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

April 17, 1997

Dr. Willis G. Blair
Bonnie Marino-Blair
3428 SE 45th Avenue
Portland, OR 97206-3110

Re: ***Petition for Public Records Disclosure Order: Appraiser Certification and Licensure Board Records***

Dear Dr. and Mrs. Blair:

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 April 10, 1997, asks the Attorney General to direct the Appraiser Certification and Licensure Board (ACLB) to make available the following records:

1) Budget versus actual for the ACLB for the 1992 through 1996 and 1997 year to date.

2) Substance of discussion and documents considered in ACLB Board decision regarding Willis G. Blair's motion for reconsideration in January 30, 1995 executive session.

For the reasons that follow, 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. If a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material. *Turner v. Reed*, 22 OR App 177, 186 n 8, 538 P2d 373 (1975).

1. Budget Documents

With respect to the "budget versus actual" information, your petition and the information attached to the petition indicates that you informed the ACLB you would come to the ACLB office on April 8, 1997, to inspect and copy that information, but that Linda Riddell, ACLB Administrator, denied you access to the financial information, stating that "they were in 'archives' and she did not have a chance to 'get them ready.'" It is not a denial of a request for public records merely because the records custodian does not provide access to nonexempt records within the timeframe set by the requester. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL at 7 (1995). Moreover, Ms. Riddell informs us that the ACLB will make available to you, to the extent they exist, documents containing the information you have requested.[1/] Absent a denial of a records request by a state agency, the Attorney General does not have jurisdiction to order the agency to disclose records. *See* ORS 192.450(1). Because the ACLB has agreed to provide these records to you, we deny your petition as to these records as moot.

2. ACLB Executive Session Records

We interpret your request for the "substance of discussion" of the ACLB's January 30, 1995, executive session regarding your request for reconsideration to be seeking minutes of that portion of the meeting. ORS 192.660(h) permits a board to have an executive session to consult with counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed. Assistant Attorney General J. Kevin Shuba was present and gave advice concerning litigation likely to occur, i.e., your petition for judicial review to the Oregon Court of Appeals. The substance of this advice is reflected in the minutes. If disclosure of executive session minutes is inconsistent with the purpose for which executive session was held under ORS 192.660, the material may be withheld from public disclosure. ORS 192.650(2). Therefore, these records are exempt from disclosure under the Public Records Law. ORS 192.502(8).

Additionally, the Public Meetings Law expressly excludes from its coverage the deliberations of state agencies conducting hearings on contested cases in accordance with the provisions of ORS 183.310 to 183.550. ORS 192.690(1). The ACLB's discussion of your request for reconsideration, presumably filed under ORS 183.482(3), constitutes such

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[1/] The agency may charge you a fee to reimburse the agency for its actual cost in making such records available, including its photocopy costs and the time spent by agency personnel in reviewing the records. *See* ORS 192.440(3); OAR 161-08-040(1).

deliberations. Because the Public Meetings Law did not apply, the ACLB was not required to keep minutes reflecting the substance of its discussion concerning your request for reconsideration.

Nevertheless, Ms. Riddell informs us that the ACLB will make available to you the portion of the minutes from its January 30, 1995, executive session that summarize the discussion relating to your request for reconsideration.

You also seek documents considered in the ACLB's executive session regarding your request for reconsideration. Ms. Riddell informs us that those records were made available to you when you were at the ACLB offices on April 8, 1997.

Because the minutes and records from the ACLB's January 30 meeting relating to your request for reconsideration have been or will be disclosed to you by the ACLB, we deny your petition as to these records as moot.

3. Overlooked Information

Your petition also asks the Attorney General to order the ACLB to disclose any "overlooked information." Ms. Riddell informs us that the ACLB has disclosed to you all existing records that meet the description in your request. You have not identified any specific records to which you believe you were denied access, and we have no basis for concluding that Ms. Riddell's statement is untrue. Accordingly, we find that you have not been denied access to any "overlooked" records and deny your petition.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel
to the Attorney General

JKS:AV:mo/JGG0FBE6
c: Linda Riddell, Administrator, ACLB