July 2, 2009

Valerie J. Troyer
P.O. Box 1950
Sisters, OR 97759

Re: Petition for Public Records Disclosure Order:
Oregon State Fire Marshal's Office, Oregon State Police Arson and Explosions Unit, Oregon Department of Consumer and Business Services, Insurance Division, Oregon State Bar, Aurora RFPD, Honorable Walter M. Beglau, Marion County District Attorney

Dear Ms. Troyer:

This letter is the Attorney General's order on your petitions for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. We received a letter from you on June 25, 2009. As we understand your letter, it is a petition asking the Attorney General to direct

(1) the Office of the State Fire Marshal (OSFM);
(2) the Oregon State Police Arson and Explosions Unit (OSP);
(3) the Oregon Department of Consumer and Business Services, Insurance Division (Insurance Division);
(4) the Oregon State Bar (OSB);
(5) the Aurora Rural Fire Protection District (RFPD); and
(6) The Honorable Walter M. Beglau, Marion County District Attorney

to disclose "[your] public records files."

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 state agency denies a request for disclosure of records the requester may petition the Attorney General for review of the denial. However, 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(1). For the reasons that follow, we respectfully deny your petition.

I. OSP/OSFM Records

You have requested OSP records maintained by two separate divisions or sections within the agency: OSFM records and the Arson and Explosions Unit records. Each division and section of OSP maintains its own public records and handles any public records requests. Therefore, we discuss your petition for OSFM and OSP Arson and Explosions Unit records separately.

A. OSFM Records

Your petition states that you are trying to get the files from "those responsible for holding proper investigations of explosions and gas fires." You have attached email correspondence addressed to Laura Drager, Support Services Supervisor, Vi Pelley, Fire Reporting Assistant, and Sandy McClaughry, Administrative Specialist, at OSFM, dated June 24, 2009. Your email to OSFM asks the agency to "[p]lease give me my files now * * *." We contacted Vi Pelley regarding this record request, as well as your previous records request, to which this office responded on August 1, 2008. She stated that OSFM prepared the records you requested and mailed them to the address you provided at that time. However, the post office returned the mail to OSFM as undeliverable. OSFM has no record that you contacted their office regarding your previous records request until it received your email correspondence dated June 24, 2009.

We have asked Ms. Pelley to re-send the documents the agency had previously agreed to send to you last year and she has agreed to do so. She will send them to the address indicated above. Under these circumstances, OSFM has not denied the request for records referenced in your petition. Consequently, we have no authority to order OSFM to make the records available to you. ORS 192.450(1). We therefore deny your petition with respect to OSFM.

If you do not receive any correspondence from OSFM within the next week or so, please contact the agency at:

Office of the State Fire Marshal
4760 Portland Road NE
Salem, OR 97305-1760

Please put in the heading: "Request for Copy of Fire Record."

B. OSP Arson and Explosions Unit Records

As with your request for records from OSFM, you similarly request your files from the OSP Explosions and Arson Unit. We have contacted Cecily Brown, Criminal Records Supervisor, Arson Section, who indicated that she responded to your public records request in a letter dated August 12, 2008. In that letter, Ms. Brown stated that her office would conduct a search for records and provide you with a response and estimate of costs as soon as practicable. In a letter dated October 24, 2008, Ms. Brown responded to your request for records by informing you that OSP would provide you with copies of records upon receipt of $40.50 to

cover the fees to "compile, review, redact, copy and prepare materials for delivery" and for the cost of the photocopies. According to Ms. Brown, you did not respond to the October 24 letter. Therefore, OSP has not denied your request for records and we have no authority to order the agency to make the records available to you. ORS 192.450(1). We respectfully deny your petition as to OSP.

If you wish to receive copies of OSP's file regarding your records request, please contact Ms. Brown at the address below:

OSP Arson and Explosions Unit
Investigative Report Section
255 Capitol St. NE, 4th Floor
Salem, OR 97310

II. Insurance Division Records

We have spoken to the Insurance Division personnel responsible for processing public records requests. They do not have any record or recollection of receiving a public records request from you since your request in July of 2008 for records relating to an investigation by the Insurance Division.[1] In a Public Records Order addressed to you on August 1, 2008, we determined that the Insurance Division had acted properly in response to that request. We adhere to that decision and respectfully deny your petition as to the Insurance Division

