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Justice Building
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March 25, 1992

Tom Bender
38755 Reed Road
Nehalem, OR 97131

Re: **Petition for Public Records Disclosure: Department of Transportation**

Dear Mr. Bender:

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 request, which we received on March 20, 1992, asks the Attorney General to direct the Oregon Department of Transportation (ODOT) to provide, on request and without charge, copies of the records contained in your "First Request for Documents," attached to your March 10, 1992 petition to this office. For reasons stated in the March 19 order to your March 10 request, and for the reasons that follow, we respectfully deny your request as premature.

ODOT responded to your initial request by letter dated March 18, 1992. That letter identified what records were in existence for each of your 32 areas of concern, and identified where those records could be found and examined. A schedule of ODOT charges for public record costs was enclosed. The letter went on to waive any charges for costs incurred in determining the location of the records and of supervision while viewing them.

Since you have not identified which records you would like copied, there has still not been any determination of the costs which would be incurred and any review of the decision to deny your request for waiver is premature. The volume of the records sought to be copied must enter into the final determination. We note in the Attorney General's Public Records and Meetings Manual (1989) that potential financial hardship on an agency that would arise from granting a fee waiver is pertinent to the reasonableness of the agency's decision. Manual at 8. The volume of records, given a request with a field of 32 categories,

clearly enters into the decision; as does the fact that ODOT has decided not to seek reimbursement of certain of its recoverable costs. See Public Records Order, July 8, 1991, Marr.

You also indicated that ODOT would not make the originals or free copies available to you at the one location requested or within the time requested. The Public Records Law requires a custodian of public records to "furnish proper and reasonable opportunities for inspection and examination" of records in its custody. ORS 192.430 (emphasis added). The law imposes no specific deadline for release of requested records or any requirement that requested records be compiled in any one location for inspection. Rather, a public agency must act on a records request within a "reasonable" time, and make the records available for inspection at the location they are normally stored. See Public Records Order, July 3, 1991, DeSalvo. The ODOT response complies with this standard.

For these reasons, we reaffirm our March 19, 1992, order and deny your request for waiver of costs as premature.

Sincerely,

PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

PLA:DKH:AV/bjs/JGG02A7C

c: Kenneth E. Husby,
Region 2 Administrator
Highway Division, ODOT