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

June 22, 2001

Ross Day
O'Donnell & Clark LLP
1706 NW Glisan Street, Suite 6
Portland, OR 97209

Re: Petition for Public Records Disclosure Order:
Oregon State Police Records

Dear Mr. Day:

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.[1] Your petition, which we received on June 15, 2001, asks the Attorney General to direct the Oregon State Police (OSP) to make available the following records:

1) All documents or records relating to the number of police officers both full and part time under the employment of the Oregon State Police, in any manner, from 1994 to present;

2) All documents and records relating to the budget for the Department of State Police for the last 10 years, this should include the specific funding for the three bureaus that make up the Department of State Police: Operations Service, Support Services and Intergovernmental Services;

3) Governor Kitzhaber's proposed budgets for the Department of State Police for the [sic] each biennium from 1994 to 2003, this should include the proposed funding for all three bureaus.

For the reasons that follow, we respectfully deny your petition as premature.

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 denied

[1] We are treating your letter dated June 14, 2001, as a petition to the Attorney General for disclosure of records under ORS 192.450. That petition was filed on behalf of your client, the Oregon Republican Party.

the right to inspect or to receive a copy of a public record may petition the Attorney General to determine whether the record may be withheld from inspection. ORS 192.450(1).

You state in your petition that your client previously asked OSP for these records on April 16, 2001, and sent a second letter to OSP reiterating the request four weeks later. According to the documents you sent this office, was dated May 30, 2001. You further state that OSP has not responded to either letter.

ORS 192.430 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, 622, 798 P2d 719 (1990), *citing* ORS 192.430(2). Whether the time that an agency takes to review records and act on a particular request is reasonable will depend on many 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 (1999) at 7-8 (MANUAL).

Sergeant David Scholten of the OSP Office of Professional Standards informs us that OSP has no record of receiving either the April 16th letter or the May 30th letter. Upon receipt of your petition, this office provided OSP with copies of both letters. Sgt. Scholten informs us that OSP is currently in the process of reviewing its records to respond to the records request as presented in those documents. Because OSP has not yet completed its review of the records, OSP has not yet determined whether any exemptions apply.[2]

Since OSP has not denied the request for records that is the subject of your petition, but is in the process of responding to that request we deny your petition as premature.[3]

Sincerely,

Peter D. Shepherd

PETER D. SHEPHERD
Deputy Attorney General

c: David Scholten, Office of Professional Standards, Oregon State Police

AGS08006

---

[2] OSP may charge you a fee to reimburse the agency for its actual cost in making the records available. *See* ORS 192.440(3)

[3] If the agency fails to produce some of the requested records on the basis of an exemption, you may petition this office for disclosure of those records at that time.