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March 13, 2000

Arden J. Olsen
Harrang, Long, Gary & Rudnick, P.C.
101 E. Broadway
Eugene, OR 97401-5114

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

Dear Mr. Olson:

This letter is the Attorney General's order on your petition[1] for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on March 7, 2000, asks the Attorney General to direct the Department of Administrative Services (DAS), to make available the following records to update your earlier records request of November 24, 1999:

> "... any further documents related to the Ontario lease project, meaning any documents which have been created or have come into DAS's possession after those which were produced."

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. If a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material. *Turner v. Reed*, 22 Or.App 177, 186 n 8, 538 P2d 373 (1975).

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[1] Your petition was filed on behalf of your client Eldorado Investments, Inc.

The Public Records Law allows a public body a "reasonable" time to respond to a records request. What is "reasonable" will depend upon many factors, including the volume of records requested, the staff available to respond to the records request, and the difficulty in determining whether any records are exempt from disclosure. OREGON ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL at 7 (1997).

As with your earlier request, the records that are the subject of this petition were requested from the DAS Facilities Division by you on behalf of Eldorado Investments, Inc. These records are in addition to the approximately 250 pages of records that have thus far been produced in response to your initial request. We have been informed by Darin Smith, Leasing and Property Agent, Real Property Services, Facilities Division, that he is currently preparing an estimate of the cost to make these additional records available (as provided by ORS 192.440(3)) and that the cost estimate will then be sent to your attention.[2]

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(2). 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 courts can review the matter. *Morse Bros., Inc. v. ODED*, 103 Or App 619, 798 P2d 719 (1990). Because DAS Facilities has not denied Eldorado's request for the records, we deny the petition for disclosure of those records as premature.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

AGS04333
c: Darin Smith, Leasing and Property Agent,
Real Property Services, DAS Facilities Division

[2] We understand from Mr. Smith that the Adult and Family Services Division (AFS) may be the custodian of additional records relating to this matter. Any request for such records would need to be sent directly to AFS.