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September 5, 2000

Herbert D. Riley
1543 Wiltsey Rd. SE
Salem, OR 97306

Re: Petition for Public Records Disclosure Order
Oregon Department of Veterans Affairs Records

Dear Mr. Riley:

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 August 23, 2000.[1] Your petition asks the Attorney General to direct the Oregon Department of Veterans' Affairs (ODVA) to make available:

> copies of the Investigator's report and the Department of Justice review, as well as notes and supporting documentation from both parties regarding the investigation of [your] July 13, 2000 discrimination complaint against the Oregon Department of Veterans' Affairs.

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).

Cynthia Foster, ODVA Human Resources Manager, informs us that ODVA has the following records related to the investigation of the discrimination complaint:

- applications submitted by employees requesting to attend training;
- notes of meetings with legal counsel;

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

- notes of an interview of an ODVA administrator by an investigator assisting legal counsel; and
- notes of witness interviews.

Ms. Foster states that ODVA has agreed to disclose the training applications to you. Accordingly, as to these documents, we deny your petition as moot.

As to the remaining documents, we find that they come within one of the Public Records Law's exemptions from disclosure. ORS 192.502(9) exempts from disclosure "[p]ublic records or information the disclosure of which is prohibited, restricted or otherwise made confidential or *privileged* under Oregon law." (Emphasis added.) Oregon law recognizes the attorney-client privilege in Rule 503 of the Oregon Evidence Code (OEC) (codified as ORS 40.225).

OEC 503(2) provides:

> A client has a privilege to refuse to disclose and prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:
>
> (a) Between the client or the client's representative and the client's lawyer or a representative of the lawyer;
>
> (b) Between the client's lawyer and the lawyer's representative;
>
> (c) By the client or the client's lawyer to a lawyer representing another in a matter of common interest;
>
> (d) Between representatives of the client or between the client and a representative of the client, or
>
> (e) Between lawyers representing the client.

In order to come within the privilege, the communication must (1) be "confidential," (2) be made for the purpose of facilitating the rendition of professional legal services to the client, and (3) have been between persons described in one of the paragraphs of OEC 503(2)(a) to (e). *See State ex rel. Oregon Health Sciences University v. Haas*, 325 Or 492, 501, 942 P2d 261 (1997).

The notes of meetings with ODVA's legal counsel were taken by the ODVA Director or Human Resources Manager. The investigator assisting legal counsel attended one such meeting. Under the OEC, the ODVA Director and Human Resources Manager are representatives of the client and the investigator is legal counsel's representative. OEC 503(1)(d),(e); *see Haas*, 325 Or at 509 and *Report of the Legislative Interim Committee on the Judiciary*, (proposed Oregon Evidence Code), December, 1980, at 70. The communications during the meetings were solely for the purpose of facilitating the rendition of professional legal services to the client and were not intended to be disclosed to third persons. The notes document the legal advice given to the agency by its lawyer. As such, the notes are within the attorney-client privilege as reflecting communications between the client's representatives and its lawyer. OEC 503(2)(a).

At the direction of an Assistant Attorney General (AAG), the investigator interviewed the Administrator of the Financial Administration Division of ODVA. The Division Administrator took notes of the interview. The communications during the interview were solely for the purpose of facilitating the rendition of professional legal services to the client and were not intended to be disclosed to third persons. As such, the Division Administrator's notes are within the attorney-client privilege as reflecting communications between the client's representative and legal counsel's representative. OEC 503(2)(a).

Witness interviews were conducted by the ODVA Human Resources Manager at the express request of an AAG. During the interviews, the Human Resources Manager took notes and then sent a copy of the notes to the AAG to facilitate the rendition of professional legal services to the client. These notes are the only report of the interviews made by the Human Resources Manager. The notes were not intended to be disclosed to third persons and are an attorney-client privileged communication between the client's representative and its lawyer under OEC 503(2)(a).

Because the notes of the meetings and interviews described above are privileged under OEC 503(2)(a), they are exempt from disclosure under ORS 192.502(9). For this reason, we deny your petition to compel disclosure of these records.

Sincerely,

David Schuman
Deputy Attorney General

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c: Cynthia Foster, ODVA Human Resources Manager