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

June 15, 1994

Walter H. Drew
06103 View Road
P.O. Box 217
Florence, OR 97439

Re: ***Petition for Public Records Disclosure Order: Records of Department of Land Conservation and Development and Department of Environmental Quality***

Dear Mr. Drew:

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 May 31, 1994,[1/] asks the Attorney General to direct the Department of Land Conservation and Development (DLCD) and the Department of Environmental Quality (DEQ) to make available for inspection "all records concerning mediation between the Heceta Water District and Lane County from and during 1992 through to the present." For the reasons that follow, 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. If a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material. Turner v. Reed, 22 Or App 177, 186 n 8, 538 P2d 373 (1975).

1. Attorney Client Privileged Records

ORS 192.502(8) exempts from disclosure

[1/] We appreciate your agreeing to extend the time within which this office otherwise would have had to respond to the petition.

> Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law[.]

This exemption incorporates the confidentiality protection of any record covered by a statute outside of the Public Records Law. Such a record is exempt, conditionally exempt or partially exempt from disclosure to the extent provided in the incorporated statute.

In this instance, the agencies' records related to the mediation sessions include four memoranda from agency staff to their legal counsel. These communications were made for the purpose of facilitating the rendition of professional legal services to the client and were not intended to be disclosed to third persons. These communications are privileged under ORS 40.225, the attorney-client privilege, and therefore, exempt from disclosure under ORS 192.502(8). Accordingly, we deny your petition as to these records.

2. Other Materials

Other than the confidential communications mentioned above, we understand from Bob Rindy at DLCD and Dick Nichols at DEQ that the agencies have agreed to make all other records related to the mediation available for your inspection. Therefore, your petition to order disclosure of these records is moot.

3. Conclusion

For the reasons stated above, we conclude that some of the records you request are exempt from disclosure under ORS 192.502(8). The records that are not exempt have been disclosed or will be shortly, making the remainder of your petition moot. Accordingly, we deny your petition.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

ESH:BJA:AV:jpl:bja:tmt/JAA0120D
C: Bob Rindy, DLCD
Dick Nichols, DEQ