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DEPARTMENT OF JUSTICE
Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400

December 13, 1990

Sandra W. Wenzel
1155 S.E. Kelly
Portland, Oregon 97202

Re: Petition for Public Records Disclosure Order: Insurance Division Records

Dear Ms. Wenzel:

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 December 6, 1990, asks the Attorney General to direct the Insurance Division, Department of Insurance and Finance, to make available for inspection and copying all records relating to Sandra W. Wenzel and Sannell Associates. 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. In order to inspect such records, a person first must ask the agency that has custody of the records. See ORS 192.430. A person may petition the Attorney General for a disclosure order only when the custodian of records denies the person access to the records. See ORS 192.450. Mr. Bill Brooks of the Insurance Division informs us that he has not denied your request to inspect records of the agency, but merely asked that you come into the office and discuss the matter with him. For that reason, to deny your petition is premature.

Even if your petition were not premature, however, we would deny it in this instance. The records that you seek to inspect fall within an exemption to the general rule of public accessibility to government records.

ORS 731.264 provides, in relevant part:

> "(1) A complaint made to the director against any person regulated by the Insurance Code, and the record thereof, shall be confidential, and shall not be disclosed except as considered necessary by the director in the administration of the Insurance Code. No such complaint, or the record thereof, shall be used in any action, suit or proceeding except as to the extent considered necessary by the director in the prosecution of apparent violations of the Insurance Code.
>
> "(2) Data gathered pursuant to an investigation by the director of a complaint shall be confidential, and shall not be disclosed or used in any action, suit or proceeding except to the extent considered necessary by the director in the investigation or prosecution of apparent violations of the Insurance Code."

We understand from Mr. Brooks that the records you seek are data gathered pursuant to its investigation of your activities. Those records, therefore, are confidential under ORS 731.264, and consequently exempt from public disclosure. See ORS 192.502(8).

Finally, you ask that "[i]n the case of materials deemed confidential, that the general description of the information be listed with file materials provided." The Public Records Law does not require that an agency create records to comply with a request. Since no such records exist, we may not order the agency to disclose them.

For these reasons, we respectfully deny your petition to compel disclosure.

Sincerely,

PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

PLA:KGD/kgd:ros/4363G
c: James Swenson, Administrator
Insurance Division

Bill Brooks, Supervisor
Compliance Section
Insurance Division