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July 7, 2000

Johnny Anderson Lake
170 Kenwood Street NE
Salem, OR 97301

RE: *Petition for Public Records Disclosure Order: Workers' Compensation Division Records*

Dear Mr. Lake:

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 June 30, 2000, asks the Attorney General to direct the Workers' Compensation Division (Division) to make available the following records:[1]

1. Records of investigation conducted at request of Johnny Anderson Lake since October 1999 to present.

2. Records of all internal and external correspondence, communications and documents between Worker's [*sic*] Compensation [Division] and other entities respecting the previously named investigations requested by Johnny Anderson Lake and conducted by the Worker's [*sic*] Compensation [Division].

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. ORS 192.410(4) defines "public record" to include "any writing containing information relating to the conduct of the public's business[.]" The records you have requested come within this definition.

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[1] Your original records requests to Martin Gall and Janet Skelton, dated May 20, 2000, are not identical to the description you provided in your petition. However, we do not regard the differences in wording as significant in determining the scope of your petition.

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). *See also Morse Bros., Inc. v. ODED*, 103 Or App 619, 798 P2d 719 (1990) ("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 court can review the matter.").

It is apparent from the correspondence between you and the Division that the Division originally treated your request for documents as a request for discovery in a contested case, and not a public record request.[2] Jerry Managhan of the Workers' Compensation Division informs us that the Division did not refuse to provide you with any records, but provided records to you as appropriate in response to a discovery request. OAR 137-003-0570(1). . Mr. Managhan states that the Division already has provided you with the documents that the Division understood your requests to include.

When this office informed the Division that we had received your petition for a public record disclosure order, the Division realized that you intended to make a public records request, not a discovery request. We do not view the Division's response to your request to produce documents as a denial. The Public Records Law allows a public body a "reasonable" time to respond to a records request and imposes no specific deadline for release of requested records. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL at 8 (1999). What is "reasonable" depends on the circumstances of the request. *Id.* In this case, the Division reasonably treated your request as a discovery request and not a public record request. Now that the Division understands that you have made a public records request, Mr. Managhan states that the Division will comply with the Public Records Law.

Mr. Managhan informs us that you may inspect the files of the Compliance Section, including files related to the Investigation and Sanctions Unit activities, to determine whether you have already received copies of the documents you requested. If you would like copies of any documents in these files, the Division will make copies for you. The Division may charge you for its costs in making public records available. *See* ORS 192.440(3). We have asked Mr. Managhan to let you know how much the Division will charge for staff time and for copies of documents to respond to your public record request. OAR 440-005-0025. Mr. Managhan tells us that he expects to provide you with this information within five working days.

[2] See letters from Janet Skelton (May 24, 2000), Martin Gall (May 25, 2000), and Assistant Attorney General Carol Parks (May 25, 2000).

In addition, Mr. Managhan will check with both the director's office and the administrator's office to determine whether they have additional records that are not already contained within the Compliance Section's files. Please contact Mr. Managhan directly at 947-7651 to arrange for inspection and copying of the records. If Mr. Managhan is not available, you should call Sally Coen at 947-7654.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

AGS05119
c: Jerry Managhan, WCD Compliance Section