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DEPARTMENT OF JUSTICE
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April 28, 1997

Peggy J. Wood
PO Box 1325
Newport, OR 97365

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

Dear Ms. Wood:

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 21, 1997, asks the Attorney General to direct the Appraiser Certification and Licensure Board (ACLB) to make available the following records:

1) Minutes and audio tapes of ACLB meetings (for unspecified years);

2) Files of individuals;

3) Copies of records relating to meetings where Linda Riddell was in attendance as a guest or speaker;

4) A copy of "Lonnie's Rules";

5) A List of appraiser assistants who were not properly registered January 1 to July 1, 1992 and copies of certain letters;

6) Any record which contain your name;

7) Any correspondence with any licensing bureaus of any other state concerning you;

8) Renewing your request to be on a mailing list;

9) Copies of statute and rules regarding obtaining public records from the ACLB.

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). *See* ORS 192.505.

1. Records Made Available on April 8, 1997

Linda Riddell, Administrator for the ACLB, informs us that on April 8, 1997, you were permitted to review and make copies of certain of the ACLB files listed in item #2 above, i.e., the files of Peggy Wood, David Wood and Steve Miller. As to those records, we deny your petition as moot.

2. Records Requested on April 8, 1997, but Not Reviewed

As to the remainder of the files requested in item #2 and items #1 and 5, your petition and the information attached to the petition indicates that you went to the ACLB office on April 8, 1997, to inspect and copy that information, but that Ms. Riddell "denied" you access to records. It is not a denial of a request for public records merely because the records custodial 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). According to Ms. Riddell, you were asked to make a written request for the records you wished to inspect so that Ms. Riddell could review those records and separate the exempt and nonexempt records as required by ORS 192.505. Ms. Riddell states that you left a handwritten request for these records with the ACLB on April 8, 1997, and did not return to review those records. In your petition, you stated an intention to return on April 24, 1997.

Ms. Riddell has informed you by letter dated April 24, 1997, that upon payment of the agency's costs, the ACLB will make available to you to the extent they exist and are not exempt documents containing the information you have requested.[1/] Absent a denial of a records

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(continued...)

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 not denied your request for these records, we deny your petition as to these records as premature.

3. Records Sought in Petition, but Not Requested of ACLB

With respect to the remaining records listed in your petition (items #3, 4 and 6-9), Ms. Riddell informs us that those records were never requested from the ACLB prior to the petition filed with the Attorney General. It is axiomatic that without a request for records, the agency could not have denied you access to the records. Accordingly, as to these records, we deny your petition as premature because the records request was not made to and denied by the ACLB.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel
to the Attorney General

JKS:AV:/JGG0FD04
c: Linda Riddell, Administrator, ACLB

[1/] (...continued)

[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).

bc: Kate Georges, AAG, Trial