HARDY MYERS
ATTORNEY GENERAL

PETER D. SHEPHERD
DEPUTY ATTORNEY GENERAL



DEPARTMENT OF JUSTICE

1162 Court Street NE
Justice Building
Salem, Oregon 97301-4096
Telephone: (503) 378-4400
TTY: (503) 378-5938

October 18, 2006

Russell L. Baldwin
Attorney at Law
PO Box 1241
Lincoln City OR 97367

Re: Petition for Public Records Disclosure Order
Board of Tax Practitioners

Dear Mr. Baldwin:

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 October 12, 2006. The petition asks the Attorney General to direct the Custodian of Records for the Oregon Board of Tax Practitioners to make available copies of documents requested in your letter dated September 15, 2006, to Sr. AAG Kelly M. Gabliks in the pending case of Albert S. Bentley, BTP Case No. 351.

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 who is 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 record and determine if it may be withheld. ORS 192.450(1). A custodian of public records must provide "proper and reasonable opportunities for inspection and examination." *See* ORS 192.430. Correspondingly, the custodian is allowed a "reasonable" time to respond to a request for records. The Public Records Law expressly authorizes a public body to charge fees "reasonably calculated to reimburse the public body for the public body's actual cost of making public records available." ORS 192.440(3)(a). "Actual cost" may include a charge for the time spent by the public body's staff in locating the requested records, reviewing records in order to separate out or redact exempt material, supervising a person's inspection of original documents in order to protect the records, copying the records, and the cost spent by the public body's attorney reviewing, redacting, and segregating the

records at the public body's request. ORS 192.440(3). A public body may require prepayment of its estimated charges before taking further action on a request.

On October 6, 2006, the Board through counsel responded by letter to your discovery request in the pending case of Albert S. Bentley, BTP Case No. 351. In that letter, counsel stated that based on your letter dated September 15, 2006, "it is unclear what, if any, documents you may be requesting under the Oregon Public Records Law." The letter went on to "ask that you provide further clarification on your request before the Board responds." The letter notes that "Board rules specifically require the prepayment of all fees associated with its compliance with any public records request you may make. *See* OAR 800-030-0050(6)."

The Board has also received a copy of your letter to the Board's counsel dated October 11, 2006, that renews your request for documents under the Oregon Public Records Law. On October 16, 2006, we spoke with Ronald Bersin, the Board's Executive Director, and Duane Hunter of Compliance, regarding your request for documents. They tell us that since receiving your recent letter the Board is in the process of preparing a cost estimate to respond to your requests.

We conclude that the Oregon Board of Tax Practitioners has not denied your public records request. You and the Board have been actively engaged in pursuing your request. As a result, this office lacks authority to order disclosure. ORS 192.450(1). Any such order would be premature.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS18626