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

September 24, 1996

B. Harrison Conley
P.O. Box 288
Salem, OR 97308-0288

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

Dear Mr. Conley:

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 September 18, 1996, asks the Attorney General to direct the Oregon Department of Administrative Services (DAS) to produce copies of the following:

1. The names and addresses of all classified State employees working in the Human Resources Building in Salem who are "exempt" under the Fair Labor Standards Act (FLSA). Please provide names and addresses in a format ready for mailing, e.g., on a 3 1/2 inch double density floppy disc in a file format that can be imported into a database application (Microsoft Access or Microsoft Works preferred) or on mailing labels.

2. The total number of classified FLSA exempt State employees (by department or division, whichever is most cost efficient to collect and report) who missed any amount of work on or after February 7, 1996 due to the flood and/or flood-related building closures.

3. The total number of employees in item 2 (by department or division, whichever is reported in item 2) whose wages were reduced and/or who were required to report time not worked due to the flood and/or flood-related building closures as other than regular time or miscellaneous paid leave.

4. Copies of any writing from DAS to other State agencies containing instructions for time reporting related to the flood or flood-related building closures including, but not limited to, occupants of the Agriculture Building, the

Archives Building, the Forestry Building, the Human Resources Building and the Labor and Industries Building and the Lands Building.

5. Copies of any writing produced by State agencies reporting or summarizing the manner in which time reporting related to the flood or flood-related building closures was handled including, but not limited to, reports or summaries from occupants of the Agriculture Building, the Archives Building, the Forestry Building, the Human Resources Building and the Labor and Industries Building and the Lands Building.

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

The Attorney General may order a state agency to disclose records only if the agency first has denied a request for public records. ORS 192.450(1). Dan Kennedy, Administrator of the DAS Human Resources Services Division informs us that DAS has not denied your request, and that in conversation with you on September 24, Mr. Kennedy affirmed the department's intention to provide the requested records for inspection. We are informed by Mr. Kennedy that the delay is due, in part, to the need to manually identify and segregate the records requested from similar records that are not sought. Mr. Kennedy expects to have this process completed by October 16, 1996.

An agency has a reasonable time to respond to a records request and has not constructively denied the request merely because the agency does not provide access to the records within the time frame set by the requestor. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1995) at 6-7. Because the Oregon Department of Administrative Services has not denied your request, the Attorney General has no authority to order disclosure. Accordingly, your petition is denied as premature.

Sincerely,

THOMAS A. BALMER
Deputy Attorney General

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c: Dan Kennedy, Administrator
Human Resources Services Division
Department of Administrative Services
155 Cottage Street NE
Salem, OR 97310