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May 10, 2010

SENT VIA REGULAR MAIL & ELECTRONIC MAIL

Emily Brubaker
Corr Cronin Michelson Baumgardner & Preece LLP
1001 Fourth Avenue, Suite 3900
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Re: Petition for Public Records Disclosure Order:
Oregon Department of Justice Records

Dear Ms. Brubaker:

This letter is the Attorney General's response to your petition for disclosure of records under the Oregon Public Records Law. In your petition, which we received on May 3, 2010, you asked for "29 email chains/communications between DOJ attorneys and the attorneys/law firm of Stoll Stoll Berne Lokting & Shlacher, P.C. between September 1, 2007 and the present." The Department of Justice did not disclose those documents because we determined that they are protected by the attorney-client privilege and exempt from disclosure.

You also attached an email from this office dated April 30, 2010, denying your request to produce a privilege log for the withheld documents. By attaching that email, we understand that you seek review of that denial too.

You filed your initial request for records on April 2, 2010. On April 16, the Department provided you with copies of email chains responsive to your request that involved you, or Mr. Canary, or both of you. We identified, but did not provide you with an additional 29 email chains, because we determined that they are protected by the attorney-client privilege and exempt from disclosure. Specifically, we concluded that they are confidential communications, intended to facilitate the provision of legal services, exchanged between attorneys representing clients on a matter of common interest. ORS 40.225; ORS 192.502(9). We also suggested that the communications might be exempt under the work product doctrine, ORS 192.502(9), and under the exemption for documents compiled in anticipation of litigation, ORS 192.501(1).

On April 27, 2010, you requested that we provide you with a privilege log for the 29 undisclosed email chains. On April 30, 2010, we wrote to you declining to provide a privilege log, concluding that nothing in the public records law requires us to provide one. Instead, the law requires us to inform you of what records are being withheld and why. We concluded that we had adequately informed you of both.

Your request effectively asks the Department to review its own responses to your petition. Our responses were made by Department personnel to whom the Attorney General had delegated his authority to issue public records orders under ORS 192.450. Therefore, the public records request process and the public records petition process were effectively joined.

In any event, we have reexamined our earlier responses and our conclusions remain the same. But we want to clarify one point about our denial of your request for a privilege log. We stated that nothing in the public records law requires us to *provide* a privilege log. There is no privilege log in this case. Our intention was to explain that nothing in the public records law requires us to *create* such a log, rather than to speak to whether an existing log must be disclosed.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

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