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March 10, 1993

Bruce Smith
Gleaves, Swearingen, Larsen
Potter Scott & Smith
975 Oak Street
Eugene, Oregon 97401-3156

Re: Petition for Public Records Disclosure Order:
Children's Services Division Records

Dear Mr. Smith:

This letter is the Attorney General's order on your petition[1/] for disclosure of records under the Oregon Public Records Law, ORS 192.410 to ORS 192.505. Your petition, which we received on March 3, 1993, asks the Attorney General to direct the Children's Services Division (CSD) to make available for inspection and to produce copies of documents showing the monthly amounts of foster care payments to the Norman and Doris Bolden foster home and the number of children in the foster home during each month. Alternatively, you request the amount of the annual payments made to the Bolden foster home and the number of children in the foster home each month during each year. 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 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).

CSD informs us there is a document listing payments made to the Bolden foster

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[1/] The petition was filed on behalf of your client, Guard Publishing Company dba The Register Guard.

home called a "Payee Financial Ledger Display" that would satisfy your request for a record showing "monthly payments" to that home. While the document shows each payment from CSD to the foster home, it does not reveal any confidential information about the foster children. Susie Dey, Branch Manager, Lane CSD, informs us that CSD is willing to make these records available to you.[2/] Accordingly, with respect to these records, we deny your petition as moot.[3/]

With respect to the request for information about the number of children in the Bolden foster home each month, CSD informs us that you have not made a request to the agency for that information. Because CSD has not had an opportunity to consider this request, it is premature for us to respond to this element of the petition. Absent a request for, and a denial of records, the Attorney General has no jurisdiction to order disclosure. See ORS 192.450(1). Accordingly, with respect to these records, we deny your petition as premature.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the Attorney General

ESH:jpl/JAA00B0F.W51

c: Susie Dey, Lane CSD

[2/] CSD informs us that the computerized records, which go back to July 1984, will be available without delay and that the agency has begun a search for any earlier records that would show the requested information back to the date the Bolder home first became a foster home. It is our understanding that CSD will inform your client when those records are available.

CSD may charge a fee to reimburse the agency for its actual cost in making the foster home payment records available. See ORS 192.440(3).

[3/] Since CSD has agreed to provide the monthly records to you, it is not necessary for us to consider your alternative request for annual payment records.