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December 20, 1994

G. Michael Meinig
Tri-Western, Inc.
6469 S.E. 134th Avenue
Portland OR 97236

Re: ***Petition for Public Records Disclosure Order: State Fire Marshal Records***

Dear Mr. Meinig:

This letter is the Attorney General's order in response to your letter of November 11, 1994, to Phil Keisling, the Oregon Secretary of State. The Attorney General is treating that letter, which was forwarded by the Secretary of State and received in the office of the Attorney General on December 14, 1994, as a petition for a public records disclosure order under ORS 192.450.

Your letter of November 11, 1994, refers to previous requests for State Fire Marshal budget documents and your dissatisfaction with what was produced in response to those requests. Glen Andreassen, Fiscal Officer in the Office of the State Fire Marshal, informs us that the agency has mailed to you on Friday, December 16, 1994, the State Fire Marshal's Legislatively Approved Budget for the period July 1, 1993, through June 30, 1995. You will note that this actually is one document and not the two documents you have referred to in previous correspondence.

Your letter of November 11, 1994, also requests "minutes and documents" related to the agency's review of an assessment against your company of $196.43. It appears to us from a review of the correspondence you have provided that this is the first request you have made for this material, nor do you allege that the State Fire Marshal has denied that request. Moreover, your letter is addressed to the Secretary of State, an agency which neither possesses the documents nor has the authority to

of State, an agency which neither possesses the documents nor has the authority to G. require their production. You should make this request to the office of the State Fire Marshal.

We have also reviewed your previous correspondence with the agency relative to employee compensation. It appears from that correspondence that the State Fire Marshal has provided you with the material you requested.

Absent a request to, and a denial by, the agency for specific records, the Attorney General lacks authority to order disclosure. *See* ORS 192.450. Therefore, with respect to those documents that the State Fire Marshal has provided (or agreed to provide) to you, we deny your petition as moot. With respect to those records that you have not requested from the State Fire Marshal, we deny your petition as premature.

Finally, we note that your November 11, 1994, letter asks factual questions and presents positions that cannot be interpreted as requests for existing public records. ORS 192.410(4). The Attorney General's authority under the Oregon Public Records Law, ORS 192.410 to 192.505, extends only to the ability to order the production of public records in the custody of a state agency, access to which has been improperly denied by the agency. Consequently, the Attorney General cannot order the State Fire Marshal to create records or to clarify, explain or interpret documents you might receive from that office or some other source. Therefore, with respect to your request for records that do not exist, we also deny your petition to compel disclosure.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

ESH:TET/AV/jpl/MEINIG.PRO

c: Robert T. Panuccio, State Fire Marshal
Glen Andreassen, Fiscal Officer, State Fire Marshal