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February 21, 2007

Lemuel F. Hentz
SID # 6750414
2500 Westgate
Pendleton, OR 97001

Re: Petition for Public Records Disclosure Order
Legislative Counsel Committee Records

Dear Mr. Hentz:

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 February 14, 2007, asks the Attorney General to direct the Legislative Counsel Committee of the Oregon Legislative Assembly and its employees to make available for inspection or produce "[t]he date and time the Legislative Counsel received a copy of the Oregon Department of Corrections adopted rule, "Racketeering" – OAR 291-105-0015(4)(k)." You state that the rule went into effect July 24, 2005. You maintain that you "made a request for information on 12/26/06; 1/2/07; and 2/2/07," and contend that "[t]his request was denied by inaction." For the following reasons we respectfully deny your petition.

The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. Any person who is denied the right to inspect or to receive a copy of a public record of a "state agency" may petition the Attorney General to review the record and determine if it may be withheld. ORS 192.450(1). 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).

For purposes of the Public Records Law, "state agency" is defined to mean "any state officer, department, board, commission or court created by the Constitution or statutes of this state but *does not include* the Legislative Assembly or its members, *committees*, officers or employees insofar as they are exempt under section 9, Article IV of the Oregon Constitution." ORS 192.410(5)(emphasis added). Article IV, section 9 provides, in turn, that state legislators

"shall not be subject to any civil process during the session of the Legislative Assembly, nor during the fifteen days next before the commencement of."

"In the context of the Public Records Law, we interpret the immunity from service of civil process to mean that, during the relevant time period, a legislator cannot be subject to a petition to the Attorney General requiring response as to whether he or she claims the right to withhold disclosure of public records or to service of a summons and complaint in a proceeding for injunctive or declaratory relief in circuit court to obtain disclosure of public records." Letter of Advice dated June 9, 1998, to Dave Henderson, Legislative Administrator, Legislative Administration Committee (OP-1998-3) at 2. The Legislative Counsel Committee is created by statute as a joint committee of the Legislative Assembly. ORS 173.111. It consists entirely of legislators. ORS 173.191(1). The Legislative Assembly is currently in session, which commenced on January 8, 2007. Consequently, in accordance with the terms of ORS 192.410(5), the committee is not subject to a public records petition at this time, and we have no jurisdiction to consider your petition.

In any event, we have conferred with Ann Boss, Legislative Counsel, and she stated that your request has not been denied, but that because of the press of business occasioned by the commencement of the legislative session it has not been practicable to respond to your request. She stated that the Office of the Legislative Counsel will provide the requested information in due course.

For the foregoing reasons, we deny your petition.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS19345
cc: Ann Boss, Legislative Counsel