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May 14, 1987

Ray A. Baker
Vice-President
Deschutes River Public Outfitters
P.O. Box 5586
Eugene, Oregon 97405

Re: Public Records Disclosure Petition

Dear Mr. Baker:

This letter responds to your petition for a public records disclosure order. The Attorney General's office received your request May 8, 1987. For the reasons stated below, we respectfully deny your petition.

The petition specifically seeks disclosure of:

> "[t]he names and addresses of all persons who responded to surveys from which the 'Social and Ecological Impacts of Recreation Use on the Deschutes River Scenic Water study was compiled." (Emphasis added.)

You specifically ask that we order the Department of Transportation (Parks & Recreation Divison/Scenic Waterways) to produce a copy of the record information you seek.

The Department of Transportation does not possess this information. The shortest answer to your petition would be that we decline to order the Department of Transportation to disclose record information it does not have.

We recognize, however, that the information you seek is in the possession of another state agency, the State System of Higher Education, at Oregon State University (OSU). We are also aware that you presented a request for disclosure to officials at OSU who denied your request. Your petition states that your disclosure request was denied by Caroline Kerl. Ms. Kerl is Legal Advisor to the President of OSU (but not a representative of the Attorney General's office, as your petition states).

Under these particular circumstances, we treat your petition as a request that we order the State System of Higher Education to disclose the information you seek. We, nevertheless, deny the petition because that information is exempt from mandatory disclosure under the Public Records Law, ORS 192.410 - 192.500.

ORS 192.500(2)(c) provides:

> "The following public records are exempt from disclosure under ORS 192.410 to 192.500:
>
> " . . . Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure. . . ."
> (Emphasis added.)

The information you seek meets the tests for exemption under this statute.

The Deschutes River use study to which your petition refers was conducted by OSU's College of Forestry, Department of Resource Recreation Management, pursuant to a statutorily authorized contract with the Department of Transportation. OSU sent questionnaires to a random sampling of 800 people drawn from the 13,000 persons listed in Department of Transportation records as holding boater's passes. OSU Professor Bo Shelby mailed the questionnaires with letters in which he promised anonymity to those persons who responded to the survey. A copy of a letter assuring confidentiality is enclosed.

No law required the survey recipients to respond to the questionnaire. It is reasonable to believe that an assurance of anonymity would prompt a greater number of people to respond to the questionnaire and thus supply a better informational base for the study. The public body conducting the survey promised to keep responses and the identity of respondents confidential in the good faith belief that such assurances would improve the quality of its research. A significant public interest is at stake. The public interest in guaranteeing the ability of state researchers to conduct productive studies on matters of public concern would be hampered if the assurance of confidentiality to survey respondents was breached in this case.

We therefore conclude that the specific information you seek is exempt from disclosure under the Public Records Law.

Respectfully submitted,

James E. Mountain Jr

JAMES E. MOUNTAIN, JR.
Special Counsel to the
Attorney General

JEM:cm
Enclosure
cc: Caroline Kerl, Legal Advisor, OSU
Jerry Casby, Assistant Attorney General
Melinda Bruce, Assistant Attorney General