THEODORE R. KULONGOSKI
ATTORNEY GENERAL

THOMAS A. BALMER
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400
TDD: (503) 378-5938

May 4, 1994

Ron Ledbury
P.O. Box 80363
Portland, OR 97280

Re: **Petition for Public Records Disclosure Order: Oregon State Archives**

Dear Mr. Ledbury:

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 27, 1994, asks the Attorney General to direct the Archives Division to make available certain computer records of administrative rules. For the reasons that follow, we respectfully deny your petition.

The Public Records Laws confers a right to access any public records of a public body in Oregon, subject to certain exemptions and limitations. See ORS 192.420. The law requires generally that the custodian of public records furnish proper and reasonable opportunities for inspection and/or copying of the record in the office of the custodian. ORS 192.430. Any person denied the right to inspect or to receive a copy of any public record of a state agency may petition the Attorney General to review the public record to determine if it may be withheld from public inspection. ORS 192.450(1). Under these provisions, an agency may be said to have "denied" a request to inspect or to receive a copy of a public record only if it receives a proper request for public records and has denied that request. Public Records Order, July 7, 1989 (Baker).

Your petition questions the claim of the Oregon State Archives that certain records you seek do not exist in electronic form and asks us to order the agency to produce those records in electronic form. We have confirmed with the staff at the Oregon State Archives that the rule amendment records you request exist only in paper format and are not stored electronically. The Attorney General cannot order disclosure of records that do not exist, and therefore denies your petition as to those records.

On the same day that we received your petition, you also provided us a copy of a letter from you to Roy Turnbaugh, State Archivist, requesting additional records. In that letter you described your request for electronic records of administrative rules and requested a response. We are informed by Dorothy Horton of the Archives Division that she has prepared a response to your letter. In addition, we understand that you have spoken with Roy Turnbaugh, State Archivist.

Because the Archives Division is in the process of reviewing and responding to your request for these additional records, the Division has not denied a request for public records within the meaning of the Public Records Law. Under these circumstances, we have no authority to order the Archives Division to make these records available to you. See ORS 192.450. Therefore, as to these records, we deny your petition as premature.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to
the Attorney General

ESH:krg/JAA01165

cc: Roy Turnbaugh, State Archivist
Dorothy Horton, Administrative Rules, Archives Division