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February 28, 2000

Leslie Haber
P.O. Box 518
333 Thistledown Lane
Gates, OR 97346-0518

Re: *Petition for Public Records Disclosure Order: Legislative Counsel Records*

Dear Mr. Haber:

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 February 22, 2000, asks the Attorney General to order the Legislative Counsel's Office and its employees to provide you with copies of the following records:

I. Re: ORS 173.130

1. File on the proposal in writing of ORS 173.130 with all notes and commentary to date.
2. Minutes of discussion in both Houses of the Legislature plus Legislative Committees on ORS 173.130.
3. Roll call vote and vote tally on ORS 173.130 in both Houses of the Legislature.

II. Breakdown of the number of statewide initiatives, county initiatives, and city initiatives written on behalf of individuals by the Legislative Counsel's Office in the last eight years, along with all records of hours and cost per hour spent in the writing of each of these initiatives for each state, county, and city initiative written in the last eight years.

III. The complete file on the two initiatives attached that Legislative Counsel's Office assisted Mr. Hensell in your office in drafting his two initiatives, all documents, notes, phone logs, and all other information in your possession pertaining to the drafting of Mr. Hensell's initiatives to a[m]end the Charter of the City of Gates.

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. Any person who is denied the right to inspect or to receive a copy of any public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld. ORS 192.450(1).

By letter dated February 16, 2000, Gregory Chaimov, Legislative Counsel, provided you with copies of some of the records you sought and responded to your other requests. We consider your requests and Mr. Chaimov's responses below.

Legislative and Committee Minutes and Vote Tally Records

In response to your request for legislative and committee minutes and vote tally records regarding amendments to ORS 173.130, Mr. Chaimov provided to you the minutes of the Legislative Counsel Committee meeting of September 17, 1998. He advised you that the minutes of other committees' discussions are not in the custody of the Legislative Counsel Committee. He similarly advised you that records of the roll call vote and vote tally on ORS 173.130 are not in the Legislative Counsel Committee's custody.

The duty to disclose public records lies with the public body that is the custodian of those records. ORS 192.430, 192.440. The custodian is the "public body mandated, directly or indirectly, to create, maintain, care for or control a public record." ORS 192.410(1)(b). Because the Legislative Counsel Committee is not the custodian of the other committee minutes and voting records you have requested, this office cannot order the Legislative Counsel Committee to make them available to you. We therefore deny your petition with regard to those records.

Breakdown of Initiatives with Hours and Costs

In response to your request for a breakdown of the number of initiatives written on behalf of individuals by the Legislative Counsel's Office in the last eight years, along with records of hours and cost per hour spent writing the initiatives, Mr. Chaimov informed you that providing the records from which this information might be gleaned "would require the manual retrieval and review of tens of thousands of files" and that the fee for undertaking that review "would likely run into the thousands of dollars." He stated that if you were willing to pay for the

necessary review, he would provide a more specific estimate of the prepayment required. Mr. Chaimov has informed us that he received no further communication from you regarding the prepayment requirement.

ORS 192.440(3) authorizes a public body to "establish fees reasonably calculated to reimburse it for its actual cost in making such records available including costs for summarizing, compiling or tailoring such record, either in organization or media, to meet the person's request." A public body may preliminarily estimate charges for responding to a records request and require prepayment of the estimated charges before acting on the request. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL at 12 (1999). An agency does not deny a public record request merely by requiring prepayment of these costs.[1/] Because the Office of Legislative Counsel had not denied your request for a breakdown of the initiatives written by that office on behalf of individuals or the records of hours and costs to write the initiatives, this office has no authority to order the Legislative Counsel Committee to make these records available to you. *See* ORS 192.450(1). We therefore deny your petition as to these records as premature.

File on Writing ORS 173.130 and on Mr. Hensell's 1997 Initiatives

Mr. Chaimov did deny your requests for two categories of records: 1) The "[f]ile on the proposal in writing of ORS 173.130 with all notes and commentary to date;" and 2) the complete file on two initiatives with regard to which the Office of Legislative Counsel "assisted Mr. Jim Hensell in drafting in 1997."

ORS 192.480 provides in relevant part:

> In any case in which a person is denied the right to inspect or to receive a copy of a public record in the custody of an elected official, or in the custody of any other person but as to which an elected official claims the right to withhold disclosure, no petition to require disclosure may be filed with the Attorney General * * * or if a petition is filed it shall not be considered by the Attorney General * * * after a claim of right to withhold disclosure by an elected official.

[1/] We have no basis to believe that Mr. Chaimov's estimate of the number of records that would need to be retrieved and reviewed to provide you with the eight years' of information you seek does not accurately reflect his best estimate of the actual cost to the Office of Legislative Counsel in making the requested information available to you.

Mr. Chaimov has informed us that Senators Randy Miller and Marylin Shannon, together with the elected officials who are members of the Legislative Counsel Committee, claim the right to withhold disclosure of materials pertaining to the drafting of ORS 173.130 and the two 1997 initiatives. Because elected officials claim the right to withhold disclosure of these records, the Attorney General may not consider your petition as to these records.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

AGS04219
c: Gregory A. Chaimov, Legislative Counsel