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personnel discipline

April 29, 1993

Mark Hass
KATU Television Center
P.O. Box 2
Portland, OR 97207

Re: Petition for Public Records Disclosure Order:
Executive Department Records

Dear Mr. Hass:

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 April 22, 1993, asks the Attorney General to direct the Executive Department to make available all "phone messages, memos, conditions of employment and results of any management review pertaining to the employment and termination" of Everett Hall, Mike Rodia and Virginia Honeywell from the Office of the State Fire Marshall. 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. However, the Attorney General may order a state agency to disclose records only where the agency first has denied a request for public records. See ORS 192.450(1).

Your petition states that you requested and were denied the records by Cindy Becker at the Executive Department and Sarah Ames in the Governor's office[1/]. Both Ms. Becker and Ms. Ames inform us that they were not asked for phone messages, memos or conditions of employment, but only for the results of the management review that was the basis for the

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[1/] Your petition does not seek a disclosure order directed to the Governor. If an elected official claims the right to withhold disclosure of documents, a petition to require disclosure may not be filed or considered by the Attorney General. ORS 192.480.

terminations. Absent a request and a denial for phone messages, memos or conditions of employment, we deny your petition with respect to these documents as premature.[2/]

With respect to the results of the management review, an explicit exemption in the public records law is applicable. ORS 192.501(13) provides in pertinent part:

> The following public records are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest requires disclosure in the particular instance:
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> * * * * *
>
> (13) A personnel discipline action, or materials or documents supporting that action[.]

A personnel discipline action means "the completed process and the sanction of discipline imposed upon a public employee." City of Portland v. Rice, 308 Or 118, 123, 775 P2d 1371 (1989). The results of the management review that was the basis for the termination of Everett Hall, Mike Rodia and Virginia Honeywell from the Office of the State Fire Marshall falls within the terms of this exemption. Disciplinary action was imposed on all three of these employees, and the results of the management review that you have requested is material supporting that action.

However, the disciplinary action exemption does not apply if the public interest requires disclosure in the particular instance. In City of Portland v. Rice, supra, the court noted: "The policy intended by the legislature * * * protects the public employee from ridicule for having been disciplined but does not shield the government from public efforts to obtain knowledge about its processes." 308 Or at 124 n 5 (citation omitted). Thus, we must consider whether, in light of this policy, the public interest requires disclosure of the material supporting the termination of these three individuals.

Ordinarily, a disciplinary sanction and the documents supporting that action are matters of primary significance to the employer and employee with little relevance to the public interest. In assessing the public interest in disclosure, we have previously considered the position of the employee within the state agency, the basis for the discipline action and

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[2/] We understand that you have discussed this matter with Assistant Attorney General Mary James and have asked her to forward your request for these documents to the Executive Department for response.

the extent to which the information had already been made public. See Public Record Order November 26, 1990 (Nealy/Hogan), Public Record Order January 27, 1992 (Moody).

Under the circumstances presented here, we conclude that the public interest does not require disclosure. Although the three individuals are high level management officials, the confidentiality that they would expect when discipline is imposed is no less than that of any other employee. In contrast to those situations where we have ordered disclosure, these employees were not dismissed as a result of a criminal investigation that produced allegations they misused a public office for private financial gain and in furtherance of a criminal conspiracy, compare Nealy/Hogan Order, supra, nor were they supervisory law enforcement officers disciplined for reasons virtually identical to allegations that resulted in criminal prosecution and criminal sanction, compare Moody Order, supra.

Moreover, the results of the management review in this case has not already been made public. Although it is public knowledge that the three individuals have been terminated as a result of a management decision, the specific reasons for that disciplinary action have not become public knowledge. We find no overriding public interest in depriving these former state employees of their privacy surrounding the reasons for their discipline.

Accordingly, we deny your petition for an order requiring disclosure of the results of the management review. Such records are exempt from disclosure under ORS 192.501(13).

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the Attorney General

ESH:AV:jpl/JAA00BC9.W51

cc: Cindy Becker, Executive Department