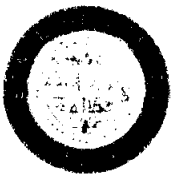
DAVE FROHNMAYER
ATTORNEY GENERAL
STATE OF OREGON

JAMES E. MOUNTAIN, JR.
DEPUTY ATTORNEY GENERAL



DEPARTMENT OF JUSTICE
Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400

May 16, 1989

David A. Rhoten
Attorney at Law
230 Oregon Building
494 State Street
Salem, OR 97310

Re: **Petition for Public Records Disclosure Order; Department of Insurance and Finance Records**

Dear Mr. Rhoten:

This letter is the Attorney General's order on Benjamin D. Koerper's petition (which you submitted on his behalf) for disclosure of records under the Public Records Law, ORS 192.410 to 192.505. The petition, which we received on May 9, 1989, asks the Attorney General to direct the Evaluation Section of the Workers' Compensation Division of the Department of Insurance and Finance to disclose certain written notes, which you represent were used by Mr. Ken Forbes in a meeting of the Evaluation Section on March 2, 1989. The petition also asks that, if the actual writing has been destroyed, the "personal computer used by Mr. Forbes be immediately impounded and all other computer-generated memoranda produced by Mr. Forbes, or at his direction, on equipment used by [DIF] be secured until this matter is resolved." For the following reasons we deny the petition.

We understand that the document in question has been discarded. We also understand that there is no computer record of the document; the disk on which the outline was prepared has been reused, and the previous data thus destroyed. Thus, the record Mr. Koerper seeks no longer exists in any form. Further, the Public Records Law does not require a public body to create a record, even if it is possible to do so. The

request that we impound Mr. Forbes' personal computer would be futile here and, in any event, beyond the Attorney General's authority under the Public Records Law. Accordingly, we deny the petition.

Sincerely,

PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

PA:DKC:ros/6164G

cc: Theodore Kulongoski, Director
Department of Insurance and Finance

Matthew Hennessee, Administrator
Workers' Compensation Division

Kenneth Forbes, Manager
Evaluation Section