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November 9, 1998

William D. Stark
Attorney at Law
876 Welcome Way, S.E., Suite 200
Salem, OR 07302

Re: *Public Records Disclosure Order:*
Department of Human Resources Records

Dear Mr. Stark:

This letter is the Attorney General's order on your petition for disclosure under the Oregon Public Records Law, ORS 192.410 to 192.505. The petition, which we received on November 2, 1998, asks the Attorney General to direct the Oregon Department of Human Resources (DHR) to provide you with Dr. George Samerotte's personnel records. You have previously provided DHR with an authorization for release of records and documents signed by Dr. Samerotte.

We are informed by Dr. Mark O. Loveless, Director, HIV/STD/TB Program, that he has not denied your request. We understand from speaking with Dr. Loveless and with DHR's attorney, Assistant Attorney General Stephanie Harper, that Dr. Loveless has contacted AAG Harper for advice regarding legal issues raised by your records request.

We have stated under similar circumstances that when a public body consults with legal counsel regarding its duties under the Public Records Law, the public body does not thereby actually and constructively deny the request. Nor does the Public body deny a request merely because it fails to comply with a deadline the requestor seeks to impose. *See* ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 16 (1997).

Given the pending request by Dr. Loveless for legal advice, we conclude that your request for records has not been constructively denied. Absent a denial by the agency, this office has no authority to order the agency to disclose records. *See* ORS 192.450(1); *see also Morse Bros., Inc. v. ODED*, 103 Or App 619, 798 P2d 719 (1990) ("The 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."). Accordingly, we deny your petition as premature.

Sincerely,

STEPHANIE L. STRIFFLER
Special Counsel to the Attorney General

AGS00958
c: Mark O. Loveless, M.D.
Stephanie Harper, AAG