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August 2, 1994

Michael Beaudin
3824 SE 51st Ave.
Portland, OR 97206

Re: *Petition for Public Records Disclosure Order*
Oregon Liquor Control Commission Records

Dear Mr. Beaudin:

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 July 19, 1994,[1] asks the Attorney General to direct the Oregon Liquor Control Commission (OLCC) "to make a transcript from the recordings of an Administrative Hearing concerning the Punjab Tavern and to then produce to . . . [you] a copy of that transcript." You also request "that the fees for this be waived under ORS 192.440(4)." For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to demand a certified copy of a public record, ORS 192.440(2) subject to "fees reasonably calculated to reimburse it for its actual costs of making such a record available." ORS 192.440(3). However, "[t]he custodian of any public record may furnish copies without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public." ORS 192.440(4).

Your request was originally made by your attorney Holly J. Hummel in a May 11, 1994, letter to OLCC Administrator Chris Lyons, and April 2 and 26, 1994, Motions in your contested case hearing before the OLCC. We also have your April 29, 1994, Affidavit in support of your April 26 Motion.

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[1] We appreciate your extending by seven days the time within which the law would have otherwise obligated us to respond.

We are informed by the Commission that the Commission has not prepared a written transcript of the tape recordings of your contested case before the Commission's Hearings Examiner. Therefore, there is no such "record" under the Public Records Law. What you have requested is that the Commission first prepare a transcript and then provide you with a copy. In other words, you request the Commission to create a public record. "[T]he public records law does not impose on public bodies the duty to create public records." Attorney General's Public Records and Meetings Manual, at 4 (1993). Neither does the Commission intend to prepare a transcript at this time. The Attorney General has no authority to order an agency to produce a record that does not exist. See ORS 192.450(2). Therefore, we deny your petition with respect to your request for a transcript.

With respect to the portion of your petition seeking free copies of the 29 tapes of your hearing, we deny that also for the reasons stated by the Commission through its Director of Administrative Services/Hearings Division, Lee E. Moore, Sr. in his June 8, 1994, to Ms. Hummel, a copy of which is attached hereto.

ORS 192.440(4) authorizes an agency to furnish copies of records without charge if the waiver of the fees is "in the public interest because making the records available primarily benefits the general public." You cannot transform your private interest in a transcript into a public interest merely by stating that there is an anonymous investigator who is "gathering information . . . for an article." If there is such a person gathering such information that person would have to make his or her own request. We would then respond to that person on the basis of the facts and circumstances pertinent to that person's request. Because you have demonstrated no intent or capability of personally disseminating the information to the public, we deny your petition with respect to the waiver of fees.

For these reasons, we deny your petition to require the OLCC to prepare a transcript and to provide you with a free copy or free copies of the 29 audio tapes of your hearing.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the Attorney General

ESH:jpl/JAA012CE.W51
Enclosures