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April 25, 1997

Carol J. Koppenstein
PO Box 69
Lebanon, OR 97355

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

Dear Ms. Koppenstein:

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 18, 1997, asks the Attorney General to direct the Appraiser Certification and Licensure Board (ACLB) to mail to you copies of 38 categories of ACLB records.[1/] 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). Under the Public Records Law, the Attorney General may order an agency to permit inspection or to produce copies of nonexempt records; the Attorney General does not have authority to order an agency to mail records to a requester. Accordingly, we will treat your petition as seeking an opportunity to inspect and obtain copies of the ACLB records listed in your petition.

[1/] A copy of your petition is attached. For purposes of this order, we refer to each of the 38 categories of documents you seek by the number used to identify those records in your petition. (We do not address an item #23 because your petition does not list an item #23.)

1. Records Identified in Petition But Not Denied by ACLB

Your petition indicates that you requested to inspect and copy your file and that Linda Riddell, ACLB Administrator, offered your copies of those records. According to Ms. Riddell, this included those records described in items 1, 2, 4, 5, 18, 20, 30 and 38 of your petition.[2/] An agency does not deny a request for public records merely because the agency 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). Ms. Riddell informs us that the ACLB will make available to you, to the extent they exist, documents containing the information you have requested.[3/] 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. Records Identified in Petition But Not Requested from ACLB

Ms. Riddell informs us that the ACLB has not received a request from you for items 3, 6-15, 17-19, 21, 22, 24-29 and 31-37.[4/] If any of the records identified in your petition have not been requested from the ACLB, it is axiomatic that the ACLB could not have denied you access to those public records. 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 these requests have not been made to the ACLB, we deny your petition as to these records as premature.

[2/] Item #38 requests a "List of Banks/clients removed by Riddle [sic] and Mitchell from my office in 1995 without my permission." Ms. Riddell informs us that no documents were removed from your office without your permission and that the ACLB has offered to make available to you any copies of documents that you provided to either Ms. Riddell or Don Mitchell during their 1995 visit to your office.

[3/] In its letter to you dated February 21, 1997, the ACLB offered to make copies of documents and estimated a cost $711.75 for doing so. 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).

[4/] Ms. Riddell states that it is possible that your earlier records requests may have been sufficiently broad in scope to encompass one or more of these items. Ms. Riddle also informs us that the ACLB did not deny those earlier requests, but provided you with an estimate of the agency's cost of producing the documents, and has not received payment of that estimate from you. Accordingly, to the extent a records request was made to the ACLB for any of these documents, we deny your petition as moot for the reasons stated above.

3. Other Information

Item #16 in your petition seeks "Identification of liaison person with the Appraisal Institute." Ms. Riddell informs us that the ACLB has no such liaison person. Accordingly, no records exist that meet this item of your petition. The Attorney General cannot order an agency to produce records that do not exist.

Your petition also asks the Attorney General to order the ACLB to disclose any "documents added to my file" in the future. A public body is required to make available for inspection and copying only those nonexempt records that exist at the time of the request. OREGON ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL at A-1 (1995). If you wish to receive records that may be added to your file in the future, you must make a new request after such records are in existence. Accordingly, as to any such records, we deny your petition as premature.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel
to the Attorney General

JKS:AV:JAA02392/

c: Linda Riddell, Administrator, ACLB