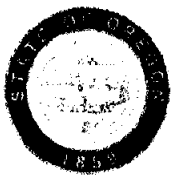
DAVE FROHNMAYER
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July 31, 1990

Chris L. Mullmann
Davis Wright Tremaine
2300 First Interstate Tower
1300 SW Fifth Avenue
Portland, OR 97201-5682

Re: **Petition for Public Records Disclosure Order; Oregon State Bar Records**

Dear Mr. Mullmann:

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 26, 1990, asks the Attorney General to direct the Oregon State Bar (OSB) to make available for inspection and copying the following records:

> "(1) a transcript of deposition of Rob Wolf in the disciplinary proceeding now pending before the Oregon State Bar, or (2) in the alternative, the court reporter's notes of the deposition of Rob Wolf, Accused, in the disciplinary proceeding now pending before the Bar."

For the reasons stated below, we respectfully deny your petition.

You acknowledge in your petition that the OSB has not yet responded to your records request. Your petition rests, therefore, on your position that the OSB's inaction must be deemed a denial.

The Public Records Law imposes no rigid time limit on agencies responding to public records requests. Rather, agencies have a reasonable time in which to respond. See

ORS 192.430(1) (custodian of public records must furnish proper and reasonable opportunities for inspection of public records). Absent a denial of a records request, the Attorney General lacks authority to order an agency to disclose records. See ORS 192.450(1).

We believe that unreasonable delay in responding to a records request may constitute a denial under the Public Records Law. Under the circumstances presented, however, we find no unreasonable delay. As you are aware, on July 16, Mr. Wolf's attorney filed a motion in the Oregon Supreme Court for a protective order. Although the OSB has neither formally supported nor opposed the motion, Bar counsel submitted a statement to the court outlining the facts from which the current public records controversy arose. The motion is still pending before the court. It is reasonable for the OSB to await the court's ruling, rather than to act unilaterally and undermine the ongoing judicial process. Cf. Attorney General's Public Records and Meetings Manual 9-10 (1989) (agency does not actually or constructively deny request when it consults with counsel). Because we conclude that there has been no unreasonable delay, there has been no denial. Therefore, your petition is premature.

In addition, we must deny your petition for another reason as well. From our discussions with Mr. Jeff Sapiro, OSB's Disciplinary Counsel, we understand that the OSB does not have the records you seek. No transcript of the deposition has yet been prepared. The notes of the deposition are in the custody of a private court reporter, and the OSB appears to have no contractual right to obtain those notes. Thus, this case differs from AA Ambulance Co., Inc. v. Multnomah County, ___ Or App ___, ___ P2d ___ (July 18, 1990), in which the court held that records in the custody of a private consultant were "public records" because the county had a contractual right of access. Under the Public Records Law, only a "custodian" of records has a duty to provide disclosure. Because the OSB does not at this time have custody of the records at issue, we cannot order the OSB to disclose those records.

For the reasons stated above, we respectfully deny your petition.

Sincerely,

PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

PLA:RDW/7211Y
cc: Jeff Sapiro, Disciplinary Counsel
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