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 11, 1993

Paul D. Meadowbrook
42280 Upper Berlin Dr.
Lebanon, OR 97355

Re: Petition for Public Records Order:
Executive Department and the Department of Justice

Dear Mr. Meadowbrook:

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 June 4, 1993, asks the Attorney General to order the Executive Department and the Department of Justice:

1. [To] produce a copy of my computer disks at the Executive Department.

2. [To] produce copies of E-mails, notes and other personnel matters pertaining to my job performance or attitude and/or are used or have been used to determine my qualifications for employment, promotion, termination or disciplinary action, including but not limited to records maintained by Executive Department Director Dan Simmons and gubernatorial aide Roger Auerbach.

3. [To] produce a copy of the grievance policy established and maintained by PLRD Administrator Karen Roach pursuant to Policy 80.008.02.

For the reasons that follow, we respectfully deny your petition.

Pertaining to your petition for an order directed to the Executive Department:

1. As to the computer disks, none of the earlier requests for documents received from either you or your attorneys asked for computer disks. Instead, they requested access to or copies of computer files or documents. Your attorney was advised by letter from

Josephine Hawthorne, Assistant Attorney General, dated May 13, 1993, and again by letter from Karen Roach of the Executive Department dated June 2, 1993, that you may have access to the computer files and documents. Because you have not been denied access to the records, the Attorney General lacks authority to order disclosure. See ORS 192.450(1).

2. As to the e-mails and other documents relating to your employment, Ms. Roach advises us that the Executive Department has either provided these documents to you or now agrees to provide you access to these records in its custody. Accordingly, as to such records in the custody of the Executive Department, your petition is denied as moot. As to any such records "maintained" by Roger Auerbach, a member of the Governor's staff, the Executive Department does not have such records. The Attorney General lacks authority to order an agency to produce records that are not in the custody of the agency. See ORS 192.430.

3. As to the grievance policy, Ms. Roach has agreed to provide you a copy of the policy. Accordingly, this portion of your petition is denied as moot.

Pertaining to your petition for an order directed to the Justice Department, your petition is denied as moot because the only Department of Justice records you have requested have already been provided to you.

The Executive Department may charge you a fee to reimburse it for its actual cost in making the records available, including its photocopy costs and the time spent by agency personnel in reviewing the records. See ORS 192.440(3). Ms. Roach will contact you regarding access to these documents and the cost of making them available.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the Attorney General

ESH:JH:MJJ:AV:jpl/JAA00C87.W51

c: Karen Roach