HARDY MYERS
ATTORNEY GENERAL

PETER D. SHEPHERD
DEPUTY ATTORNEY GENERAL



DEPARTMENT OF JUSTICE

1162 Court Street NE
Justice Building
Salem, Oregon 97301-4096
Telephone: (503) 378-4400
TTY: (503) 378-5938

December 17, 2008

Karen Kirsch
c/o Charlie Ringo
974 N.W. Riverside Blvd.
Bend, OR 97701

Re: Petition for Public Records Disclosure Order:
Insurance Division Records

Dear Ms. Kirsch:

On Saturday, December 6, 2008, you emailed Assistant Attorney General Judith Anderson requesting that the Attorney General issue a Public Records Order under ORS 192.450(1) directing the Insurance Division of the Department of Consumer and Business Services ("the Division") to disclose certain records to you. In part because individual Assistant Attorney's General are often occupied away from their offices, the Attorney General has established a procedure for submitting petitions for Public Records Orders to the Attorney General's central office via facsimile or mail. See http://www.doj.state.or.us/pros/pub_records_pet.shtml (viewed on December 15, 2008). You directed your petition elsewhere, and consequently it did not reach the appropriate people within DOJ until Wednesday, December 10, 2008. As a result, we treat your petition as received on that date.

The substance of your petition relates to a November 18 request for documents in the custody of the Division. Specifically, you requested:

> 1. Any and all correspondence, petitions, rulings and any other communication of any kind between the Division of Insurance or the Department of Consumer and Business Services and Regence Blue Cross Blue Shield of Oregon and its agents and attorneys regarding Regence's claim that certain portions of its Individual Rate filing for adjustments to become effective as of July 1, 2008 are confidential and should be exempt from public disclosure and the Division and/or DCBS's response thereto.

> 2. Any correspondence, transcript, tape recording, order and/or any other communication of any kind between the Division of Insurance, the Department of Consumer and Business Services, the Office of Administrative Hearings, the Department of Justice and Regence Blue Cross Blue Shield of Oregon and its agents and attorneys relating to any hearing request, hearing, meeting or settlement agreement pertaining to Regence's claim of confidentiality.

You state that as of December 5, 2008, you had not received a reply from the Division.

In general, the Public Records Law confers on every person the "right to inspect any public record of a public body in this state," subject to statutory exemptions and limitations. ORS 192.420(1). Public bodies are required to "furnish proper and reasonable opportunities for inspection and examination" of records in their custody. ORS 192.430(1). And "any person 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 public record to determine if it may be withheld from public inspection." ORS 192.450(1). We understand that you are asking the Attorney General to view the asserted lack of response by the Division as a denial of your request for records. For the reasons that follow, we respectfully deny your petition.

On November 18, 2008, Anthony A. Behrens, the Policy and Legislative Analyst for the Division, sent email addressed to kk02446@earthlink.net. That address matches the "mailto" address appearing on your December 6, 2008 email to Ms. Anderson. Mr. Behrens's message stated:

> I am contacting you to acknowledge receipt of your public records request. We understand that you are represented in this matter by your attorney, Charlie Ringo. Mr. Ringo requested the same records on November 5, 2008. We are currently working with him to satisfy this request.
>
> Because Mr. Ringo is representing you in this matter, certain ethical considerations require us to deal directly with him. Therefore, please direct all future communications with the Division that are within the scope of Mr. Ringo's representation through him. Please contact Mr. Ringo should you have any questions regarding this matter.

Mr. Behrens's email was also copied to Charlie Ringo, an attorney who represents you before the Division in matters related to the request. In light of this email, we cannot accept your assertion that you "have not had a reply" from the insurance division.

Given the substance of the Division's November 18, 2008 email to you, we have reviewed the November 5, 2008 request by Mr. Ringo. That request was made "[o]n behalf of [his] client, Karen Kirsch." Letter from Mr. Ringo to Teresa Miller, Acting Director, Insurance Division, November 5, 2008. Although the wording of Mr. Ringo's request is not precisely

identical to your November 18, 2008 request, we agree with the Division that your later request is redundant to the earlier request filed by Mr. Ringo on your behalf. Specifically, Mr. Ringo sought

> 1. All documents relating in any way to Regence BlueCrossBlueShield's [*sic*] claim that certain portions of its individual rate filing for 2008 are confidential and should be exempt from public disclosure. This includes all communications, letters, emails, notes, internal memoranda, etc.
>
> 2. Any correspondence, transcript, tape recording, order and/or any other communication of any kind between the Division of Insurance, the Department of Consumer and Business Services, the Office of Administrative Hearings, the Department of Justice and Regence Blue Cross Blue Shield of Oregon and its agents and attorneys relating to any hearing request, hearing, meeting, or settlement agreement pertaining to Regence's claim of confidentiality.

If anything, Mr. Ringo's request on your behalf is broader than your subsequent request on November 18, 2008.

Because your November 18, 2008 request was redundant of the November 5, 2008 request filed by your attorney on your behalf, we find that the substance of the Division's November 18, 2008 response to your request was proper. The Division did not deny your request, but informed you that it had already received that request and was working with your attorney to respond to that request. Your attorney is your agent and acts on your behalf with respect to matters within the scope of his representation. As a result, the Division properly could assume that a response to your attorney would effectively be a response to you.

Through Ms. Anderson, its counsel, the Division has been in touch with Mr. Ringo as the Division compiles records responsive to his November 5, 2008 request on your behalf. The Division indicates that its response to Mr. Ringo is ongoing, and that Mr. Ringo has not indicated that either you or he is dissatisfied with the pace of that request.

We acknowledge, of course, that your rights under the Public Records Law are not diminished by virtue of the fact that you are represented by counsel. Our indication that the Division could properly respond to your request through your counsel should not be understood to mean that you are deprived of the ability to make an independent request.

Likewise, you do not lose your ability to petition the Attorney General for the issuance of an order under ORS 192.450(1). Because your petition relates the asserted failure of the Division to respond to your order, you may be asserting – contrary to the sense the Division gleaned from its dealings with Mr. Ringo – that the Division has exceeded the reasonable time within which it is obligated to provide access to non-exempt public records. See ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2008) at 10-11. To the extent you are making that assertion, we reject it. Based on its dealings with Mr. Ringo, the Division

reasonably could believe that the pace of its response to your request was acceptable to Mr. Ringo on your behalf. That is, the Division properly could assume that, in the course of communications on the matter, Mr. Ringo would voice any objections on your behalf. Under these conditions, it would be unfair to the Division to entertain an assertion from you that the Division has exceeded a reasonable length of time for its response. Reasonableness is judged under the totality of the circumstances, and we view the fact that the Division was working with your attorney on a response to the requests underlying your petition as a highly relevant circumstance.

For the reasons described above, we respectfully deny your petition.

Sincerely,

for PETER D. SHEPHERD
Deputy Attorney General

DM1196610
c; Teresa Miller, Insurance Division