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June 6, 1994

Daniel Stotter
Bahr & Stotter Law Offices
Suite 200
259 E. Fifth Street
Eugene, OR 97401

Re: ***Petition for Public Records Disclosure Order: Oregon Department of Fish and Wildlife Records***

Dear Mr. Stotter:

This letter is the Attorney General's order on your petition[1/] for disclosure of records under the Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on May 31, 1994, asks the Attorney General to direct the Oregon Department of Fish and Wildlife (ODFW) to make available any information concerning the poaching or illegal harvest, roadkill and damage control of black bears in Oregon since 1985. For the reasons below, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. See ORS 192.420. However, the law only applies to records that actually exist; it does not impose a duty upon an agency to create records. In this case, ODFW does not gather or have in its possession information concerning roadkill, poaching or illegal harvest of black bears in Oregon. Therefore, the public records you request related to those two areas simply do not exist. The Attorney General has no authority to order the disclosure of records that do not exist.

[1/] Your petition is filed on behalf of your client, Spencer Lennard.

As for the information related to damage control of black bears, Ron Anglin, ODFW Assistant Staff Biologist, informs us that ODFW has not denied Mr. Lennard's records request and very shortly will be providing a copy of its damage control summary, which contains the information requested. Therefore, your petition concerning these records is both premature and moot.

For these reasons, we deny your petition to compel disclosure.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

ESH:jpl:tjh/JAA011E1

c: Ron Anglin, Assistant Staff Biologist, Department of Fish and Wildlife