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January 14, 2000

Arden J. Olson
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 January 11, 2000, asks the Attorney General to direct the Department of Administrative Services (DAS), to make available the following records:

> [P]ublic records which have been created by or have come into the State's possession prior to, at the time of or subsequent to the mentioned HOT SHEET pertaining to the matter described in the HOT SHEET, namely office space in or near Ontario to be leased by the State to replace the facilities in Ontario currently leased from Eldorado, as follows:
>
> 1. Writings received by any means by the State directing or suggesting that other facilities should be acquired to replace those subject to the existing lease with Eldorado.
> 2. Writings received at any time by any means by the State directing or suggesting the location of the proposed new office space described in the HOT SHEET.
> 3. Correspondence, memorandum and reports between and among the State's agencies and their administrative staff, the College, other public bodies, and private third parties of every description.

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

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).

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).

The records that are the subject of this petition were requested from the DAS Facilities Division on behalf of Eldorado Investments, Inc., by its legal counsel Max Taggart. We have been informed by Mr. Darin Smith, Leasing and Property Agent, Real Property Services, Facilities Division, that on December 29, 1999, he notified by mail the law offices of Taggart & Taggart (from whom the original request had been received on November 26, 1999) that the matter had been researched and that the requested records were in fact available. Also in his December 29th letter, Mr. Smith provided Taggart & Taggart with an estimate of the cost of making the records available (as provided by ORS 192.440(3)) together with the option of copying and shipping the records directly to their office or, in the alternative, making them available for review by appointment at the DAS offices in Salem. Mr. Smith informs us that he has not received a response from Taggart & Taggart.

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

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