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DEPARTMENT OF JUSTICE

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January 9, 2009

Michael A. Presley
11812 Mallory Dr
Klamath Falls, OR 97603

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

Dear Mr. Presley:

This letter is the Attorney General's order on your petition for a Public Records Order under the Oregon Public Records Law, ORS 192.410 to 192.505. We received your petition on December 26, 2008.[1] You ask the Attorney General to order the Teachers Standards and Practices Commission (Commission) to provide you with a copy of the "[c]ontents of [your] file at TSPC."

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 state agency denies a request for disclosure of records, the requestor may petition the Attorney General for review of the denial. ORS 192.450

We respectfully deny your petition, because we conclude that the Commission has not denied your request for records.

You indicate in your petition that you initially requested these records in June 2004 and at other times after that date. The Commission confirmed that you requested the records in an email to Melody Hanson on or about October 29, 2008. In that email you state, "After only three years of trying I think that I have discovered the correct question to ask," followed by a smiley-face emoticon. You then go on to make a request for the records in question "under Oregon Public Records Law."

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[1] We thank you for extending the time for our response until January 9, 2009

On December 31, 2008, we spoke to the Commission's Executive Director, Victoria Chamberlain, regarding your request. Ms. Chamberlain explained to us that she emailed you shortly after your October 29 email. Ms. Chamberlain informed you that some of her staff was out due to illness, but that someone would contact you to provide you a cost estimate for the records you requested. Also on December 31, 2008, we spoke to George Finch, the Commission's Coordinator of Professional Practices. Mr. Finch informed us that the Commission was in the process of preparing a cost estimate for the records you requested. *See* ORS 192.440(4), allowing public agencies to establish fees "reasonably calculated to reimburse the public body for the public body's actual cost of making public records available." That same day, Mr. Finch sent an email, addressed to you at mnmpresley@yahoo.com, estimating the cost of responding to your request for records at twenty dollars, and stating that "[o]nce [the Commission] receives payment the records will be released to you."

Under these circumstances, we cannot conclude that the Commission has denied your request for records. To the contrary, the Commission has agreed to provide the records after you pay the fees estimated by the Commission. Public agencies may require prepayment of their estimated fees before providing access to public records. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2008) at 15. Because the Attorney General's authority is to issue Public Records Orders in response to petitions by "any person denied the right to inspect or to receive a copy of any public record of a state agency," ORS 192.450(1), your petition must be respectfully denied.

We note that in previous correspondence with you, Ms. Chamberlain indicated that some records you requested may be redacted or withheld from the Commission's response. If you disagree with any such decision by the Commission, the law permits you to petition our office to review the Commission's decision.

Sincerely,

DAVID E. LEITH
Associate Attorney General

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