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February 3, 2006

Ms. Keta Tom
2650 NE Asbahr
Corvallis, OR 97330

Re: Petition for Public Records Disclosure Order:
Oregon Department of Education Records

Dear Ms. Tom:

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 January 31, 2006, asks for assistance with getting the Oregon Department of Education (ODOE) to disclose records in response to a request made in October 2005, and for a waiver of fees.[1] 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. Any person denied the right to inspect or receive a copy of a public record may petition the Attorney General to determine whether the record may be withheld from disclosure. 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. *Id.*

Your request to ODOE, dated October 14, 2005, asked for paper and electronic copies of certain 2005 statewide assessment test results. You also requested a waiver of fees. According to your petition, ODOE never responded to your request.

We talked to Gene Evans, ODOE Communications Director, about your petition. He told us that ODOE recently responded to your request, by letter dated February 1, 2006. In its response, ODOE agrees to provide you with the requested records, and provides you a cost estimate for doing so of $159. Because ODOE has agreed to disclose the requested records to you, we deny that part of your petition as moot.

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[1] Your letter, dated January 30, was addressed to Kevin Neely in the Attorney General's Office and asked for "help" to "once again get public information from the Oregon Department of Education." We are treating your letter as a petition for a public records order in light of its representation that you had requested the records from ODOE last October. In the future, if you wish to submit a petition, to avoid confusion please label it as such and address it to the Attorney General.

ODOE's February 1st letter states that you are ineligible for a fee waiver based on the information provided in your request. The Public Records Law authorizes a public body to establish fees "reasonably calculated to reimburse it for its actual cost" in making records available. ORS 192.440(3). A public body may waive fees if it determines that waiver is in the public interest "because making the record available primarily benefits the general public." ORS 192.440(4).

Your request to ODOE asks for a waiver "because this information will be used to do accurate documents in the public interest." ODOE's response explains that this statement does not provide it with sufficient information to determine if disclosure of the requested records to you would primarily benefit the general public. ODOE offers that it would reconsider your request for a waiver if you submit information explaining "the nature of the 'public interest' served by your documents."

We agree with ODOE that the information in your October 14th request, which does not explain the nature of the documents related to your records request or how they would benefit the general public, is insufficient to determine whether waiving fees would be in the public interest. Therefore, we also deny your petition as it pertains the agency's denial of your request for a fee waiver.

Sincerely,

PHILIP SCHRADLE
Special Counsel to the Attorney General

AGS16933
c: Gene J. Evan, ODOE Communications Director