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DEPARTMENT OF JUSTICE

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August 1, 2008

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

Re: Petition for Public Records Disclosure Order:
Oregon State Fire Marshal's Office
Oregon State Police Arson and Explosions Unit
Aurora RFPD

Dear Ms. Troyer:

This letter is the Attorney General's order on your petitions for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. We received three petitions from you on July 24, 2008, asking the Attorney General to direct: (1) the Office of the State Fire Marshal (OSFM), (2) the Oregon State Police (OSP) Arson and Explosions Unit, and (3) the Aurora Rural Fire Protection District (RFPD) to disclose "the public record file of my fire since it happened." Specifically, these petitions pertain to the following records:

Alarm No. 2005430: Aurora RFPD
14675 Lloyd's Lane, NE, Aurora, OR 97002: 8/06/05

For the reasons that follow, we respectfully deny your petitions.

I. OSP/OSFM records

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 requester may petition the Attorney General for review of the denial. However, 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(1).

You have requested OSP records maintained by two separate divisions or sections within the agency: OSFM records and the Arson and Explosions Unit records. Each division and section of OSP maintains its own public records and handles any public records requests.

Therefore, we discuss your petitions for OSFM and OSP Arson and Explosions Unit records separately.

A. OSFM records

Your petition states that you have made repeated requests for the files pertaining to the records listed in your petition but that no one has responded to your letters. You have not attached any of your correspondence to your public records request, therefore we are uncertain to whom you addressed your requests. However, we contacted Laura Drager, Support Services Supervisor, Vi Pelley, Fire Reporting Assistant, and Sandy McClaughry, Administrative Specialist, at OSFM. Each person reviewed the pertinent files and confirmed that there is no record that OSFM received any public records request from you. Under these circumstances, OSFM has not denied the request for records referenced in your petition. Consequently, we have no authority to order OSFM to make the records available to you. ORS 192.450(1). We therefore deny your request as premature.

We have asked Ms. McClaughry if OSFM would accept your petition as a request for records and she has agreed to do so. Our office has forwarded a copy of your petition to OSFM to help expedite your request. You may also wish to contact the agency at:

Office of the State Fire Marshal
4760 Portland Road NE
Salem, OR 97305-1760

Please put in the heading: "Request for Copy of Fire Record."

B. OSP Arson and Explosions Unit records

Your petition states that on September 28, 2005, you were told by Paul Nees, Marion County Fire Marshal, that the investigation of fire had been turned over to the OSP "Explosions and Arson Unit on August 22, 2005." You state that no one has responded to your many letters requesting the file on your fire. We have contacted Cecily Brown, Criminal Records Supervisor, Arson Section, who searched the files for a public records request from you. She confirmed that the Arson and Explosions Unit has no record of receiving any request from you regarding the fire. Therefore OSP has not denied your request for records and we have no authority to order the agency to make the records available to you. ORS 192.450(1). We respectfully deny your petition as premature.

We have asked Ms. Brown if the Arson and Explosions Unit would accept your petition as a public records request. Like Ms. McLaughry, Ms. Brown agreed to do so. Our office has forwarded a copy of your petition to OSP's Arson and Explosions Unit to help expedite your request. Should you desire to contact the agency, you may do so directly at the following address:

OSP Arson and Explosions Unit
Investigative Report Section
255 Capitol St. NE, 4th Floor
Salem, OR 97310

II. Aurora RFPD records

You have requested that the Attorney General's office assist you in obtaining records from the Aurora RFPD, a special service district within Marion County, Oregon. Under the Public Records Law, the Attorney General has authority to issue a public records order only upon the petition of a person "denied the right to inspect or to receive a copy of any public records of *a state agency*." ORS 192.450(1) (emphasis added). The Aurora RFPD is not a state agency. Therefore, under the Public Records Law, it is the Marion County District Attorney who has the authority to review the denial of your request for the Aurora RFPD records. ORS 192.460 (in case of person denied right to inspect public record of a public body other than a state agency, "[t]he district attorney of the county in which the public body is located * * * shall carry out the functions of the Attorney General"). A petition regarding Aurora RFPD records should be directed to the Marion County District Attorney.

III. Conclusion

Under these circumstances, OSFM and the OSP Arson and Explosions Unit have not denied the request for records referenced in your petition. Consequently, we have no authority to order OSFM and OSP to make the records available to you. ORS 192.450(1). We therefore respectfully deny your petitions as to these records as premature. Furthermore, because Aurora RFPD is not a state agency, we have no authority to order Aurora RFPD to disclose its records to you. We respectfully deny your petition as to those records as well.

Sincerely,

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

DM635806
Enclosure
c: Laura Drager, Support Services Supervisor, Office of the State Fire Marshal
Vi Pelley, Fire Reporting Assistant, Office of the State Fire Marshal
Sandy McClaughry, Administrative Specialist, Office of the State Fire Marshal
Cecily Brown, OSP Criminal Records Supervisor, Arson Section
Honorable Walt Beglau, Marion County District Attorney