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DEPARTMENT OF JUSTICE

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Telephone: (503) 378-4400

February 19, 1988

John M. Stone
31100-0 NW Reeder Road
Portland, Oregon 97231

Re: Request for Public Records Disclosure Order
Oregon Department of Fish and Wildlife

Dear Mr. Stone:

This letter responds to your petition requesting the Attorney General to order the Department of Fish and Wildlife ("department") to disclose records relating to department Lease ML-648. The Attorney General's office received your petition on February 12, 1988. For the reasons stated below, your petition is granted.

Initially, we have no doubt that the documents you have requested are "public records" within the meaning of ORS 192.410(4). The remaining question is whether those documents are exempt from disclosure under the Public Records Law.

The only arguably applicable exemption is ORS 192.502(1), which provides:

> "The following public records are exempt from disclosure under ORS 192.410 to 192.505:
>
> "Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public

> body shows that in the particular instance the public interest in encouraging frank communication between officials and employes of public bodies clearly outweighs the public interest in disclosure."

However, applying the rationale of Coos County v. Ore. Dept. of Fish and Wildlife, 86 Or App 168, ___ P2d ___ (1987), we lack sufficient evidence to persuade us that, in this instance, the public interest in encouraging frank communication within a public body clearly outweighs the public interest in disclosure. Accordingly, the statutory presumption favoring disclosure embodied in the Public Records Law is not overcome here. We conclude that the records you have requested must be disclosed.

The department has agreed to provide you access to the requested documents, and a reasonable opportunity to photocopy them. ORS 192.440 authorizes the department to charge you a reasonable fee to reimburse it for its actual cost in making those records available to you, including not only a per-page charge for photocopying but also a charge for the employe time necessary to retrieve and provide the records.

Sincerely,

Richard D. Wasserman
Assistant Attorney General

RDW:cm
cc: Randy Fisher, Director, Oregon Department of Fish and Wildlife
Rollie Rousseau, Deputy Director, Oregon Department of Fish and Wildlife
James E. Mountain, Jr., Special Counsel to the Attorney General
Cheryl Coodley, Assistant Attorney General
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