HARDY MYERS
ATTORNEY GENERAL

DAVID SCHUMAN
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97310-0506
Telephone: (503) 378-4400
TDD: (503) 378-5938

November 12, 1997

Mr. Kenneth A. Wetten
c/o Toledo Citizens Police Review Board
250 NW 6th Street
Toledo, OR 97391

Re: *Petition for Public Records Disclosure Order: Oregon State Police*

Dear Mr. Wetten:

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 was forwarded to us by the Toledo Citizens Police Review Board and received on November 5, 1997, asks the Attorney General to direct the Oregon State Police (OSP) to make available the following records:

> Police report generated by OSP Pam Gaither, Newport-OSP Ph 265-5354 regarding an incident on Mr. Kenneth A. Wetten's property west of Toledo, Oregon

For the reasons that follow, 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. The law requires generally that the custodian of public records furnish proper and reasonable opportunities for inspection and copying of the record in the office of the custodian. ORS 192.430. Any person denied the right to inspect or to receive a copy of any public record of a state agency may petition the Attorney General to review the public record to determine if it may be withheld from public inspection. ORS 192.450(1).

The Attorney General may order a state agency to disclose records only when the agency first has denied a request for such records. ORS 192.450(1) and 192.470. Your petition states that you asked to inspect and/or copy the above records on October 25, 1997, and that you have not received a response to your request.

We have spoken with Sergeant Guy Dorman of the Oregon State Police in Newport. Sergeant Dorman informs us that on October 15, 1997, the Oregon State Police received a written request from you seeking a copy of the police report described above. However, the request did not contain either an address or telephone number for you.[1/] Sergeant Dorman was, therefore, not able to inform you that the requested record does not exist. According to Sergeant Dorman, State Trooper Pam Gaither did not make a formal "police report" concerning the above incident.

Sergeant Dorman further informed us that although there is no formal police report, there is a log entry of the incident, and Trooper Gaither's notes describing the incident are also available. If you would like copies of those documents, you should so advise Sergeant Dorman in a written request that includes your return address.

The Attorney General does not have authority to order an agency to disclose records that do not exist or when an agency has not denied a request for records. Therefore, we deny your petition to compel disclosure.

Your petition also requests that OSP waive its fees for making the requested records available to you, based on your assertion that your request is in the public interest. In the alternative, you state that you authorize a maximum charge of $1.65 if the waiver is denied. Sergeant Dorman informs us that OSP will consider your request for a waiver or reduction of its fees, if necessary, after you clarify the extent of your request. Because OSP has not made a final decision concerning your request for a waiver or reduction of fees, your petition

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[1/] Your petition to the Attorney General for a public records order likewise did not include a return address. We are sending this order to you at the Toledo Citizens Police Review Board address that was printed on the envelope containing your public records petition.

to order a waiver of fees is premature.[2/] Accordingly, we deny your petition to order the OSP to waive its fees.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

DS:MAC:AV:mac:rmc/JGG10E06
c: Sgt. Guy Dorman
Oregon State Police
P.O. Box 947
Newport, OR 97365

Sgt. Fred W. Douthit
Department of Oregon State Police
Superintendent's Office
Professional Standards Section
400 Public Service Building
Salem, OR 97310

[2/] Your petition states that a denial of a fee waiver or reduction "can be authority to petition the District Attorney's office." Under the Public Records Law, the Attorney General, not the District Attorney, has jurisdiction over petitions concerning a denial by a state agency of fee waiver or reduction of fees. ORS 192.440(5).