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

August 1, 2008

Valerie Troyer
P.O. Box 230064
Portland, OR 97281-0064

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

Dear Ms. Troyer:

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 July 24, 2008, asks the Attorney General to direct the Department of Consumer and Business Services/Insurance Division (Division) to make available your "public records file". 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 state agency denies any person the right to inspect or obtain a copy of a public record, that person may petition the Attorney General to determine if the requested record was properly withheld. ORS 192.450.

We spoke with Insurance Division staff about your petition and found that your petition relates to requests you made to the Insurance Division in June and July, 2008. The Division provided us with the following background information.

On March 7, 2006, you filed a complaint about an insurer with the Insurance Division. The Division provided a response to your complaint on May 3, 2006, informing you that it found no violation of the Oregon Insurance Code or terms of your policy. On September 23, 2006, you sent another letter to the Division and requested a meeting with the Division's Consumer Advocate to "finally resolve this case." The Consumer Advocate replied to your letter on October 3, 2006, and informed you that she had concluded the review of your complaint and again stated that the Division found no violation of the Insurance Code by your insurer.

On June 25, 2008 you sent an email to Scott Kipper, Insurance Administrator, and requested a response regarding your March, 2006, complaint. A consumer advocate from the Division responded on June 27, 2008, and told you that she had reviewed your complaint and that the Division was unable to assist you in a criminal investigation, as you had suggested. You responded on June 27, 2008, and requested the insurer's investigation. The consumer advocate responded on June 30, 2008, and informed you that she would pull your file from the archives and forward any information that was not confidential. You responded on June 30, 2008 and stated that nothing in the Division's file related to your complaint should be confidential. During our discussion with Division staff regarding your petition, we discovered that a majority of the records in the requested file are letters to and from you, so presumably you have those documents. The documents in question, including correspondence between you and the agency, are part of the agency's investigative file.

On July 1, 2008, you emailed Mr. Kipper again and requested your "complete file". On July 17, 2008, you received an email from Lorna White, Senior Consumer Advocate, in which she indicated that the file you were requesting is confidential and would not be sent to you. Ms. White followed up with an email to you that provided the text of the applicable confidentiality statutes from the Insurance Code. We have confirmed with the Division that their intent is to withhold the requested records.

Oregon law specifically provides, in relevant part, that a complaint made to the Director of the Department of Consumer and Business Services against any person regulated by the Insurance Code, and the record thereof, shall be confidential and shall not be disclosed except as provided by ORS 705.137. ORS 731.264(1). Similarly, data gathered pursuant to the investigation is confidential and cannot be disclosed except to the extent considered necessary by the director for the prosecution of apparent violators of the Insurance Code or other law. ORS 731.264(2).

ORS 705.137 provides, in relevant part:

> (A)ny document, material or other information in possession or control of the Department of Consumer and Business Services for the purpose of administering * * * the Insurance Code and that is described in statute as confidential or as not subject to disclosure is not subject to disclosure under ORS 192.410 to 192.505 * * *

Accordingly, pursuant to ORS 731.264, the Division is prohibited from disclosing the records in the complaint file unless such disclosure is considered necessary in the prosecution of apparent violations of the Insurance Code or other law. However, the Division found no violation of the Insurance Code as a result of their investigation of your complaint, and the case was closed.

The Oregon Public Records Law exempts from disclosure "records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law." ORS 192.502(9). This exemption incorporates into the Public Records Law other state statutes that make records confidential or privileged. Thus, under the cited statutes, the

records of complaint and subsequent investigation by the Division are exempt from disclosure under ORS 192.502(9).

Because the requested records are exempt from disclosure under ORS 192.502(9) due to the Division's confidentiality statute, we must respectfully deny your petition to compel disclosure.

Sincerely,

STEPHANIE L. STRIFFLER
Special Counsel to the Attorney General for
PETER D. SHEPHERD
Deputy Attorney General

DM635811
c: Scott Kipper, Insurance Administrator