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

January 25, 1999

RECEIVED
JAN 26 1999
GENERAL COUNSEL
DEPT. OF JUSTICE
SALEM, OREGON

Joseph J. Criscione
Sanitarian and Geological Environmental Services
PO Box 1730
Roseburg, OR 97470

Re: Petition for Public Records Disclosure Order
Board of Geologist Examiners Records

Dear Mr. Criscione:

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 January 19, 1999, asks the Attorney General to direct the Oregon State Board of Geologist Examiners (Board) to make available for inspection or to produce copies of: 1) all board meeting minutes from February 1, 1998 through January 18, 1999; and 2) a roster of all candidates receiving a passing score on the September 18, 1998 exam and all geology registrations granted from this exam. For the reasons stated below, we respectfully deny your petition.

Susanna R. Knight, Administrative Assistant to the board, informs us that although the board has a letter from you dated January 13, 1999, requesting board meeting minutes that make reference to you or certain other individuals and "a copy of all registrants as of November 30," which would appear to be what you refer to in your petition as a roster of "all geology registrations granted from [the September 18, 1998] exam," the board has not received a written request from you for the other records specified in your petition.[1/] Moreover, Ms. Knight informs us that the board has not denied any records request that it has received from you.

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

[1/] The board's administrative rules require that all requests for copies of public records of the board be submitted in writing. *See* OAR 809-001-0015.

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.[2/] *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 the matter."). Because the board has not yet denied your request for records,[3/] we deny your petition as premature.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

AGS01474
c: Susanna Knight, Administrative Assistant
Board of Geologist Examiners

[2/] The board has recently undergone some changes that may affect its reasonable response time. The board recently separated from the Board of Engineering Examiners and moved into new offices on or about January 4, 1999. Ms. Knight was appointed Administrative Assistant to the board and is in the process of learning the business of the board. As a result of these changes, the board office is still in the process of being organized.

[3/] Ms. Knight informs us that due to an upcoming board meeting scheduled for January 29, 1999, and necessary preparations for the examination registration deadline of February 19, 1999, the board expects to contact you on or before February 25, 1999, concerning your records requests.