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January 25, 1999

Ron Baker
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. Baker:

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) and its employees to make available for inspection or to produce a copy of the following records:

1. All Board Meeting Minutes since establishment of the Board.
2. List of all Geologist (sic) registered by the Board, by test, without test, by reciprocity.
3. List of all geologists allowed to practice geology in Oregon without Oregon registration and state each operated from.
4. List of all states recognized by the Board as having equal qualifications.
5. List of all states not recognized by the Board as having equal qualifications, and why.

Susanna R. Knight, Administrative Assistant to the board, informs us that although the board has a letter from you dated January 14, 1999, requesting various information and records, some of which are identified in your petition, the board has no record of a request from you for other information listed in your petition, specifically items #4 and #5. 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 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.[1/] *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,[2/] we deny your petition as premature.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

AGS01475
c: Susanna Knight, Administrative Assistant
Board of Geologist Examiners

[1/] 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.

[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 809-001-0015. Because of the extent of your request and because Ms. Knight is the sole administrative person employed by the board, Ms. Knight informs us that it may be necessary for the board to hire a temporary person to locate and photocopy the records you have requested. In that case, the board's "actual costs" would include the costs for the temporary person. The board may preliminarily estimate its costs for responding to a records request and require prepayment. *See* ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL at 11, 12. 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.