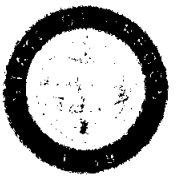
DAVE FROHNMAYER
ATTORNEY GENERAL
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JAMES E. MOUNTAIN, JR.
DEPUTY ATTORNEY GENERAL



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April 4, 1989

Michael A. James, Pharm.D.
Community Medication Consultants
1275 Taft Street
Eugene, Oregon 97402

Re: Petition for Public Records Disclosure Order; Oregon State Board of Pharmacy Records

Dear Mr. James:

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. The petition, which we received on March 28, 1989, asks the Attorney General to direct the Oregon State Board of Pharmacy board to disclose "copies of a document, sent to the members of the BOARD called the 'Update'." For the reasons stated below, we deny your petition as premature.

Under ORS 192.450(1), denial of the right to inspect public records is a condition precedent to the Attorney General's review of agency action. The facts of which we are aware show no such denial.

Your petition recites that on "March 24, 1989, [you] wrote the Oregon State Board of Pharmacy requesting copies." You state further that on "March 27, 1989 at approx. 10:30 AM [you] received a call from Board secretary Carolyn Gibson informing [you] that the BOARD could not comply with [your] request within the five business days requested because the documents would have to be reviewed for 'confidentiality.'" After receipt of your petition, we received a copy of a March 27, 1989, letter to you from Board Executive Director Ruth

Vandever. In that letter, Ms. Vandever stated that your request covers "a considerable amount of material which must be reviewed by [the Executive Director] and Board members to determine which material is exempt and should be kept from public disclosure." She also stated that the board "could retrieve these records, complete [its] review, and make them available to you on April 21, the day immediately following the Board's next scheduled meeting."

The agency thus has promptly responded to your request, explaining the scope of the material covered and the need to review it to determine whether the request covers exempt material. From these facts we cannot say that the agency has denied your request. The agency must disclose non-exempt documents within a reasonable time. See ORS 192.430. That reasonable time period may include time necessary for an agency to review documents to determine whether they contain exempt materials. See 44 Op Atty Gen 239, 276 (1984) (Attorney General's Public Records and Meetings Manual). The agency's proposed action is not, on its face, clearly unreasonable. Accordingly, we find no denial at this time.

In denying your petition as premature, we are confident that the board is mindful of its obligations under the Public Records Law. Under ORS 192.505, where a public record contains both exempt and non-exempt material, the agency must separate the exempt and non-exempt materials and make the non-exempt material available for examination. Presumably, under the terms of Ms. Vandever's March 27, 1989, letter, the board will disclose copies of all clearly non-exempt records by April 21. Only those records for which an exemption is claimed will be held for board review. After the board meeting, we expect that either all of the records sought will be disclosed, or the board will promptly inform you that it claims an exemption as to specific materials. As already noted, only upon such a denial of your request would this office have authority to review the board's action.

Very truly yours,

James E. Mountain Jr.

JAMES E. MOUNTAIN, JR.
Deputy Attorney General

JEM:cm
cc: Ruth Vandever, Executive Director,
Oregon State Board of Pharmacy
Frank Mussell, Assistant Attorney General
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