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April 24, 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 April 17, 1997, asks the Attorney General to direct the Office of Alcohol and Drug Abuse Programs (OADAP) to produce the records that were the subject of our February 25, 1997 order and the following records that are the subject of your February 18, 1997, request to OADAP:

1. Documents sufficient to show the chronology of all on-site visits of Judi Christensen, the dates on which draft site reports were completed and sent to the providers for comment, and the dates on which the final reports were issued, from January 1, 1995 to the present. Alternatively, you will accept an abstract which provides this information; and

2. All documents reflecting or relating to instances in which Judi Christensen brought dogs and/or babies with her during the course of site visits.

On April 23, you spoke by telephone with Assistant Attorney General Linda Grimms and confirmed that subsequent to your petition to this office you received a packet of materials sent to you by OADAP in response to your first request, which was the subject of our February 25 order. Because OADAP has provided you with the records that were the subject of our February 25 order, we deny your petition with respect to those records as moot.

Antonia Phipps, Manager of Community and Prevention Services for OADAP, informs us that OADAP has not denied your second request for records. Having just completed the response to your first record request, the agency is in the process of responding to your second request. Ms. Phipps informs us that, in particular, the first item of your request, which covers a period of more than two years, will require substantial agency time to locate and copy the requested records. Ms. Phipps states that she is estimating the potential cost to the agency of responding to your request and expects to send you that estimate of charges not later than April 29, 1997.[1/]

The Attorney General may order a state agency to disclose records only when the agency has denied a request for records. *See* ORS 192.450(1). Absent a denial of a records request by a state agency, the Attorney General has no authority to order disclosure. *See Morse Bros. v. ODED*, 103 Or App 619 (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."). Because OADAP has not denied your requests 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:LDG:AV/jpl:JAA02389

[1/] An agency may charge a fee to reimburse the agency for its actual cost in making records available, including its photocopy costs and the time spent by agency personnel in reviewing the records. *See* ORS 192.440(3).