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

January 11, 2001

Leslie I. Zaitz
Staff Writer, *The Oregonian*
Press Room 43
Capitol Building
Salem, OR 97310

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

Dear Mr. Zaitz:

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 January 4, 2001, asks the Attorney General to direct the Oregon State Police to "provide a full, unabridged copy" of the entries for December 8, 2000, in the notebook maintained by Lt. Fred Douthit. 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).

The Oregon State Police provided you a copy of Lt. Douthit's notebook entries for December 8, 2000, but redacted some entries pursuant to the exemption applicable to internal advisory communications in ORS 192.502(1). Lt. Douthit has advised us that he provided to you yesterday those portions of the requested record that were earlier redacted by Oregon State Police, with the exception of one entry. Therefore, this order addresses only the entry on the page labeled "Page 4" of Lt. Douthit's notebook that the Oregon State Police continues to withhold from disclosure.

On the afternoon of December 8, 2000, Lt. Douthit and Sgt. David Scholten met with Assistant Attorney General Keith Kutler for the purpose of receiving legal advice. The entry in Lt. Douthit's notebook that the Oregon State Police continues to withhold from disclosure consists of notes summarizing the substance of that meeting. As such, those notes reflect communications between an attorney and representatives of a client agency.

ORS 40.225 establishes the attorney-client privilege for "confidential communications made for the purpose of facilitating the rendition of professional legal services to the client." Records or information that come within ORS 40.225 are exempt from disclosure under ORS 192.502(9), which exempts from disclosure "[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law."

Because Lt. Douthit's notes regarding the meeting with Assistant Attorney General Kutler summarize substantive aspects of the meeting, we find that the withheld entry from Lt. Douthit's notebook is within the scope of the attorney-client privilege. Therefore, we conclude that the entry is exempt from disclosure under ORS 192.502(9), and we deny your petition as to it.[1] Because the Oregon State Police has disclosed to you all portions of the requested record except for the entry that we have determined to be covered by the attorney-client privilege, we deny the remainder of your petition as moot.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS06861

[1] Oregon State Police originally withheld these notes pursuant to the internal advisory communications exemption. ORS 192.502(1). Without deciding the applicability of that exemption, we conclude that the notes are exempt under ORS 192.502(9).