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February 22, 1994

Don Huberty
191 Ausland Drive
Grants Pass, OR 97526

Re: *Petition for Public Records Disclosure Order: Board of Architect Examiners Records*

Dear Mr. Huberty:

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 February 17, 1994, asks the Attorney General to direct the Board of Architect Examiners to produce a copy or copies of its records of "[t]he full names and addresses of the last 100 people that the Oregon Board of Architect Examiners has accused of breaking the law (ORS 671)." For the reasons that follow below, we respectfully deny your petition.

In your petition, you state that you requested and were denied these records by the Board's Administrator on January 6, 1994, when you personally appeared at the Board's office. Eleanor Gundran, Administrator, Board of Architect Examiners, informed us that you had not given the Board any advance notice that you would be seeking to inspect any of its records before you appeared at the Board's office on that day. Ms. Gundran further informed us that she told you she could not open up all of the Board's files without first inspecting them to determine whether any items exempt from disclosure under the Public Records Law were contained in them. You then agreed to identify in writing the records you sought.

Thereafter, in a letter addressed to the Board's Administrator dated January 10, 1994, you asked the Board for "delivery of the names and addresses of the last 100 people that O.B.A.E. has accused of breaking Oregon law" and for disclosure of other records. The Board, through its attorney, responded seeking clarification of your request. You clarified the request in a letter to the Board's Administrator dated January 27, 1994, as follows:

> It was you who first accused me of violating Oregon law in your April 19, 1993 letter. I want the names and addresses of the last 100 people you have similarly accused of violating O.R.S. 671.

By a letter dated February 15, 1994, the Board, through its attorney, responded to that letter asking you to refer to counsel's previous letter.[1/] In that letter, counsel asked you to clarify what you meant by "accused." Specifically, counsel asked whether you were referring to persons against whom the Board initiated contested case proceedings or any person that staff had investigated to any extent.

We find that the Board's request for clarification of your request was reasonable. You have requested names and addresses "of the last 100 people that the Oregon Board of Architect Examiners has accused of breaking the law." Accusations by the Board are made in the form of notices of contested case proceedings. Thus, the language of your request suggests that you seek the names of the those against whom the Board has initiated contested case proceedings.

On the other hand, your letters to the Board refer to those that the Administrator has accused in a manner similar to that in her letter to you dated April 19, 1993, a copy of which you attached to your petition. We understand that letters of that type are sent by the Board's staff to initiate investigations and that they sometimes produce sufficient information to demonstrate that the investigation should be dropped before the matter ever goes to the Board. Thus, the Board reasonably could conclude that you seek the names of the last 100 persons the Board's staff has investigated regardless of whether the Board ever was aware of the investigation.

[1/] Your petition, which we received on February 17, 1994, also was dated February 15. It is therefore unlikely that you received the Board's response prior to sending your petition.

The Board has asked you to clarify your request for information. The Board has not denied you access to the records. Absent a denial by a state agency, the Attorney General lacks authority to order disclosure. See ORS 192.450(1). Accordingly, we deny your petition as premature.[2/]

Sincerely,

Elizabeth S. Harchenko

Elizabeth S. Harchenko
Special Counsel to the
Attorney General

ESH:KLK:klk/tjh/JGG08FB3
c: Eleanor Gundran, Administrator
Board of Architect Examiners

[2/] On February 18, 1994, you clarified your request during a telephone conversation with Assistant Attorney General Keith Kutler. You stated that you sought the names and addresses of 100 persons who had been investigated by the Board's staff regardless of whether the Board ever was aware of the investigation. You also stated that you would be satisfied with the first one hundred such people that would be found by going through the Board's files alphabetically even if the first 100 names in alphabetical order were not the last 100 names in chronological order.

Ms. Gundran advises us that she has a list of the last 108 persons who were subject to investigation by the Board's staff and that she will provide that list to you. The Board may charge you a fee to reimburse it for its actual cost in making that list available, including its copying costs and the time spent by agency personnel in reviewing the records. ORS 192.440(3).