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

July 27, 1998

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GENERAL COUNSEL
DEPT. OF JUSTICE
SALEM, OREGON

Gary Johansen
Oregon Data Supply
23740 S.W. Grahams Ferry Road
Sherwood, OR 97140

Dear Mr. Johansen:

This 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 July 21, 1998, asks the Attorney General to direct the Oregon Veterinary Medical Examining Board (OVMEB) and its employees to produce copies of:

> All electronically maintained public information including but not limited to, license id (number or serial id), date licensed, type of license (code with explanation will be sufficient), license name, place of employment, address of employment or clinic, and/or county licensed in.

You inform us that OVMEB has offered to provide license name, place of employment, address of employment or clinic, but that it is withholding the information in electronic form. For the reasons that follow, we respectfully deny your petition.

For purposes of the Public Records Law, a public record includes information maintained on paper or in electronic form. ORS 192.410. The custodian of a public record that is maintained in machine readable or electronic form must produce records in the form requested if available in that form or, if not available in the form requested, in the form in which the records are maintained. ORS 192.440(2).

Ms. Lori Makinen, Executive Director, OVMEB, informs us that she has not denied your request. We understand from speaking with Ms. Makinen and with OVMEB's assigned attorney, Assistant Attorney General Armonica M. Gilford, that Ms. Makinen has contacted Ms. Gilford for advice regarding legal issues raised by your records request. We have also reviewed correspondence dated July 16, 1998 between you and Ms. Makinen in which she advises you that she would obtain attorney general advice and discuss nondisclosure rights of

licensees pertaining to information distribution via electronic media.

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 Ms. Makinen 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. 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."). According, we deny your petition as premature.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

c: Lori Makinen, Executive Director, OVMEB