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February 23, 2006

Henry Kane
12077 SW Camden Lane
Beaverton, OR 97008-5251

Re: Petition for Public Records Disclosure Order:
*Oregon Department of Transportation Records*

Dear Mr. Kane:

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 13, 2006,[1] asks the Attorney General to order the Oregon Department of Transportation (ODOT) to produce copies of two sets of records:

> 1. All documents in the possession of ODOT that support the claim of Metro Attorney Daniel B. Cooper, OSB No. 72056, to the Metro Council that someone at ODOT had told him (Cooper) that the Attorney General had approved use of Oregon [motor] vehicle and fuel taxes to help pay for the proposed two toll lanes on the Highway 217 freeway in Washington County.
>
> 2. All documents, including Attorney General Opinions and Letters of Advice, correspondence and memoranda, pertaining to whether Oregon Constitution, Article IX, section 3a, fuel and vehicle taxes can or cannot be used for purposes not listed in said Article IX, section 3a.

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. Any person denied the right to inspect or to receive a copy of a public record may petition the Attorney General to determine whether the record may be withheld from inspection. ORS 192.450(1).

[1] Thank you for agreeing to extend the deadline for the issuance of this order.

Your petition states that, as of February 11, 2006, ODOT had not responded to your request, dated January 28, 2006. After we received your petition, ODOT's Communications Administrator, Patrick Cooney, responded to your request by letter dated February 14, 2006. ODOT denied your request for both sets of records. This order addresses ODOT's denial.

As to your request for records pertaining to statements made by Metro Council that the Attorney General "had approved use" of certain taxes to help pay for toll lanes on Highway 217, ODOT responded that it was unaware of records in the agency's possession that would be responsive to your request. Mr. Cooney told us that, subsequent to sending you that response, he learned that ODOT does maintain records regarding the proposed toll lanes that discuss informal advice received from an Assistant Attorney General (not the Attorney General) and subsequently shared with Metro staff. The records consist of electronic mail messages between ODOT employees and Assistant Attorney General Dale Hormann, and between ODOT and Metro employees. ODOT has agreed to disclose these records to you in their entirety. Therefore, with regard to the first set of records, we deny your petition as moot.

ODOT denied your request for a second set of records. The Public Records Law does not impose on public bodies an obligation to comply with a request to engage in legal research or analysis of an issue. *See* Public Records Order, May 26, 2005, Andrade (denial of petition to order agency to identify and disclose law requiring motor vehicles to be titled and registered). Over the years, this office has publicly and privately advised ODOT about many aspects of Article IX, section 3a. However, except for the records included in response to your first request for records, we are have not provided advice about the specific point of law framed in that request. Thus, your second request effectively invites the State of Oregon to determine whether any part of our previously-provided advice addressing different points of law "pertains" to the legal question that you have framed in your requests. The determination that your request invites requires the exercise of legal judgment and thus would require us to engage in legal analysis not required by the Public Records Law. For this reason, we agree with ODOT's conclusion and, accordingly, deny your petition.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

PDS:gvk/AGS17007

c: Patrick J. Cooney, ODOT Communications Administrator