DAVE FROHNMAYER
ATTORNEY GENERAL
STATE OF OREGON

DEPARTMENT OF JUSTICE

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Salem, Oregon 97310
Telephone: 503/378-4400

September 16, 1982

Lee Sherman-Stadius
Times Publications
9730 S.W. Cascade Boulevard
Tigard, Oregon 97223

Dear Ms. Sherman-Stadius:

This constitutes the order of the Attorney General in response to your public records petition dated September 8, 1982. You request an order requiring the Washington County office of the Senior Services Division to disclose:

"1) The number and nature of each complaint made to SSD against any certified adult foster home for the elderly or against any private, home-care facility for the elderly in Washington County from Nov. 1, 1981, through Sept. 6, 1982.

"2) The addresses of facilities against which complaints have been made.

"3) The names and addresses of the owners of facilities against which complaints have been made.

"4) Actions taken by SSD in response to these complaints."

Senior Services Division has consulted with its assigned counsel, Assistant Attorney General Ben Pearlman, and is now making arrangements to furnish you with copies of records which will satisfy your requests, subject to deletions necessary to comply with statutory confidentiality provisions. While your petition may therefore be moot, we set out for your benefit and that of the division the considerations governing disclosure and confidentiality in this case.

1. Some of the complaints as to which you seek information are "elderly abuse" complaints under ORS 410.610 to 410.700. ORS 410.690(1) prohibits disclosure of the names of persons making reports of abuse of elderly persons under those statutes, and of the names of the elderly persons allegedly abused. This information, which you did not request, will be deleted. ORS 410.690(2) provides that other parts of reports and other records compiled under the law are subject to the Public Records Law.

2. Other complaints related to other subjects, and are not subject to ORS 410.610 to 410.700. They would be subject to the Public Records Law.

3. Under the Public Records Law, some of the records or parts of records in either class may be exempt or conditionally exempt from disclosure as criminal investigatory material, as preliminary and advisory inter-agency and intra-agency communications, as personal information, or as information submitted in confidence. ORS 192.500(1)(c), (2)(a), (b) and (c). The agency has reviewed the records in its possession, and although some exempt material exists, it finds that the information you request can be furnished.

ORS 410.680 can be read to make the entire elderly abuse report confidential. We have resolved the conflict and resulting ambiguity by reviewing the amendments made to the elderly abuse statutes before their enactment, concluding that the more specific language of ORS 410.690 was intended to govern.

ORS 410.150 provides:

> "For the protection of applicants for and recipients of services, the Senior Services Division shall not disclose or use the contents of any records, . . . for purposes other than those directly connected with the administration of the laws of Oregon, and these records . . . are considered confidential . . . ." (Emphasis added.)

We do not construe this statute to exempt Senior Services Division entirely from the requirements of the Public Records Law. The statute must be construed in light of its stated purpose, to protect applicants for and recipients of services. It governs cases in which identifiable persons apply for or receive direct services, and not cases in which the division is carrying out its general regulatory, supervisory, protective and

administrative obligations. See Triplet v. Bd. of Social Protection, 19 Or App 408, 528 P2d 563 (1974); Stivahtis v. Juras, 13 Or App 519, 511 P2d 421 (1973).

Of course, the specific provisions of ORS 410.690, for records within its scope, would override the general provisions of ORS 410.150.

Yours very truly,

JOHN A. REULING, Jr.
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to the Attorney General

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