DAVE F. JOHNMAN
ATTORNEY GENERAL

JAC LANDAU
DEPUTY ATTORNEY GENERAL

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

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ATTORNEY GENERAL
SALEM, OREGON

September 25, 1991

Robert Cole Tozer
Attorney at Law
303 Centre Court
44 W. Broadway
Eugene, Oregon 97401

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

Dear Mr. Tozer:

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 September 18, 1991, asks the Attorney General to direct the Insurance Division of the Department of Insurance and Finance to make available for inspection and copying the following records:

1. Names and addresses of people contacted for information during the course of investigation of Gerald Derby, Jeffrey Tomlin and the Independent Contractor's Association (ICA).

2. Any complaints, or records, or memoranda of complaints against Tomlin, Derby or ICA.

3. Written interoffice memoranda during course of investigation of Derby, Tomlin and ICA.

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. The records you wish to inspect fall within an exemption to the general rule of public accessibility to government records.

ORS 731.264 severely curtails the public's right to examine records of the Insurance Division. ORS 731.264(1) and (2) provide, 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. * * * *
>
> (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.

This confidentiality restriction is incorporated into the Public Records Law's exemptions from disclosure by ORS 192.502(8).

The information you request as item "1" is covered by ORS 731.264(1) and, therefore, exempt from disclosure under ORS 192.502(8). The information you request as items "2" and "3" is covered by ORS 731.264(2) and similarly is exempt from disclosure.

The Insurance Division also withheld one interoffice memorandum for other reasons. That memorandum is a confidential attorney-client communication between Insurance Division staff and a Department of Justice attorney. This record is exempt from disclosure under ORS 40.225, which is incorporated by 192.502(8) into the unconditional exemptions under the Public Records Law. See Public Records Order, October 21, 1988, Best; Public Records Order, March 30, 1989, Howser.

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

Sincerely,

PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

PLA:KGD:ros/JGG01336
c: Charles Nicoloff, Acting Administrator
Insurance Division, Department of Insurance and Finance
William J. Brooks, Manager, Compliance Section
Insurance Division, Department of Insurance and Finance