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ATTORNEY GENERAL

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DEPARTMENT OF JUSTICE
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October 1, 1996

Maurice Baker
Pacific Energy Service Company, Inc.
1821 NE 2nd Avenue
Portland, Or 97212

Re: ***Petition for Public Records Order: Oregon Department of Education***

Dear Mr. Baker:

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 is dated September 23, 1996 and was received on by us on September 25, 1996, asks the Attorney General to direct the Oregon Department of Education to produce copies of a signed Memorandum of Understanding concerning formation of N.W. Collaboration for Energy, Education and the Environment (NWCEEE) and minutes of the NWCEEE.

Your petition states you requested these documents from the Department of Education on September 23, 1996, the same day you also sent us the petition for disclosure of records. Your petition also states that your request for these records was denied by Deputy Superintendent Greg McMurdo and/or Superintendent Norma Paulus. Mr. McMurdo informs us that he had not received the request contained in your letter dated September 23, 1996, until we provided him a copy, and Mr. McMurdo reports that he has not denied your request as you stated in your petition. Superintendent Paulus is currently out of the state and apparently has not received or denied your request.

The Attorney General may order a state agency to disclose records only if the agency has first received a request for the records and has denied the request. ORS 192.450(1). In our view, it is inappropriate under the Public Records Law to file a petition for the Attorney General to compel disclosure of records simultaneously with a request to the agency for those same records. As we stated in our earlier public records order to you dated September 3, 1996, an agency has a reasonable time to reply to a records request and has not constructively denied the request merely because the agency does not provide access to the records within the timeframe set by the requestor. That statement clearly applies when the requestor files a public records petition before allowing the agency any opportunity to respond.

Mr. McMurdo informs us that the Department of Education has a copy of the Memorandum of Understanding that you describe in your petition, and the department will disclose a copy of those records to you. Please note that the Public Records Law permits an agency to establish fees reasonably calculated to reimburse it for its actual costs in making the records available. *See* ORS 192.440(3).

Mr. McMurdo also informs us that the department does not have any records containing minutes of meetings of the NWCEEE.

Because the Department of Education has stated its intent to provide you with the records of a Memorandum of Understanding and because the department has no records containing minutes of the NWCEEE, we have no jurisdiction to compel disclosure. *See* ORS 192.450. Therefore, we respectfully deny your petition.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

JGM:AV/jpl:JAA0207E
c: C. Gregory McMurdo
Deputy Superintendent for Public Instruction