HARDY MYERS
ATTORNEY GENERAL

DAVID SCHUMAN
DEPUTY ATTORNEY GENERAL



DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97310-0506
Telephone: (503) 378-4400
TDD: (503) 378-5938

April 11, 2000

Nicole Montesano
News-Register
PO Box 727
McMinnville, OR 97128

Re: Petition for Public Records Disclosure Order:
Senior and Disabled Services Division Records

Dear Ms. Montesano:

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 April 6, 2000, asks the Attorney General to direct the Senior and Disabled Services Division (SDSD) to make available copies of "any documentation related to the civil penalty assessed against the Sheridan Care Center."

SDSD's letter to you dated March 31, 2000, which you attached to your petition, states that, with the assistance of staff from the Attorney General's office, SDSD had initiated a review of the requested records in order "to determine which [documents] can be released and which are exempt." Dan Kaplan, SDSD Deputy Administrator, confirms that this review is underway, and that you will be notified when the review is complete.[1/] A public body does not deny a records request when it consults with counsel about disclosure of documents that appear to be exempt in whole or in part from the disclosure requirements of the Public Records Law. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1999) at 17.

[1/] The agency may charge you a fee to reimburse it for its actual cost in making such records available, including its photocopy costs and the time spent in reviewing the records and segregating the exempt and nonexempt materials. *See* ORS 192.440(3).

Because SDSD has not denied your request for the records, the Attorney General lacks authority to order disclosure. *See* ORS 192.450(1); *Morse Bros. v. ODED*, 103 Or App 619, 798 P2d 719 (1990) ("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 courts can review the matter."). Accordingly, we deny as premature your petition to compel.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

AGS04571
c: Daniel Kaplan, Deputy Administrator, SDSD
Bonnie Salle, Corrective Action Officer, SDSD