III. OSB Records

We spoke to OSB General Counsel Sylvia Stevens regarding your petition as it relates to OSB. Ms. Stevens reports that OSB has received numerous requests from you over a number of years. Ms. Stevens was unable to determine which of your requests your petition is referring to. After reviewing your petition and a number of emails you have sent to OSB (which were provided to us by Ms. Stevens), we were also unable to specifically connect any of those emails with your petition. In any event, Ms. Stevens reports that "[you have] been informed on several occasions that [you are] entitled to view the records [OSB has] maintained in connection with [your] numerous complaints about OSB members." Ms. Stevens forwarded us an email dated July 31, 2008 in which Jeff Matthews of OSB told you that "we have provided to you all of your requested file contents in our possession. If you did not receive it, it is because we do not have it." Ms. Stevens also provided us with a copy of an August 12, 2008 email in which Ms. Stevens informed you that "you are entitled to review and obtain copies of any of our public records" and that "[y]ou need to make your request to the Disciplinary Records Clerk." Because we cannot determine what records you are seeking, and because it does not appear that OSB has denied any of your requests for public records, we must respectfully deny your petition as it relates to OSB.

[1] The Insurance Division did receive correspondence from you on June 3, 2009, but based on our review of that correspondence, you asked for an attorney referral and did not request any records.

IV. Aurora RFPD records

You have requested that the Attorney General's office assist you in obtaining records from the Aurora RFPD, a special service district within Marion County, Oregon. Under the Public Records Law, the Attorney General has authority to issue a public records order only upon the petition of a person "denied the right to inspect or to receive a copy of any public records of *a state agency*." ORS 192.450(1) (emphasis added). The Aurora RFPD is not a state agency. Under the Public Records Law, it is the Marion County District Attorney who has the authority to review the denial of any request for Aurora RFPD records. ORS 192.460 (in case of person denied right to inspect public record of a public body other than a state agency, "[t]he district attorney of the county in which the public body is located * * * shall carry out the functions of the Attorney General"). A petition regarding Aurora RFPD records should be directed to the Marion County District Attorney.

V. The Honorable Walter M. Beglau, Marion County District Attorney

You have requested that the Attorney General's office assist you in obtaining records from the Honorable Walter M. Beglau, Marion County District Attorney. It is unclear from your letter whether you are "trying to get the files from the * * * Honorable Walt Beglau" or if you seek the Attorney General's assistance in "trying to get Walt Beglau (who has never responded to me) to get my public records files from those responsible for the due process of my fire investigation * * *." Therefore, we discuss each possibility separately.

A. Records from the District Attorney's Office

If a local elected official claims a right to withhold disclosure of a public record in his custody, or in the custody of any other agency under this law, the claim is not subject to administrative review by the Attorney General or district attorney. ORS 192.480. Instead, a person denied the right to inspect or to receive a copy of a public record may institute proceedings for injunctive or declaratory relief in the appropriate circuit court, as specified in ORS 192.450 or 192.460. *Id.* The Attorney General has no jurisdiction to order the Marion County District Attorney to disclose records in his custody. Therefore, if you are requesting that the Attorney General order the Marion County District Attorney to disclose records to you, that request must be respectfully denied.

B. Denial of petition by the District Attorney's Office

In any case in which a person is refused an opportunity to inspect a record by a local government body or official, other than an elected official, a petition for disclosure may be filed with the district attorney. ORS 192.460. The same procedure and form are used as for a petition to the Attorney General. If the district attorney's order is adverse to the petitioner or if the order is not complied with, the petitioner may file suit in the circuit court for that particular county. ORS 192.460(1)(b). To the extent you are asserting that the Marion County District Attorney has denied a petition that you filed with his office, we are without authority to consider your petition.

VI. Conclusion

Under these circumstances, your petition must be wholly denied. As to OSFM, the OSP Arson and Explosions Unit, and OSB, we cannot find that you have been denied the opportunity to inspect any records. Consequently, we have no authority to order those agencies to make records available to you. ORS 192.450(1). Insofar as we can determine, your petition with respect to the Insurance Division was denied by our office on August 1, 2008, and we adhere to that decision. And we do not have any authority to order Aurora RFPD of the Marion County District Attorney to make records available to you because those entities are not state agencies. Your petition is respectfully denied.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

DM # 1475737
c: The Honorable Walter M. Beglau
Sylvia Stevens, OSB
Teresa Miller, Insurance Division
Vi Pelley, OSFM
Claire McGrew, OSFM
Cecily Brown, OSP