redistricting/reapportionment in general including but not limited to licensing agents, manual, instructions, marketing materials, and other user information." Mr. McGuire's letter identifies the software the Secretary used as a product called "Autobound" and points out that "[i]t would be a violation of federal copyright laws to provide you with a copy of it" and that "manuals and instructions are copyrighted and we cannot reproduce them without permission."

These responses are consistent with our interpretation of the Public Records Law. We have concluded:

> Under federal law the owner of a copyright has the *exclusive* right to reproduce or distribute copyrighted work, although others may copy a limited amount of the work under the "fair use" doctrine. 17 USC §§ 106, 107, 501. The Public Records Law does not authorize public bodies to violate federal copyright law. A public body must permit a requester to inspect copyrighted materials, but should not make copies or allow someone else to make copies of such materials without the copyright owner's consent or on advise of legal counsel.

ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1999) (MANUAL) at Appendix A, p A-1. Nothing in Mr. McGuire's letter suggests that you will be denied an

opportunity to inspect the copyrighted material, only that the Secretary's office cannot copy the materials without the necessary consent. Since Mr. McGuire provided you with the name and address of the company that holds the copyright to Autobound and suggested that you contact them to obtain permission for the Secretary's office to provide a copy to you, and given the general nature of your petition to this office, we are not prepared to conclude at this time that you are petitioning this office because you have been denied the right to copy materials that Mr. McGuire has identified as protected by federal copyright law.

With regard to a few of your requests, Mr. McGuire stated that the Secretary's staff was unable to compile all of the materials responsive to your requests in the timeline – less than a day – you stipulated in your letter. Specifically, with regard to your request number 2, Mr. McGuire stated that some of the materials would have to be compiled by employees who were away from Salem on July 25, but who would review the relevant materials "shortly after their return." And in response to your request number 13 for "[a]ll resumes and applications of employment for each employee of the redistricting staff and for the Deputy Secretary of State," he stated that the material was being reviewed for redaction of certain information "to protect the privacy of our employees." Mr. McGuire informs us that these redactions will involve only information exempt from disclosure under the Public Records Law.

The fact that the Secretary's office was not able to compile or prepare all records responsive to your requests in the one-day time frame you requested is not a denial of those requests. Mr. McGuire correctly observes that the Public Records Law affords an agency a "reasonable" time to respond to a records request. 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." MANUAL at 8. Moreover, "[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.* We conclude that the Secretary's failure to compile all of the records responsive to your requests and to make them available to you less than a day after you submitted the requests does not constitute unreasonable delay, particularly when the Secretary has expressed his intent to continue the work of compiling the records and making them available to you in a reasonable time.

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 the Secretary has not denied your request to inspect or to copy specific records, the Attorney General does not have jurisdiction to order disclosure at this time. We therefore deny your petition as premature.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS08250
c: Paddy McGuire, Deputy Secretary of State