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

March 10, 1997

Paul B. Meadowbrook, P.C.
Attorney at Law
388 State Street, Suite 555
Salem, OR 97301

Re: *Petition for Public Records Disclosure: Fairview Training Center Records*

Dear Mr. Meadowbrook:

This letter is the Attorney General's order on your petition[1/] for disclosure of records under the Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on March 3, 1997, asks the Attorney General to direct Fairview Training Center (Fairview) to provide copies of:

1. Health Care Financing Administration (HCFA) standards, reports, directives, visitations, and correspondence to, from or related to the Fairview Training Center for the period 5/5/95 to 9/1/96, including without limitation Central Staffing documents regarding changes in staff/client staffing ratios in 30-day period before and after HCFA on-site visits, and state intra-agency communications regarding HCFA inspections.

2. Complaints of client abuse at Fairview Training Center between 5/1/95 to 9/1/96, including without limitation civil suits, complaints by FTC staff or client's relatives.

3. For the last five years all criminal charges filed against FTC or its staff and all disciplinary action related to client abuse or mistreatment.

For the reasons stated below, we respectfully deny your petition.

[1/] Your petition was filed on behalf of your client, Pat Young.

Jon Cooper, Superintendent of Fairview, informs us that Fairview has not denied your records request. Mr. Cooper and his staff are in the process of reviewing Fairview's records to determine the extent to which Fairview can make available the records you request. Mr. Cooper informs us that Fairview will respond to your request as soon as Fairview has made its determination.

It is reasonable for an agency to review its records in light of the exemptions from disclosure in the Public Records Law before responding to a public records request. Moreover, an agency is not deemed to have denied a request merely because the agency fails to comply with a deadline imposed by the requester. OREGON ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1995) at 15. Mr. Cooper informs us that your request for public records encompasses a large number of documents, many of which are likely to contain information exempt from disclosure under the Public Records Law. This exempt information must be removed prior to release of the documents.[2/] We find that the length of time since your request for the records is not unreasonable in light of the foregoing facts.

Absent Fairview's denial of your records request, the Attorney General has no jurisdiction to order disclosure. *See* ORS 192.450. Accordingly, we deny your petition as premature.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to
the Attorney General

DJE:AV/JGG0F7FA
c: Jon Cooper, Fairview Training Center

[2/] Mr. Cooper also informs us that if, as anticipated, your request requires Fairview to copy a large number of documents or separate exempt material from non-exempt material, Fairview will likely request prepayment of the estimated costs of making the records available to you. The Public Records Law permits public bodies to recover fees reasonably calculated to reimburse them for their actual costs in making public records available, including the time spent by staff in locating, reviewing and copying the records requested. *See* ORS 192.440(8). A public body may estimate its costs for responding to a records request and require prepayment of those estimated costs before acting upon a records request. OREGON ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1995) at 10.