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

July 13, 1993

Paul B. Meadowbrook
42280 Upper Berlin Drive
Lebanon, OR 97355

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

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 July 6, 1993, asks the Attorney General to direct the Office of the Governor to make available records relating to your job performance and to direct the Executive Department to make available copies of facsimile documents and records showing the facsimile transmissions pertaining to the sale of a home by Rita Thomas, a state employee.

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

ORS 192.480 provides that the Attorney General shall not consider a petition to require disclosure of records in the custody of an elected official, or in the custody of any other person but as to which an elected official claims the right to withhold disclosure. The Governor is an elected official. Accordingly, we must deny your petition as to documents to which you may have been denied access by the Office of the Governor.[1/]

You requested that Dan Simmons, Director of the Executive Department, produce documents and records from realtors and others in Michigan regarding the sale of the home of Rita Thomas and records showing the facsimile transmission of such records. In your

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[1/] We have been advised by Roger Auerbach, Senior Policy Advisor for the Governor, that the Governor's Office does not have any records of the nature you have requested.

June 4, 1993, letter to Karen Roach, attached to your petition, you described the records sought as "documents faxed to and/or from Rita Thomas using PLRD, SEBB, or other state equipment from Michigan real estate brokers or other persons regarding sale of her home or other non-work related matters." Paul Koch, Personnel Analyst for the Executive Department, has informed us that the Executive Department does not have any such records. Moreover, the records you describe are not "public records." ORS 192.410(4).

As to the records of the facsimile transmissions, Mr. Koch informs us that either those records do not exist or that the Executive Department agreed on June 16, 1993, to permit you to inspect these records if you would provide the department with the months or approximate time period during which you believe the transmittals occurred.[2/] Accordingly, as to these records your petition is denied as moot.

As to any notes and memoranda made by the department about the facsimile transmissions, the Executive Department in its letter of June 16, 1993, erroneously advised you that, if they exist, such notes and memoranda made by the department about these transmittals would not be public records. If they exist, these documents would be public records. However, Mr. Koch informs us that no such records exist. The Attorney General has no authority to order an agency to produce records that do not exist. See 192.450.

Sincerely,

ELIZABETH HARCHENKO
Special Counsel to the
Attorney General

JOH:AV:clr/JAA00D0A

c: Karen Roach, Executive Department

[2/] The Executive Department may charge you a fee to reimburse the department 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). Karen Roach will contact you regarding access to these documents and the cost of making them available.