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April 12, 2007

Don Webb, Staff Attorney
Institute for Wildlife Protection
2630 Elinor St.
Eugene, OR 97404

Re: Petition for Public Records Disclosure Order
Oregon Department of Fish and Wildlife

Dear Mr. Webb:

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. We received your petition on April 5, 2007. The petition asks the Attorney General to direct the Oregon Department of Fish and Wildlife to disclose "policy documents from the Oregon Department of Fish and Wildlife (ODFW) regarding how it interprets its legal duties under the Oregon Endangered Species Act for it to recover and/or protect species that are endangered under the Act."

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. ORS 192.420. A custodian of public records must provide "proper and reasonable opportunities for inspection and examination." ORS 192.430. A state agency is entitled to prepayment of the cost of producing the records. ORS 192.440(3). If a state agency denies a request for disclosure of records, the requestor 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. ORS 192.450(1).

Your petition alleges that "We have tried for over 5 years to get these documents, and we have filed numerous records requests under the Oregon Public Records Act, ORS 192.—et seq., and have never received even a courtesy reply."

You attached to your petition a copy of an e-mail string which showed a series of e-mail exchanges between you and the Department beginning in 2002. On the face of the e-mails you sent us, it appears that at least two of them were responses from the Department. However, the most important thing we note from the face of these e-mails is that only your message of January 25, 2007 actually constitutes a request for public records. That message reads: "Since you refuse to answer us, please consider this Email a public records request for all documents relating to ODFW's position on its legal duties regarding endangered species as to requiring it to recover and/or protect species that are endangered." None of your preceding e-mails in that string request public records; instead, they pose questions for the Department to answer. Accordingly, we limit our analysis to your January 25, 2007 request.

We have conferred with Larry Cooper, deputy director of the Department's Wildlife Division, and Martin Nugent, the Division's Wildlife Diversity Program Manager. Mr. Nugent tells us that, in response to your January 25, 2007 message and at Mr. Cooper's direction, he telephoned you on January 31 and asked how he could be of service. He says that during that call you did not press your request for records, but instead asked him questions about Eastern and Western gray squirrels. Mr. Nugent inferred from this conversation that you had chosen not to pursue your records request. The Department's misunderstanding seemed to be corroborated by the fact that they received no further communication from you between the January 31 telephone conversation and the filing of your public records petition.

We conclude that the Department has not by its conduct denied your request. Mr. Cooper has informed us that the Department will promptly contact you to discuss the most efficient method of providing the records you request.

Because the Department has not denied your request for records, we deny your petition as premature[1].

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS19556
cc: Larry Cooper
Martin Nugent

[1] Your petition also requests a waiver or reduction of fees for production of records. This request is premature, in that the Department has not yet discussed with you the amount of records responsive to your request or any cost that may be involved in inspecting or copying them.