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July 13, 2000

Karen Ritenour
1625 ½ S.W. 53rd St.
Corvallis, OR 97333

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

Dear Ms. Ritenour:

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 7, 2000, asks the Attorney General to direct the Department of Administrative Services (DAS) to make available the following records:

> All summaries, public records or writings, recommendations, reports held by Cort Dokken regarding Karen Ritenour, specifically any records and/or summaries of conversations regarding her that he has had with Caroline Kurl [sic] or anyone else in the legal services department at Oregon State University, Tim White (Interim Provost, OSU), Sally Frances (Interim Graduate Dean, OSU), Professor Robert Schwartz (Chair, Eng. Dept., OSU), Professor Michael Oriard (Eng., OSU) or anyone else.

For the reasons set out below, we respectfully deny your petition.

On May 1, 2000, you filed a Notice of Tort Claim with the Risk Management Division of DAS. There are two types of records in the possession of DAS: the records submitted by you as part of your Notice of Tort Claim and notes regarding conversations with Caroline Kerl that occurred after you filed your Notice of Tort Claim.

By letter dated June 22, 2000, DAS offered to provide you with copies of the records you submitted, subject to your payment of DAS' copying costs. As to those records, your request has not been denied.

DAS denied your request for the remainder of the records in DAS' possession, i.e., the notes of conversations with Ms. Kerl. To determine if the notes are exempt from disclosure, we examine ORS 192.501(1) relating to litigation records. The statute conditionally exempts from disclosure:

> Records of a public body pertaining to litigation to which the public body is a party * * * if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur.

The litigation records exemption applies "unless the public interest requires disclosure in the particular instance." *Id.*

The filing of a Notice of Tort Claim is sufficient evidence that litigation is reasonably likely to occur. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (MANUAL) 25 (1999). Any notes prepared in response to such a notice are within the exemption as information compiled or collected in anticipation of litigation that is reasonably likely to occur. *See* Public Records Order, January 12, 1990, Bischoff, at 3; Public Records Order, June 8, 1990, Madrid, at 2. The DAS notes regard conversations with Caroline Kerl that occurred after you filed your Notice of Tort Claim and are part of the DAS investigation of your claim. Therefore, the notes fall within the ORS 192.501(1) exemption.

As stated above, the ORS 192.501(1) exemption is conditional. Accordingly, we must determine whether the "public interest requires disclosure in the particular instance." The purpose of the litigation records exemption "is to place governmental bodies on an even footing with private parties before and during court litigation." MANUAL at 24 (emphasis deleted). Your petition gave us no information suggesting that there is an overriding public interest in disclosure in this instance, and we are aware of none. While the notes may relate to your tort claim against the state, an interest in private litigation does not constitute a public interest requiring disclosure under the Public Records Law. Public Records Order, June 8, 1990, Madrid, at 2. We conclude, therefore, that the notes in DAS' possession are exempt from disclosure under ORS 192.501(1).

For the reasons set out above we respectfully deny your petition.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

c: Cort Dokken, Chief Claims Consultant, DAS
Caroline Kerl, Legal Adviser, Oregon State University

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