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September 12, 2000

Max S. Taggart, II
Taggart & Taggart
399 S. Oregon Street
Ontario, OR 97914

Re: Petition for Public Records Disclosure Order
Oregon Department of Administrative Services

Dear Mr. Taggart:

This letter is the Attorney General's order on your petition[1] for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. We received your petition on September 5, 2000. Your petition asks the Attorney General to direct the Oregon Department of Administrative Services (DAS) to make available seven categories of records which pertain to "office space in Ontario to be leased by the State to replace facilities in Ontario currently leased from Eldorado Investments, Inc."[2]

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 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).

[1/] Your petition was filed on behalf of your client Eldorado Investments, Inc.

[2/] Your petition states that you requested DAS to produce copies of records "which have been created by or have come into the State's possession." Under the Public Records Law, the duty to make nonexempt public records available for inspection or copying is that of the custodian of the public records. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1999) at 7. To the extent that your request extends to records for which an agency other than DAS is the custodian, you would need to make a separate request directly to that agency.

Your petition states that DAS received your records request on July 27, 2000. Your petition also states that you have not heard from DAS regarding your request, even though you left several telephone messages last month directed to the DAS Facilities Division's Property Manager, Darin Smith, in regard to the request. Upon receipt of your petition, this office asked Assistant Attorney General (AAG) Christian Boenisch to contact Mr. Smith and determine the status of the agency's response to your records request. Mr. Smith informed AAG Boenisch that DAS had received your request and is working to identify records responsive to it and to determine the status of those records under the Public Records Law. In talking with AAG Boenisch, Mr. Smith also requested legal advice from this office in responding to your request.

ORS 192.430(1) 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 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 (AG'S MANUAL). "The public records custodian acts reasonably even if the custodian does not comply with timelines imposed by the requestor, so long as the custodian provides access to the nonexempt records within a reasonable period of time." AG'S MANUAL at 8.

While it is unfortunate that DAS did not respond to your telephone inquiries, that failure does not equate to a constructive denial of your request. Mr. Smith tells us that by the end of the week he expects to provide you a cost estimate for those records that DAS has thus far identified as being responsive to your request (as provided by ORS 192.440(3)). He also anticipates that he may contact you to seek clarification regarding portions of your request. Because DAS has not denied your request and is still in the process of responding to it, we deny your petition as premature.

Sincerely,



DAVID SCHUMAN
Deputy Attorney General

AGS05435
c: Darin S. Smith, Property Manager, DAS Facilities Division