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May 1, 2001

Mark J. Makler
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1313 N.W. 19th
Portland, OR 97209

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

Dear Mr. Makler:

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 April 26, 2001, asks the Attorney General to direct the Oregon Department of State Police (OSP) to make available copies of "[t]he Management Review that was conducted at the Oregon State Police Southern Regional Dispatch Center beginning in December 2000 [and] [a]ll notes, drafts, documents and information, whether written or recorded," associated with the Management Review. 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. If a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available for inspection 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).

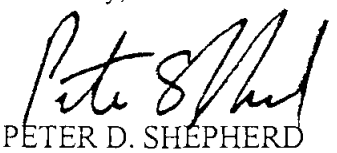
In your petition, you state that the Oregon State Police Officers' Association requested the identified records from OSP by a letter to Mike Zanon, Director of the OSP Information Resources Services Division, dated April 2, 2001, and that, on April 18, 2001, Sergeant David Scholten informed the Association by letter that OSP was in the process of evaluating release of the requested records. Sgt. Scholten's letter also stated that he would "keep in contact" with the Association regarding the status of its request. Your petition characterizes Sgt. Scholten's response as a denial of the Association's request.

According to Assistant Attorney General (AAG) Keith Kutler, Sgt. Scholten contacted him to request legal assistance in responding to the Association's request. AAG Kutler reports that the Association's April 2, 2001, request to Mr. Zanon was for a copy of the Management Review only, and did not include a request for "[a]ll notes, drafts, documents and information * * * associated with the Management Review." AAG Kutler has confirmed with Sgt. Scholten that OSP has received no request from the Association that is pending at this time other than that contained in the April 2 letter. The Attorney General may order a state agency to disclose records only when the agency has denied a request for those records. *See* ORS 192.405(2). Because OSP has not yet received a request from the Association for records associated with the Management Review, the Attorney General lacks the authority to order disclosure. Therefore, we deny as premature the portion of your petition regarding records associated with the Management Review.

With respect to the Management Review itself, as stated above, OSP has requested that this office provide the agency with legal advice in relation to responding to the Association's record request. It is reasonable for a public body to consult legal counsel about disclosure of documents that appear to be exempt, in whole or in part, from the disclosure requirements of the Public Records Law. OREGON ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL at 8 (1999) at 17. At this time, we have not yet responded to OSP's request for advice.

As explained above, the Attorney General may order a state agency to disclose records only when the agency has denied a request for the records. *See* ORS 192.405(2). There is nothing in your description of, or quotation from, Sgt. Scholten's April 18 letter to the Association to cause us to conclude that it was a denial of the Association's record request. Providing a report as to the status of a request does not equate with denying that request. Additionally, the Public Records Law clearly contemplates that agencies have the opportunity to review the requested records, including consultation with legal counsel, and to act on the request before the Attorney General or the courts can review the matter. *Morse Bros., Ind. v. ODED*, 103 Or App 619, 798 P2d 719 (1990). The Public Records Law allows a public body a "reasonable" time to respond to a records request. What is "reasonable" will depend upon many factors, including the difficulty in determining whether the records are exempt from disclosure. AG MANUAL at 8. In light of the fact that the Association made its request only last month, and OSP is in the process of receiving legal advice regarding how to respond to that request, we find that there has been no denial of the Association's request. Accordingly, we also deny as premature the portion of your petition regarding the Management Review.

Sincerely,



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Deputy Attorney General

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c: Sergeant David Scholten, Department of State Police