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February 28, 2000

Henry J. Kaplan
Bennett, Hartman & Reynolds
851 S.W. Sixth Avenue, Suite 1600
Portland, OR 97204-1376

Re: *Petition for Public Records Disclosure Order*
Teacher Standards and Practices Commission Records

Dear Mr. Kaplan:

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 1, 2000,[1/] asks the Attorney General to direct the Teacher Standards and Practices Commission (TSPC) to make available the following:

1. All correspondence, notes, all electronic communications, or other communications of any form between TSPC and Hillsboro School District concerning or mentioning HEA Member Jonathan Zook.

2. Copies of any and all criminal records information compiled by TSPC concerning or mentioning Jonathan Zook.

[1/] We appreciate your extending the time within which the law would have otherwise obligated us to respond.

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). Any person who is denied the right to receive copies of a public record of a state agency may petition the Attorney General to review the record to determine if it was properly withheld from disclosure. ORS 192.450(1).

Below, we address each of the records that you seek.

1. Communications between TSPC and the Hillsboro School District

David V. Myton, Executive Director of TSPC, informs us that the agency has three documents that contain communications between TSPC and the Hillsboro School District: (1) A letter from Mr. Myton to Mr. Zook dated September 1, 1999, of which a copy was mailed to the Hillsboro School District; (2) a form letter dated September 1, 1999, from Mr. Myton to Cheryl Griswold of the Hillsboro School District, informing the district that you had been granted a temporary teaching license; and (3) a form letter to Mr. Zook dated September 30, 1999, of which a copy was mailed to the Hillsboro School District. TSPC has provided copies of these documents to you through Assistant Attorney General Joe McKeever. Accordingly, as to these records, we deny your petition as moot.

2. Criminal Records Information

a. Washington Criminal Investigation Report

While reviewing Mr. Zook's application, TSPC requested materials from the Seattle Police Department and received a copy of a citation and report from a 1991 incident. Although the materials that TSPC received from Seattle are directly related to another individual, Mr. Zook is mentioned and there is a notation that suggests a "companion" citation to Mr. Zook was issued for the same criminal episode. In fact, in Mr. Zook's response to Character Questions" in his TSPC application, he reports that he and a friend were arrested in Seattle for shoplifting on July 17, 1991. This date and charge coincide with the information received by TSPC from the Seattle Police. The Seattle Police did not provide to TSPC the actual citation and report for Mr. Zook.

The documents that were received from the Seattle Police were stamped: "This copy was prepared by the Seattle Police Department and may not be revealed to any other individual and/or agency or used for any other purpose than stated without the consent of the Seattle Police Department." Thus, it would appear that the citation and arrest report might come under ORS 192.502(4), which exempts from disclosure:

> Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obligated itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

On February 24, 2000, Assistant Attorney General Gary Cordy contacted Joyce Dawson, Records Manager for the Seattle Police Department, and inquired about the admonition contained on the two police documents. As a result of that discussion, Ms. Dawson stated that the Seattle Police would not assert a right to nondisclosure of the two documents. Based on this information, Mr. Myton informed our office that TSPC would provide the documents to you. Accordingly, as to these records, we deny your petition as moot.

b. Criminal Offender Information Maintained by the Oregon State Police

TSPC is a designated agency that is authorized to receive criminal offender information from the Department of State Police as to persons applying to TSPC for an Oregon Teaching License. ORS 181.539. In this capacity the State Police provided TSPC with computerized records of criminal offender information relating to Mr. Zook.

ORS 181.540 generally provides that criminal offender information records compiled by the Department of State Police are confidential and exempt from public inspection except as ordered by a court, provided in rules adopted by the Department of State Police or provided under other statutes that do not apply to your request for public records. The Department of State Police has promulgated rules concerning the dissemination of computerized criminal history information directly to certain public agencies. OAR 257-010-0025 limits access to criminal offender information to criminal justice agencies and designated agencies, such as TSPC, who receive the information in order to implement a federal or state statute, Executive Order or administrative rule. A designated agency that receives records of criminal offender information must maintain those records in secure files, available only to authorized agency employees until the files are destroyed. *Id.*

ORS 192.502(9) exempts from disclosure "records or information, the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law." This provision incorporates into the Public Records Law the confidentiality of any record covered by a statute outside the Public Records Law. Records of criminal offender information compiled by the Oregon State Police are "confidential and exempt from public inspection" under ORS 181.540. Rules adopted by the Department of State Police under ORS 181.540 prohibit TSPC and other designated agencies from disclosing records of criminal offender information obtained from the Department of State Police. Accordingly, we conclude that TSPC is prohibited from disclosing to you any records of criminal offender information that TSPC

obtained from the Department of State Police. Because disclosure is prohibited by ORS 181.540, the information you seek is exempt from disclosure under the Public Records Law, ORS 192.502(9).[2/] We therefore deny your petition as to these records.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

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c: David Myton, TSPC

[2/] For your information, ORS 181.560 establishes a procedure for persons or agencies that are not criminal justice or law enforcement agencies to obtain criminal offender information. You may contact the Department of State Police, Identification Services Section, for this purpose.