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October 2, 2006

Rob Kavanaugh
6919 41st Ave SE
Olympia, WA 98503

Dear Mr. Kavanaugh:

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. We received your petition on September 25, 2006. The petition asks the Attorney General to direct the Oregon Department of Fish and Wildlife (ODFW) to make available certain records without charge. 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. If a state agency denies a request for disclosure of records, the requestor may petition the Attorney General for review of the denial. However, the Attorney General may order a state agency to disclose public records only when the agency has denied a request for the records. *See* ORS 192.450(1). The law authorizes a public body to establish fees "reasonably calculated to reimburse it for its actual cost" in making the records available. ORS 192.440(3). A public body may require pre-payment of estimated fees before acting on a request. ATTORNEY GENERAL'S PUBLIC RECORDS AND PUBLIC MEETINGS MANUAL (2005) at 14.

We spoke with Dave Budeau, Upland Game Bird Coordinator, and Casaria Tuttle, Executive Assistant to the Director's office, about your petition. Over the past four months, you have made five public record requests to ODFW.[1] Each request concerned

[1] You submitted public records requests in your own name June 9, July 14 and August 3, 2006. On each of those letters, you list "Solo Sapiens" or "Solo H. Sapiens" as recipient of a copy. On September 6, ODFW received a public records request from you on behalf of "Solo Sapiens" (signed "Rob Kavanaugh for Solo Sapiens"). That letter ends with this line: "Please send these records [sic] to Rob Kavanaugh at 6919 41st Ave. s.e. [sic] Olympia, WA. 98503." A request was submitted for "Solo H. Sapiens" on July 3 which is in the same form and addresses the same subjects as these other requests, and which lists you as recipient of a copy. Thus, because it appears that each of these five requests actually came from you, we treat them together. This conclusion is confirmed by your September 20, 2006 petition for a public records order,

upland game birds, although one of those requests sought records concerning a mammal species in addition to upland game birds. In response to your first two requests, ODFW provided you with records free of charge. Beginning with your third request, ODFW informed you that it would require prepayment of fees before making records available.

An examination of your requests indicates that you have been formulating these requests to avoid payment of fees. As noted above, each of your five requests in the past four months addresses essentially the same subject. Also, you made requests in two different names (yours and that of "Solo Sapiens"). Finally, you specifically asked ODFW to keep record production costs on your fourth request under certain limits, which corresponded to the threshold levels for fees under ODFW's public records policy.

An agency is entitled to make reasonable interpretations of its own administrative rules. *Martin v. Dept. of Transportation*, 122 Or App 271, 274-75, 857 P2d 225 (1993). OAR 635-001-0331(1) authorizes the ODFW to implement a fee schedule that takes into account the agency's "reasonable estimates of the cost for" locating and producing the documents. Here, ODFW's public records policy, incorporated into OAR 635-001-0331, provides that the agency will not charge a fee for the first 30 minutes of staff time or the first 10 photocopied pages. Policy 510_12, Public Records Requests, October 1, 2004. Although that policy states, "The following fees apply per each public information request," the underlying purpose of the policy includes "minimizing the impact on agency workload and fiscal integrity." *Id.*

ODFW interprets "public information request" to include all requests from the same person or entity on the same subject. The purpose of this interpretation is to prevent requesters from adversely impacting ODFW's workload with attempts to circumvent the fee policy and to account for the reasonable costs for locating and producing documents.

Accordingly, ODFW may reasonably interpret its fee schedule to require the prepayment of fees to recover its costs associated with these public records requests. Specifically, ODFW will treat all requests from you and "Solo H. Sapiens" as coming from the same source. In the past four months, you have made five record requests relating to upland game birds (one of which also addressed western gray squirrels). ODFW has given you records free of charge relating to upland game birds. You have therefore exhausted your "no charge" opportunity under ODFW's policy. ODFW will charge you for any records you request in the future concerning upland game birds. ODFW has indicated that, when you prepay the fees quoted you by ODFW, the agency will provide you with the records you requested.

Please note that the fee quoted to you by ODFW is not limited to reimbursing the agency for its actual cost in photocopying the records you requested. As the agency explained in its letter dated September 6, 2006, the fee also includes staff time necessary

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which speaks from the perspective of "we" and "us," which (among other things) complains of ODFW's response to a request made by "Mr. Solo Sapiens" and which again lists "Solo Sapiens" as recipient of a copy.

to compile (locate, review and organize) the records. This is authorized by the Public Records Law. ORS 192.440(3)(a).

Therefore, ODFW has not denied you access to public records. Moreover, ODFW has not limited the number of public record requests you may make. Rather, ODFW has imposed the prepayment of fees as permitted by the Public Records Law. We conclude that there has been no denial of your public records request. ORS 192.450(1). For this reason, we respectfully deny your petition as moot.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

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