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August 17, 2005

Laurence A. Tuttle
Center for Environmental Equity
610 SW Alder, Suite 1021
Portland, OR 97205

Re: Petition for Public Records Disclosure Order:
Oregon Department of Environmental Quality Records

Dear Mr. Tuttle:

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 August 12, 2005, asks the Attorney General to order the Department of Environmental Quality (DEQ) to provide copies of all records requested in your July 12, 2005, public records request, namely public records for the Formosa Silver Butte Mine AML project related to the January 11, 2005, meeting between DEQ staff and Bureau of Land Management staff.[1] For the reason that follows, 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. The law requires generally that the custodian of public records furnish proper and reasonable opportunities for their inspection or copying in the office of the custodian. ORS 192.430. If a state agency denies a request for disclosure of records, the requestor may petition the Attorney General for review of the denial. ORS 192.450(1). The Attorney General may, however, order a state agency to disclose records only if the agency has denied the applicable request. *See* ORS 192.450(1).

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[1] Your petition also asks the Attorney General to order DEQ "to provide explanations for any records withheld or redacted." While this office encourages state agencies to inform a requestor when responsive records are being withheld, the Public Records Law does not provide the Attorney General with the authority to order a state agency to provide such information. *See* ORS 192.450(1), (2) (Attorney General may order state agency to disclose records); ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2004) at 22-23 ("When a public body discloses less than all of the information requested because it determines that one or more records, or portions of records, are exempt from disclosure, the public body should inform the requestor that there are records that are not being disclosed").

Your request to DEQ, which you enclosed with your petition, asks that DEQ provide you with copies of the requested records on or before August 10, 2005. Your petition explains that you are seeking a Public Records Order because, as of August 11th, you had neither received records nor been contacted by DEQ about whether it would respond on or before the deadline you had set. You stated that DEQ's "lack of response and delay is unreasonable."

Corresponding to the reasonable opportunity that the Public Records Law affords a person to inspect public records is the reasonable time given to a public body to respond to a records request. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS LAW MANUAL (2004) (AG'S MANUAL) 9. While what constitutes a reasonable time to respond to a request depends on a number of factors, such as the availability of staff, meeting a deadline set by the requestor is not one of them. *Id.* ("It is not a denial entitling the requestor to petition for release of the records if the custodian does not provide access to the nonexempt records within the timeframe set by the requestor").

Yesterday, you sent us a copy of a letter dated August 16, 2005, addressed to you from Charles Landman at DEQ. The letter states that DEQ has compiled the records responsive to your request and that you may schedule an appointment to inspect them. Because DEQ has responded to your request by making all responsive records available for your review,[2] it has rendered moot the question of whether it had constructively denied your request. Therefore, we deny your petition.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

PDS/gvk:AGS16150
cc: Charles Landman, DEQ
Kerri Nelson, DEQ

[2] When we spoke with Mr. Landman about your petition, he told us that DEQ would make copies of the records at your request. In this regard, please note that a state agency may charge a fee to reimburse it for its actual cost in making records available for inspection, including its photocopying costs. *See* ORS 192.440(3). The Public Records Law provides for the waiver of fees, and we note that DEQ has established a process for requesting such a waiver, which is set out at OAR 340-011-0380.