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October 25, 2010

Stephen Rose
20300 SE Morrison Terrace, #P1103
Gresham, OR 97030

Re: Petition for Public Records Order:
State Accident Insurance Fund Corporation (SAIF)

Dear Mr. Rose:

This letter is the Attorney General's Order on your petition for inspection and disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on October 19, 2010, asks the Attorney General to order SAIF and its employees to make available for inspection, and to produce a copy following inspection of, the following:

1. All generic claim statistical data showing the total number of all workers compensation claims that were filed where SAIF Corporation was the insurer for FY 2008 through FY 2010.
2. All generic claim statistical data showing the total number of all workers compensation claims that were denied compensability where SAIF was the insurer for FY 2008 through FY 2010.
3. All generic claim statistical data showing all instances where SAIF Corporation hired Douglas Bald, MD at 2501 SW First Avenue., Suite 400, Portland, OR 97201 as it pertains to Independent Medical Examinations for FY 2008 through FY 2010 and of those examinations performed by Dr. Bald that resulted in claim denial.

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 records only when the agency has denied a request for the records. *See* ORS 192.450(1).

In your petition, dated October 15, 2010, you state that SAIF has not provided access to the records you requested in a "reasonable and timely manner." However, we have been provided a copy of a letter sent to you on October 19, 2010 from Michael Mueller, SAIF Senior

Vice President of Claims and Legal Services, which shows that SAIF has sent you the information responsive to your request. We have also received your letter dated October 21, 2010 in which you acknowledge you received from Mr. Mueller a computerized printout of the data you requested from SAIF, but wish to inspect SAIF's records in order to verify the information that has been provided. Because we are aware that SAIF will not allow you to physically inspect or view information in the electronic database from which the statistical reports provided to you was retrieved, we will address your request for inspection of SAIF's records.

"A person requesting a record generally can choose between receiving a copy of the record provided by the custodian, physically inspecting the record, or making a copy of the record using the requester's own equipment at the custodian's place of business." Attorney General's Public Records and Meetings Manual (2010) at sec. I.D.5., http://www.doj.state.or.us/public_records/manual/public_records.shtml#d. ORS 192.505 provides that "If any public record contains material which is not exempt under ORS 192.501 and 192.502, as well as material which is exempt from disclosure, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination." The Court of Appeals has stated that this provision "only requires editing of documents when segregating exempt and nonexempt material is: (1) reasonably possible; and (2) can be done so as to genuinely preserve the confidentiality of exempt material." *Turner v. Reed*, 22 Or App 177, 186 fn 8 (1975).

"Claimant files of the State Accident Insurance Fund Corporation" are exempt from disclosure. ORS 192.502(36). Steve Cotton, SAIF Assistant Counsel for Legal Services, informs us that the statistical information provided to you is derived from an electronic database containing SAIF claimant files. By running an electronic query with specified parameters, a computer program is able to locate specific information from each claimant file and produce statistical reports like you received. But, when the original claimant file is viewed on a computer, SAIF states that its systems provide no way to electronically segregate or mask exempt information within these files. As a result, SAIF explains that allowing you to view the information in its original electronic format would mean providing you with access to claimant files. And, as already mentioned, claimant files are exempt from disclosure under ORS 192.502(36).

Because SAIF explains that inspection of the information in its original electronic format would entail inspection of claimant files that are exempt from disclosure, and because SAIF has provided you with the information you requested, we must respectfully deny your petition.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

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c: Michael Mueller, SAIF