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March 25, 1998

Darrel W. Martin
P.O. Box 17821
Salem, OR 97305

Re: *Public Records Disclosure Order: Department of Corrections, Department of Revenue and Department of Human Resources Records*

Dear Mr. Martin:

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 March 18, 1998, asks the Attorney General to direct the Oregon Department of Corrections (DOC), the Oregon Department of Revenue (Revenue), and the Oregon Department of Human Resources (DHR) to provide you certain records relating to a hiring process conducted to fill a vacant position as a Purchaser 2 at each of the three agencies. Specifically, your petition seeks "copies of the successful persons answers to the assessment section of the announcement" and their stated work experience. For the reasons stated below, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. Any person who makes a request to a state agency to inspect a public record, and whose request is denied, may petition the Attorney General to review the record to determine if it may be withheld from public inspection. ORS 192.450(1).

1. Department of Corrections

You state in your petition that Susan Smith of the Department of Corrections denied your request for records. We have discussed your petition with both Ms. Smith, Executive

Support Specialist with DOC Fiscal Services, and Rhonda Crawford, Recruitment Officer for DOC. Both Ms. Smith and Ms. Crawford inform us that they are not aware of DOC's having received any request from you for records.[1/] Because you did not make a request to DOC to inspect any of the items described above, there has been no denial by DOC of disclosure of those records. Absent a request to, and denial by, a state agency for records, the Attorney General does not have jurisdiction to order the agency to disclose records. *See* ORS 192.450(1). Accordingly, we your petition as premature with respect to DOC records.

2. Department of Revenue Records

You do not indicate in your petition who at the Department of Revenue denied your request for records. Terri Sullens, Recruitment Coordinator, Administrative Services Division, Personnel Section, informs us that she is not aware of Revenue's having received any request from you for records.[2/] Again, absent a request to, and denial by, a state agency for records, the Attorney General does not have jurisdiction to order the agency to disclose records. *See* ORS 192.450(1). Accordingly, we deny your petition as premature with respect to Revenue records.

3. Department of Human Resources

By letter dated January 23, 1998, you asked the Department of Human Resources for the following "information":

1. The name of the person [selected for the Purchaser 2 position].

2. Has the successful person had experience in purchasing at the level of those that work for the Department of Administrative Services Purchasing Division? If so, how many?

3. Would you please tell me the persons background in the field of purchasing, including the private sector.

[1/] Ms. Crawford informs us that the records you are seeking may not be in DOC's possession. The Department of Administrative Services, Human Resources Services Division (DAS), was responsible for receiving and reviewing the assessment section submitted by applicants interested in the vacant Purchaser 2 position at DOC. Therefore, DAS may possess some of the records you are seeking.

[2/] Like DOC, Ms. Sullens informs us that the records you are seeking may be maintained by the Department of Administrative Services, Human Resources Division.

4. Please tell me what my weak points were in contrast to the person you selected.

Wendy Woodard, Manager, Contract and Procurements Units at DHR, responded by letter dated February 2, 1998. Ms. Woodard provided you information in response to item #1 but did not release information in response to the other three items.

The Public Records Law applies to requests for "public records." Public records include any "writing" containing information relating to the conduct of the public's business. ORS 192.410(4). The Public Records Law does not impose upon public bodies the duty to *create* public records. OREGON ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETING MANUAL at 5 (1997). Nor are public bodies required to create a record to disclose the "reasoning" behind their actions, or other "knowledge" their staff might have. *Id.*

Items #2 and #4 of your letter to DHR do not seek information contained in existing public records, but ask DHR to compare the successful candidate's purchasing experience with persons currently employed by the Department of Administrative Services Division and to identify your weak points in contrast to the successful candidate. Such requests are beyond the scope of the Public Records Law; the Attorney General has no authority to order an agency to provide such information.[3/]

As to item #3, information on the successful candidate's background in the field of purchasing would be contained in the application (PD 100) submitted by that individual, which is a record maintained by DHR. Ms. Woodard informs us that DHR has agreed to provide you with a copy of the successful candidate's application.[4/] Because DHR has agreed to provide this record to you, we deny your petition with respect to this item as moot.

Finally, in your petition to this office you seek copies of the successful candidate's answers to the assessment section of the announcement. You did not make this request to DHR. Because you did not request and DHR has not denied your request for the successful candidate's answers to the assessment section, the Attorney General has no jurisdiction to

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[3/] Nevertheless, Ms. Woodard informs us that DHR is willing to discuss your specific weak points with you. You may contact Ms. Woodard (telephone 945-6735) to make arrangements for that.

[4/] Prior to disclosing this record to you, DHR may redact exempt information, such as the individual's home address and telephone number, ORS 192.502(3), or other personal information, ORS 192.502(2).

order the agency to disclose such records. Accordingly, we deny your petition as to such records as premature.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

JAA02A64
cc: Rhonda Crawford, Department of Corrections
Terri Sullens, Department of Revenue
Wendy Woodard, Department of Human Resources
Linda Roberts, Department of Human Resources