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November 10, 1994

Alan Pittman
Eugene Weekly
1251 Lincoln
Eugene, OR 97401

Re: ***Petition for Review of Denial of Fee Waiver: Secretary of State, Corporation Division Records***

Dear Mr. Pittman:

This letter is the Attorney General's order on your petition for review of the Corporation Division's actions regarding your recent public records request under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on November 7, 1994, asks the Attorney General to review the amount of the fee charged for obtaining copies of Uniform Commercial Code (UCC) records and requests a waiver of the fee amount. For the reasons below, we decline to review the amount of the fee charged for the records in question. We also find that because no request has been made to the Division to obtain a waiver or reduction of the fee charged, your petition must be denied.

1. Amount of Fees Charged

The Oregon Public Records Law grants to any person "denied the right to inspect or receive a copy of any public record of a state agency" the right to petition the Attorney General to determine if the record may be withheld from public inspection. ORS 192.450. In this case there has been no denial because access to the requested records has been provided.

Your petition instead takes issue with the amount of the fees charged for the records, alleging that the fees exceed the "actual cost in making records available." ORS 192.440. However, the statute also specifically addresses the records at issue in this case:

> The public body may establish fees reasonably calculated to reimburse it for its actual cost in making such records available including costs for summarizing,

> compiling or tailoring such record, either in organization or media, to meet the person's request. ***However, when the records are those filed with the Secretary of State under ORS chapter 79, the fees for furnishing copies, summaries or compilations of such records are those established by the Secretary of State by rule, under ORS chapter 79.***

ORS 192.440(3) (emphasis added).

The records you requested are UCC records filed under ORS chapter 79. ORS 79.4025(3)(d) authorizes the Secretary of State to adopt rules prescribing a fee per page for furnishing copies of UCC records, and ORS 79.4025(3)(e) requires the Secretary of State to adopt rules proscribing fees for furnishing summaries, compilations and computer remote access to the UCC records. The Secretary of State has adopted rules complying with these statutes. OAR 160-50-000 to 160-50-085. The fees charged for the records you requested complied with those rules. *See* OAR 160-50-040(2).

The Public Records Law does not require the fees charged by the Secretary of State pursuant to rules adopted under ORS Chapter 79 to reflect that agency's actual costs. Therefore, the Attorney General has no authority to determine whether the fees you were charged are in excess of the agency's actual cost. Any concerns you may have about the amount of the fees charged must be addressed directly to the Secretary of State.

2. Fee Waiver or Reduction

Your petition also alleges that Heather Davis, an employee of the Corporations Division, told you that journalists had to pay the same fees as other persons requesting copies of UCC records. We treat this contention as a request that the Attorney General review whether there has been an unreasonable denial of a fee waiver or fee reduction under ORS 192.440. That statute provides:

> The 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).

We have been informed by Gary Johnson, Assistant to the Director of the Corporation Division, that Ms. Davis did not understand you to be requesting a waiver or reduction of the fees. Moreover, Ms. Davis is not authorized either to grant or to deny such requests; she would have had to refer the request to a supervisor. Mr. Johnson confirms that no

request for a fee waiver or reduction was made to the agency, and that the agency has made no determination on whether a fee waiver or reduction would be appropriate in this case.[1/] Until such a request is made and the agency denies a fee waiver or reduction, it is premature to petition the Attorney General for review under ORS 192.440(4).

Conclusion

For these reasons, we respectfully deny your petition for review of the amount of the fees charged by the Corporation Division. We also deny as premature your petition for a waiver or reduction of the fees charged.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

ESH:AV:LR:jpl:JAA014CF
cc: Jan Sullivan, Director, Corporation Division

[1/] In a previous public records order, we have said that a decision to waive or reduce fees is discretionary with the agency and that investigative reporters are not automatically entitled to a complete fee waiver or reduction of fees. Public Records Order dated May 19, 1993 (Smith). The person making the request must provide sufficient information to enable the agency to determine whether the fee waiver or reduction would be in the public interest. We said:

> Relevant factors include: the requestor's identity, subject of the request and purpose for which the requestor intends to use the information, the informative value of the information to be disclosed, the contribution to an understanding of the subject by the general public likely to result from disclosure, the significance of the contribution to public understanding, the existence and magnitude of a commercial interest, and any financial hardship on the agency from granting a fee waiver.

Id. at 6.