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

July 18, 2007

Billy Russo
Executive Director
Harm Reduction Center of Southern Oregon
832 NW Highland St.
Roseburg, OR 97490

Re: Petition for Public Records Disclosure Order
Department of Human Services Records

Dear Mr. Russo:

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 11, 2007, asks the Attorney General to order the Department of Human Services (DHS) to provide you "with all saved and/or archived email originating with and sent to the computers of Mark Loveless between January 1, 2000, and December 31, 2002." 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. 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). A public record, in turn, is any writing relating to the conduct of the public's business that is "prepared, owned, used or retained by" a public body. ORS 192.410(4). A "writing" includes information on computer tape, microfiche, and virtually any other method of recording information, and ORS 192.440(2) expressly recognizes that public records may be in "machine readable or electronic form." ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2005) at 5. Both e-mail and computer backup tapes are public records. *Id.*

1. Email exchange of October 2002 between Dr. Loveless and Steve Carroll

As you demonstrated in Attachment A to your petition, the e-mail exchange of October 2002 between Dr. Loveless and Steve Carroll of the AIDS Services Access and Accountability

Coalition was disclosed to you in hard-copy form. Therefore, as to this document your petition is denied as moot.

2. Other emails originating with and sent to the computers of Mark Loveless between January 1, 2000, and December 31, 2002

We spoke with Kyle Miller, Chief Information Security Officer for DHS Administrative Services. He told us that, because of the age of the materials requested, there are no means to recover the e-mails.[1] He informed us that, according to DHS's routine business practices, the e-mails were deleted and the backup tapes used to store the emails have been recycled or overwritten.

Therefore, because there are no means to recover the e-mails and backup tapes containing the e-mails you requested, we deny your petition as to these documents as moot.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS20005
c: Pat Bouchie, DHS, HR
Kyle Miller, DHS, CIO

[1] In your petition, you state that it is unlawful for DHS to destroy these records. Because this letter is limited to a review of any denial of your request for records, we do not express any opinion on DHS' legal obligations to retain records.