THEODORE R. KULONGOSKI
ATTORNEY GENERAL

THOMAS A. BALMER
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400
TDD: (503) 378-5938

May 14, 1996

George C. Fraser, II
Spexath Land Company
5550 Highway 101 North
Seaside, OR 97318

Re: ***Petition for Public Records Disclosure Order: Oregon Department of Administrative Services Records***

Dear Mr. Fraser:

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 May 7, 1996, asks the Attorney General to direct the Department of Administrative Services (DAS) to make available copies of the following records related to a February 27, 1996 Leasing Prospectus (Lease Prospectus):

1. Exhibit C-1 "Offer Summary Sheet", Project: Astoria-DHR and Employment Department, submitted by Morrison Building Corporation April 1, 1996. Page 9.

2. Exhibit C-2 "Proposed Rent Schedule", Astoria-DHR and Employment Department, submitted April 1, 1996 by Morrison Building Corporation. Page 10.

3. Phase II "Lease Offer Evaluation Sheet," Project: Astoria State Common Office Building Lease. Submitted April 1, 1996 by Morrison Building Corporation. Page 12.

For the reasons that follow, we respectfully deny your petition.

The Attorney General may order a state agency to disclose records only if the agency has first denied a request for public records inspection. ORS 192.450(1). A public body does not deny a request merely because it fails to comply with a deadline the requestor seeks

to impose. Public Records Order, October 6, 1992 (Neal). Although an unreasonable delay in responding to a records inspection request may in some circumstances constitute a denial, here there has been no denial.

The requested records are part of an offer to the Lease Prospectus. The Lease Prospectus provides that "[e]xcept as otherwise required by the Oregon Public Records Statute * * * contents of offers shall be held confidential until the selection process is completed and a lease has finally been negotiated and executed." The lease has not yet been executed or fully negotiated.

Paul Ghim, Property Management Coordinator for DAS, has requested advice from this office on the effect of this provision in order to determine what portions of the requested records should be disclosed. He advised you of that fact in his letter to you dated May 1, 1996. Assistant Attorney General Terry Meehan has been assigned to provide this advice. Mr. Meehan anticipates that he will complete his review of the file and your request within the next ten days. He will be advising Mr. Ghim of DAS's public records disclosure obligations when that review is completed.

This office advises public bodies to consult with legal counsel about disclosure of documents that appear to be exempt from the disclosure requirements of the Public Records Law. OREGON ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 15 (1995). When a public body delays acting on a public records request until it receives that advice, "it does not thereby actually or constructively deny the request." *Id.* Because DAS has not yet denied the records inspection request, the Attorney General has no authority to order disclosure. *See* ORS 192.450(1); *see also Morse Bros. v. ODED,* 103 Or App 619 (1990). Accordingly, your petition is denied as premature.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

ESH:TJM:AV:cfs:jpl/JAA01E07