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

February 25, 1997

J. David Fine
P.O. Box 66
Ashland, Oregon 97520

Re: ***Petition for Public Records Disclosure Order: Office of Alcohol and Drug Abuse Programs***

Dear Mr. Fine:

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 February 18, 1997, asks the Attorney General to direct the Office of Alcohol and Drug Abuse Programs (OADAP) to produce "all disciplinary or other records" concerning the conduct of Judie Christensen of OADAP and "a representative sampling of site review reports" of providers with client populations between 250 and 500 completed by OADAP within the past 48 months. We respectfully deny your petition as premature.

The Attorney General may order a state agency to disclose records only when the agency has denied a request for the records. *See* ORS 192.450(1). Antonia Phipps, Interim Director of OADAP and Manager of Community and Prevention Services for OADAP, informs us that OADAP has not denied your request for records. Your petition asserts that the agency's failure to respond after several weeks is a constructive denial of your request. The Public Records Law allows a public body a "reasonable" time to respond to a records request, and what is "reasonable" will depend on many factors, including the staff available to respond to the request. OREGON ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (MANUAL) at 6 (1995).

Ms. Phipps informs us that the delay here is due to the additional press of business during the legislative session, the limited number of staff of this relatively small agency, and the competing demands on her time while she serves as interim director. Under these circumstances, we do not find that there has been a constructive denial of your records request. An agency is not deemed to have denied a request merely because the agency fails

to comply with a deadline imposed by the requestor. MANUAL at 15; *See Morse Bros., Inc. v. ODED*, 103 Or App 619, 798 P2d 719 (1990).

Absent a denial of a records request by a state agency, the Attorney General has no authority to order disclosure. Because OADAP has not denied your request for records, your petition to this office is premature. Accordingly, we respectfully deny your petition.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to
the Attorney General

ESH:jpl/56814053.W51

c: Antonia Phipps, OADAP