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ATTORNEY GENERAL

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

August 14, 1991

Steve Brandon
Staff Writer
The Oregonian
1320 S.W. Broadway
Portland, OR 97201

Dear Mr. Brandon:

This letter responds to your public records request dated August 6, 1991, addressed to Deputy Attorney General Jack Landau. In that request, you asked to have made available for your inspection certain employment records and personnel information relating to Terry L. Canby, internal memoranda written by or to Mr. Canby, his travel and expense records, and State Treasury annual reports. You also requested that the Department of Justice waive any fees involved in making those records available to you.

We must respectfully deny your request for records other than internal memoranda (Items 1, 2, 4 and 5). Any such records in the custody of the Department of Justice are exempt from disclosure under ORS 192.501(3), having been compiled for investigatory purposes. We do not believe, nor have you offered any argument to support, that the public interest in disclosure outweighs the public interest in allowing our current investigation to proceed unhindered by premature disclosure of relevant facts.

Because your request mentions "State of Oregon employment history and records" for Mr. Canby, we note that this response does not govern the disclosure of records held by other state agencies. We understand that the State Treasury has Mr. Canby's personnel file from his employment there and is making substantial portions of it available for inspection. You may wish to contact the Treasurer's office to make your own arrangements to obtain access to that file.

You also requested disclosure of "all memos written by or to Canby while he was real estate investment officer for the State Treasurer." While we have not yet conducted a search to identify all documents in the custody of the Department of Justice subject to your request, we anticipate two exemptions from disclosure likely will be invoked for some of those documents. First, any internal memoranda gathered during the course of our investigation may be exempt under ORS 192.501(3). Second, any internal memoranda also may be subject to a claim of attorney-client privilege under ORS 192.502(8) and 40.225.

We have not yet made a final determination on either the disclosure status of those documents or your request for a fee waiver. Before we do so, we would ask you to narrow or otherwise clarify your request to simplify our search, and also articulate why you believe a fee waiver for your current or modified request is in the public interest. I am enclosing a copy of a recent public records order issued by this office where we outline some legal issues involved in obtaining a fee waiver or reduction.

If you have questions, please feel free to contact Public Affairs Officer Phil Lemman at 378-6002.

Sincerely,

WILLIAM F. NESSLY, Jr.
Assistant Attorney General

WFN:pl
Enclosure
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