January 30, 1981

Mr. Glen Neal Dewey
5230 Sturdivant
Klamath Falls, Oregon 97601

Re: Petition for Disclosure of Public Records

Dear Mr. Dewey:

This letter will serve as an Order of the Attorney General in response to your petition received by this office on January 26, 1981 requesting that the Attorney General order the Department of Revenue and its employes to produce copies of certain records.

The request of petitioner is extremely broad in many areas and a large degree of uncertainty lies with precisely what records the petitioner is requesting. Therefore, items in which the petitioner is granted disclosure shall be construed to mean that the Department of Revenue shall make the record available and petitioner will make the determination as to what part of the record, if any, he desires to reproduce.

The public records subject to disclosure by this petition will be available for inspection and reproduction at the Klamath Falls District Office, 403 Pine Stree, Klamath Falls, Oregon, by February 3, 1981, commencing at 10:00 A.M.

Each request of the petitioner is listed below with the decision of the Attorney General following.

1. The official definitions of the words "verify", "verification", and "materially defective", as used in Mr. Mahaffey's letters to my employer and myself, and OAR 150-316.182. Please include a citation as to the authority for the adoption of said definitions.

Item No. 1 is denied. This request is outside the scope of ORS 192.410 to 192.500.

2. The official procedure used by ODR in determining that I was not entitled to claim 29 allowances on my Form W-4.

Item No. 2 is denied. "Official procedure" is not a public record within the purview of ORS 192.410 to 192.500.

3. The official procedure used by ODR in making the determination that my Form W-4 is "materially defective".

Item No. 3 is denied. "Official procedure" is not a public record within the purview of ORS 192.410 to 192.500.

(Referring to the denials in Nos. 2 and 3, petitioner may be seeking the information contained in OAR 150-316.182. The Attorney General makes no determination on this matter, but suggests the Department of Revenue make a copy of the rule available to petitioner.)

4. Any and all policies, or policy statements, approved by Mr. George Weber, Administrator, Audit Division, upon which decisions to find Forms W-4 "materially defective" may be founded.

Item No. 4 is granted, subject to the existence of such material.

5. A chart or copy of ODR rules pursuant to my rights to pre-determination and post-determination hearings, administrative and/or judicial appeals, and the rules of procedure thereof, pursuant to the above.

Item No. 5 is denied. Rules are not within the purview of ORS 192.410 to 192.500. However, it is suggested that the Oregon Department of Revenue make copies of the rules available which may be applicable to your situation. The rules may also be obtained from the Secretary of State.

6. All information available upon which Mr. Mahaffey based the determinations described in 2 and 3 above. This would include, but not be limited to: any and all Department directives, letters, notes, inter-office memoranda, guidelines, charts, tables, data, tax returns, tax return information, evidence, exhibits, testimony, statutes, regulations, policies, or policy statements relating to, relied upon, referred to, or utilized in any way in the making of the determination that my withholding certificate is "materially defective."

Item No. 6 is denied. Items No. 2 and No. 3 have been ruled not to be a public record within the scope of ORS 192.410 to 192.500. It necessarily must follow that the information requested here would not be applicable. Further, the information requested appears to be communications within the agency which are exempt by virtue of ORS 192.500(2)(a) and records pertaining to litigation which are also exempt. ORS 192.500(1)(a). Statutes and regulations are not within the scope of ORS 192.410 to 192.500.

7. Any notification to ODR from IRS that, for purposes of federal income tax withholding, I am not entitled to claim 29 allowances on my Form W-4.

Item No. 7 is denied. Internal Revenue Service Code 61.03 prohibits disclosure of this information. The request for this information is moot in that IRS has not furnished the Oregon Department of Revenue such information.

8. All documents contained in any ODR file pertaining to me and/or my withholding certificate.

Item No. 8 is granted, subject to any information contained therein which may not be subject to disclosure. The request is so broad the Attorney General cannot make a definitive determination as to its application.

9. A list of all agencies, federal or state, who have requested access, been given access, or to whom ODR plans to give access to information contained in my files.

Item No. 9 is denied. This request is outside the scope of ORS 192.410 to 192.500.

10. Information concerning the completion of a "PROTESTOR - SHELTER DATA SHEET" in which I have been classified as a "tax protestor". The information disclosed should contain the following: the official definition for the term "tax protestor", including a citation as to the authority for the adoption of said definition; a statement as to what procedural administrative consequences accompany one's designation as a "tax protestor"; all information said designation, as it relates to me, was based upon; and the names and other identifying information for all persons who were involved in my designation as a "tax protestor".

Item No. 10 is denied. The "PROTESTOR - SHELTER DATA SHEET" is a communication within a public body and is not subject to disclosure pursuant to ORS 192.500(2)(a). The remainder of the request in Item No. 10 is outside the scope of ORS 192.410 to 192.500.

11. The complete identification of any and all persons who were or are involved with the handling of my case up to the present time, such identification to include full name, identification number, title, address, and scope of duties.

Item No. 11 is denied. This request is outside the scope of ORS 192.410 to 192.500.

Yours very truly,

Clarence R. Kruger
Assistant Attorney General
and Counsel

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Copies to:

John Clifford Dykes, District Manager
Oregon Department of Revenue
403 Pine Street, Room 120
Klamath Falls, Oregon 97601

Ellis L. Sanders, Disclosure Officer
Audit Division, Department of Revenue
600 Equitable Center
Salem, Oregon 97310