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August 1, 2000

Brent Walth
THE OREGONIAN
1320 SW Broadway
Portland, OR 97201-3499

Dear Mr. Walth:

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 July 28, 2000, asks the Attorney General to direct the Office of Medical Assistance Programs (OMAP) to make available records "that the agency has improperly withheld for nearly two months" regarding a Medicaid audit of the University Medical Group. 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 inspection 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).

In your petition, you acknowledge that OMAP has already provided some of the requested records to you but apparently contend that OMAP's delay in releasing the rest of the records in order to submit them to legal counsel to obtain advice amounts to a constructive denial of that portion of your records request. The Public Records Law allows a public body a "reasonable" time to respond to a records request. What is "reasonable" will depend upon many factors, including the difficulty in determining whether the records are exempt from disclosure. OREGON ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL at 8 (1999). It is reasonable for a public body to consult counsel about disclosure of documents that appear to be exempt, in whole or in part, from the disclosure requirements of the Public Records Law. *Id.* at 17.

Assistant Attorney General Linda Grimms states that she has been in contact with OMAP concerning the applicability of one or more of the exemptions. According to AAG Grimms, the records at issue present significant legal issues and additional legal research and review are needed in order to adequately advise OMAP of its responsibilities under the Public Records Law. AAG Grimms states that this work is progressing and that Herschel Crawford, OMAP Director, has assured her of the agency's intention to respond to your request for the remainder of records after it has received this office's legal advice. We do not find that the delay in this case has been unreasonable so as to constitute a constructive denial of your records request.

The Attorney General may order a state agency to disclose records only when the agency has denied a request for the records. *See* ORS 192.450(2). The Public Records Law clearly contemplates that agencies have the opportunity to review the requested records, including consultation with legal counsel, and to act on the request before the Attorney General or the courts can review the matter. *Morse Bros., Ind. V. ODED*, 103 Or App 619, 798 P2d 719 (1990). Because OMAP has not denied your request for the records, we deny the petition for disclosure of those records as premature.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

AGS05230
c: Herschel Crawford, Director, OMAP