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September 12, 2000

Donato B. Masaoy, III
519 NE 4th Street
Gresham, OR 97030

Re: Petition for Public Records Disclosure Order
Department of Human Services, State Office for Services to Children and Families

Dear Mr. Masaoy:

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. We received your petition on September 6, 2000. Your petition asks the Attorney General to order the Department of Human Services, State Office for Services to Children and Families (SOSCF) [1] to make available for inspection and copying the records of a minor child, Lance Bechtoldt. You have submitted your petition as the attorney for Lance Bechtoldt's father, Shawn Hernandez.

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).

Your petition states that Mr. Hernandez signed an authorization for release of the requested records, which was forwarded to SOSCF. You asked SOSCF for an opportunity to inspect and/or copy the requested records on September 11, 2000 "or other mutually agreeable time." Your petition further states that your records request was denied by Steve Carroll and Amy Bertrand of SOSCF.[2]

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[1] Your petition asks the Attorney General to order the "Department of Human Resources of the State Office for Services to Children & Families" to disclose the requested records, but we assume your request was directed to SOSCF.

[2] Mr. Carroll is an intake supervisor and Ms. Bertrand is a social service specialist at the Gresham Branch of SOSCF.

After this office received your petition, Assistant Attorney General (AAG) Carol Munson inquired of Mr. Carroll and Ms. Bertrand as to whether they had denied your request.[3] When informed of your petition, both Mr. Carroll and Ms. Bertrand informed AAG Munson that they had not denied your request on behalf of the agency, but rather had informed you that SOSCF had forwarded the request to this office for the purpose of obtaining legal advice. SOSCF's request for legal advice has been assigned to AAG Munson. AAG Munson is currently working to respond to SOSCF's 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). 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 at 7-8 (1999). A state agency may consult with legal counsel prior to taking action on a public records request. This office has concluded that in doing so the agency "does not thereby actually or constructively deny the request." Public Records Order, May 9, 1989, Hribernick.

Given that SOSCF is still in the process of responding to your records request, and is waiting to receive advice from counsel regarding its response, we deny your petition as premature.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

AGS05438
c: Steve Carroll, Intake Supervisor, Gresham Branch, SOSCF
Amy Bertrand, Social Service Specialist, Gresham Branch, SOSCF

[3] According to Mr. Carroll, SOSCF received your written records request on August 8, 2000.