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October 2, 1997

George W. Mead, Esq.
Bullivant Houser Bailey Pendergrass & Hoffman
300 Pioneer Tower
888 S.W. Fifth Avenue
Portland, OR 97204-2089

Re: *Petition for Public Records Disclosure Order:*
*Oregon State Treasury Records*
*Oregon Investment Council Records*
*Oregon Department of Justice Records*

Dear Mr. Mead:

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 September 18, 1997, asks the Attorney General to direct the Oregon State Treasury, the Oregon Investment Council and the Oregon Department of Justice (collectively "departments") to make available records pertaining to the Pacific Aircraft Maintenance Corporation, Inc. (PAMCORP) as listed on Exhibit A attached to this order.

This office has been informed by the special assistant attorneys general who are litigating the case involving PAMCORP (*State of Oregon v. Simat, Helliesen & Eichner, et al.*) that the records you seek comprise approximately 20 to 25 boxes of materials. Because of the volume of the records covered by your request, on September 22, 1997, Assistant Attorney General Cynthia Byrnes requested an extension of time to issue the Public Records Order on your petition so that this office would have sufficient time to perform the review required by the Oregon Public Records Law, ORS 192.450. You responded to our request by granting an extension until October 2, 1997.

On October 1, 1997, Assistant Attorneys General Cynthia Byrnes and Amy Veranth spoke candidly with you about the difficulty for this office in responding to your request by October 2, 1997, given the volume of documents and the lack of familiarity that those individuals who would handle this Public Records Order have with the documents you seek. AAG Veranth stated that this office would need to fulfill its statutory responsibility to independently analyze whether the records were exempt and that it was our intention to do so. She further stated that this office planned to use a "privilege log" that is being developed by the special assistant attorneys general who represent the State of Oregon in the PAMCORP litigation for purposes of identifying the records that were denied and streamlining our review. AAG Veranth suggested that this office could more quickly issue a Public Records Order if you would agree to that Order being based upon a review of the records by type of document rather than an individual review of each document. As you were informed, because of the volume of materials, this office has not yet been able to ascertain what documents were denied other than by a general description of some of the documents. Nevertheless, you have refused to give this office a further extension and have today informed us that you are treating that "counter-proposal as a denial."

We understand that a significant portion of the records you requested are confidential communications in furtherance of the rendition of professional legal services to the client or reasonably necessary for the transmission of the communication (a) between the Oregon Department of Justice (DOJ) or its representatives and the DOJ client agencies or their representatives, (b) between DOJ and its representatives, (c) between the client or the client's lawyer to a lawyer representing another in a matter of common interest, (d) between representatives of the client or between the client and a representative of the client, or (e) between lawyers representing the client. Such communications are privileged under OEC Rule 503 and therefore exempt from disclosure under ORS 192.502(8).

We understand that your request also encompasses documents that were compiled or acquired for use in the PAMCORP litigation that is currently before the Multnomah County Circuit Court. Records compiled or acquired for use in litigation or for litigation that is reasonably likely to occur are exempt from disclosure under ORS 192.501(1).

The remaining records covered by your petition may, or may not, be exempt from disclosure under ORS 192.410 to 192.505. To the extent that the requested documents are exempt, your petition is denied. To the extent the documents, or a portion thereof, are not exempt from disclosure, the departments inform us that they agree to make the nonexempt records available to you.[1] Because the departments have now agreed to make the nonexempt

[1]The departments may charge you a fee to reimburse them for their actual cost in making such records available, including their photocopy costs and the time spent by department

records available to you, your petition is denied as moot as to those records.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

JAA02696/DS/jh
c: Dan Smith, Director, Investments Division, Oregon State Treasury

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personnel in reviewing the records to delete exempt material, as well as the costs of attorney time reviewing and segregating records at the departments' request. *See* ORS 192.440(3); Public Records Order, May 19, 1993, Smith. The departments may preliminarily estimate their costs and require prepayment of the estimated costs. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 10-11 (1995).

AAG Byrnes will contact you with the departments' estimates and arrange for how the departments will provide the nonexempt records to you.