HARDY MYERS
ATTORNEY GENERAL

DAVID SCHUMAN
DEPUTY ATTORNEY GENERAL



DEPARTMENT OF JUSTICE

1162 Court Street NE
Justice Building
Salem, Oregon 97310-0506
Telephone: (503) 378-4400
TDD: (503) 378-5938

February 10, 1999

RECEIVED
FEB 11 1999
GENERAL COUNSEL
DEPT. OF JUSTICE
SALEM, OREGON

Michael J. Martinis
Webb & Martinis
1414 – 12th Street SE
Salem, OR 97302

Re: *Petition for Public Records Disclosure Order*
Construction Contractors Board Records

Dear Mr. Martinis:

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,[1/] which we received on February 5, 1999, asks the Attorney General to direct the Construction Contractors Board (CCB) to make available for inspection the following records:

1. All documents received and/or compiled by the CCB in the course of investigation (sic) any allegations as against Michael and Pamela Riddle including, but not limited to, the following documents:

(a) Witness statements in recorded form on any electronic media, together with any transcriptions thereof;

(b) Correspondence between the Construction Contractors Board (CCB) and any third parties;

(c) Investigation notes and memoranda;

[1/] Your petition was filed on behalf of your clients, Michael and Pamela Riddle.

(d) Pictures, videotapes, or any other depiction of any person or thing compiled in the course of the CCB investigation as aforesaid; and

(e) All documents obtained, prepared or compiled in the course of the foregoing CCB investigation, including any internal memoranda within the CCB and any written complaints concerning activities of Michael and/or Pamela Riddle forwarded to the CCB by any third party.

The Attorney General may order a state agency to disclose records only when the agency has denied a request for the records. *See* ORS 192.450(1). The CCB received your initial records request of February 4, 1999, which was addressed to Mike Galloway, investigator for the CCB. In your letter, you requested that the CCB provide the aforementioned documents. The CCB forwarded your request to Anthony S. Ridolfo, the Assistant Attorney General designated to represent the CCB. Mr. Ridolfo responded to your request by letter dated February 5, 1999. In that letter, Mr. Ridolfo did not deny your request. Rather, he advised you that the CCB would require prepayment of its costs for making available the records you request and that "all non-exempt materials responsive to your records request [would] be provided within three days of receipt of [your] check."[2/]

The Public Records Law allows a public body a "reasonable" time to respond to a records request, and imposes no specific deadline for release of requested records. *See* ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL at 7 (1997). What is "reasonable" depends on many factors, some of which include the volume of records requested, the staff available to respond to the records request and the difficulty in determining whether any of the records are exempt from disclosure. *Id.* When a public body has a question about its legal duty to disclose requested records, it is reasonable for that public body to consult its legal counsel. When a public body does so, it does not thereby actually or constructively deny the request. Nor does a public body deny a request merely because it fails to comply with a deadline that a requestor seeks to impose. *See id.* at 16.

Absent a request to and a denial by the board of a records request, the Attorney General has no authority to order the board to disclose records. *See* ORS 192.450(1) (Attorney General may consider petition only when person has been denied right to inspect or receive copy of public record); *see also Morse Bros., Inc. v. ODED*, 103 Or App 619, 798 P2d 719 (1990) ("Public Records Law clearly contemplates that agencies have the opportunity to review the requested records and to act on the request before the Attorney General or the courts can review

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[2/] A public body may establish fees "reasonably calculated to reimburse it for its actual cost in making such records available." ORS 192.440(3). *See also* OAR 812-001-0015(6). Your check #7022 in the amount of $50 was received by Mr. Ridolfo on February 9, 1999. Mr. Ridolfo informs us that the CCB expects to respond to your request on or before February 12, 1999.

the matter."). Because the board has not denied your request for records, we respectfully deny your petition as premature.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

AGS01620
c: Craig P. Smith, Deputy Administrator
Construction Contractors Board
Anthony S. Ridolfo, AAG