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March 28, 2001

Rex Rose
1340 Sunset Lane
Sweet Home, OR 97386

Re: Petition for Public Records Disclosure Order
Oregon Housing and Community Services Department

Dear Mr. Rose:

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 March 21, 2001, asks for assistance from the Attorney General in obtaining "the application for a Community Block Grant, named: '*Brookside Development, Sweet Home.*'" You state in your petition that the Oregon Housing & Community Services Department (Oregon Housing) denied your request for the records. 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 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). Any person denied 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).

Assistant Attorney General (AAG) Melisse S. Cunningham contacted Jack Duncan, a Regional Field Representative at Oregon Housing, regarding your petition. Mr. Duncan reported to AAG Cunningham that Oregon Housing does not have a community block grant, or a

[1] You submitted your petition under the federal Freedom of Information Act (FOIA), but it is the Oregon Public Records Law, rather than FOIA, that authorizes persons to inspect public records maintained by state agencies. ORS 192.420.

community development block grant, application regarding the Brookside Development in Sweet Home. Mr. Duncan also informed AAG Cunningham that, to the best of his recollection, you contacted him requesting an application made by Linn County Affordable Housing to Oregon Housing regarding the Brookside Development (Linn County application). Mr. Duncan identifies the Linn County application as a "consolidated funding cycle" application. Mr. Duncan denied your request. Given that you had requested records from Oregon Housing regarding the Brookside Development, and your request was denied, we construe your petition as being for the Linn County application, rather than a community block grant, or community development block grant, application that is not in the custody of Oregon Housing. Based on this assumption, we proceed with an analysis of Oregon Housing's denial of your record request.[2]

Under the Oregon Public Records Law, many application materials submitted to Oregon Housing are specifically exempt from disclosure. ORS 192.502(23) exempts:

> The following records, communications and information submitted to the Housing and Community Services Department by applicants for and recipients of loans, grants and tax credits:
> (a) Personal and corporate financial statements and information, including tax returns.
> (b) Credit reports.
> (c) Project appraisals.
> (d) Market studies and analyses.
> (e) Articles of incorporation, partnership agreements and operating agreements.
> (f) Commitment letters.
> (g) Project pro forma statements.
> (h) Project cost certifications and cost data.
> (i) Audits.
> (j) Project tenant correspondence requested to be confidential.
> (k) Tenant files relating to certification.
> (l) Housing assistance payment requests.

The purpose of this exemption "is to protect from public disclosure the detailed personal and business information that applicants and businesses must submit to the state as a condition of participating in the subsidized housing program." ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1999) at 75. Bob Gillespie, a senior manager at Oregon Housing, has told us that the Linn County application is for both grants and tax credits. Therefore, to the extent the Linn County application consists of one or more of the twelve categories of records or information listed in ORS 192.502(23), it is exempt from disclosure. From AAG Cunningham's review of the Linn County application, we conclude that a majority of the records and information that comprise the application, such as the market assessment, sources of funding,

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[2] To the extent that you are seeking records from Oregon Housing other than the Linn County application, you need to request those records directly from the agency. The Attorney General may order a state agency to disclose records only when the agency has denied a request for those records. ORS 192.450(1). In order to avoid any misunderstanding, Mr. Duncan asks that you submit any future requests to the agency in writing.

income statements and expense statements, is exempt under ORS 192.502(23). Accordingly, as to such records and information, we deny your petition.

Portions of the Linn County application, however, are not exempt under ORS 192.502(23). In particular, significant portions of the project description, including the project schedule and site control documents, are not exempt. To the extent the Linn County application contains records or information other than those exempt under ORS 192.502(23), Mr. Gillespie informs us that Oregon Housing will disclose that material to you. Therefore, we deny your petition as moot with respect to the records and information that Oregon Housing has agreed to disclose.

Sincerely,

/Hardyers

HARDY MYERS
Attorney General

c: Jack Duncan, Oregon Housing and Community Services
Bob Gillespie, Oregon Housing and Community Services

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