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December 12, 1997

Ken O'Dell
Toledo Citizens Police Review Board
250 N.W. 6th St.
Toledo, OR 97391

Re: *Petition for Public Records Disclosure Order: Oregon State Police Records*

Dear Mr. O'Dell:

This letter is the Attorney General's order on your petition for waiver of fees under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on December 5, 1997, asks the Attorney General to direct the Oregon State Police to waive fees for release of the following: "Make and model of the breath alcohol testing instrument in Lincoln County Or." For the reasons that follow, we respectfully deny your petition as moot.

The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exemptions and limitations. The Attorney General may order a state agency to waive or reduce fees for disclosure of records only when the agency has unreasonably denied a request for such waiver. ORS 192.450(5).

We review an agency's denial of a fee waiver on the basis of whether the agency's decision is reasonable. The requestor must provide to the agency sufficient information to show that a fee waiver is "in the public interest because making the record available primarily benefits the general public." ORS 192.440(4). The relevant factors used in determining the public interest include: the identity of the requestor, the purpose for which the requestor intends to use the information, the nature of the information, whether the information (if technical) would be understandable by the general public, whether the information is already in the public domain, and whether the requestor can demonstrate an

ability to disseminate the information to the public. Ability to pay is also a factor that may be considered, but is not alone a sufficient factor to support a fee waiver. Because the agency must expend public funds in order to respond to any public records request, in making a fee waiver determination the agency may also consider other factors (such as the financial hardship on the public body, the extent of the time, expense and interference with the business of the agency in fulfilling the request and the volume of records requested) and may reasonably deny a fee waiver request even if the agency determines there is a public interest in making the records available. *See* ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 14 (1995).

On December 8, 1997, Mr. Jeffrey T. Rost of the Oregon State Police Implied Consent Unit provided to you by letter the make and model of the breath alcohol testing instrument in Lincoln County, Oregon. The Oregon State Police did not charge a fee to provide you this information.

Because the information that you sought has been provided to you by the Oregon State Police without cost, we respectfully deny your petition to this office for a fee waiver as moot.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

JAA02831
c: Jeffrey T. Rost, OSP Implied Consent Unit