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April 23, 2001

Steve Schopp
10475 SW Helenius
Tualatin, OR 97062

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

Dear Mr. Schopp:

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 3, 2001,[1] asks the Attorney General to direct the Oregon Department of Education (ODE) to make available all memos sent to all employees of the ODE, Assessment Department during November and December 2000 and January 2001. 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. If a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt 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).

Assistant Attorney General Gary Cordy spoke with ODE Executive Legal Officer C. Gregory McMurdo on April 20, 2001, regarding your records request. Mr. McMurdo told AAG Cordy that he had spoken with several ODE employees about your e-mail contacts with the agency covering the time period of January through April 2001. As a result of Mr. McMurdo's inquiry, he sent a response to you by e-mail on April 20, 2001, providing the website address for a document that he believes may include the information you have sought to obtain. Mr. McMurdo also stated to AAG Cordy that if the e-mail response is inadequate to satisfy your

[1] We appreciate your extending the time within which the law would have otherwise obligated us to respond.

request, you should contact him, and he or his designee will continue to respond to your inquiry and attempt to provide any requested public records.[2]

Because you have not been denied access to the records, the Attorney General lacks authority to order disclosure. *See* ORS 192.450(1). Accordingly, we deny your petition as premature.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS07572
c: C. Gregory McMurdo, ODE

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