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

October 21, 1996

VIA Facsimile to (503) 287-5130

Maurice Baker
1821 N.E. 2d Ave.
Portland, OR 97212-3933

Re: ***Petition for Public Records Disclosure Order: Office of Energy Records***

Dear Mr. Baker:

This letter is the Attorney General's order on your petition for disclosure of records under the Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on October 15, 1996, asks the Attorney General to direct the Office of Energy (Energy) to make available the following documents:

1. All minutes of the OCEEE [Oregon Collaboration for Energy, Education and Environment] meetings held from 1/94 to date, plus signed copies of the Memorandum of Understanding establishing the OCEEE; and

2. All billing data, or computer printouts supporting the DOE [Office of Energy] claim to $1.3 million in energy cost savings as noted in the attached copy of a press release dated 8/3/95.

For the reasons stated below, we respectfully deny your petition.

1. **OCEEE records**

Bill Nesmith, Administrator of Energy's Conservation Resources Section, informs us that there is no Memorandum of Understanding regarding the OCEEE. However, by letter of August 12, 1996, John Savage, Administrator of the Office of Energy, did provide you with a copy of the Memorandum of Understanding for the Northwest Collaboration for Energy, Education and Environment, the predecessor of OCEEE. (We have enclosed another copy of that MOU for your convenience). Thus, this part of your petition refers to a

document that does not exist. The Attorney General cannot order an agency to disclose records that do not exist.

Further, Mr. Nesmith informs us that you had not previously requested Energy to provide you with any minutes the agency may have of OCEEE meetings. In light of your petition to this office, Energy is now in the process of determining whether it has any such minutes. Accordingly, your petition as to these records is premature. Energy may not have the minutes you request; even if it does, Energy has not denied you access to such records. Absent a request to, and a denial by, a state agency for records, the Attorney General does not have jurisdiction to order the agency to disclose records. *See* ORS 192.450(1).

2. **Energy cost savings data**

First, please note that the press release to which your petition refers was issued by the Oregon Department of Education, not Energy. Accordingly, Energy may or may not have information that you seek.

Administrator Savage informed you by letter of July 30, 1996, that Energy may not have this information, but nevertheless offered to provide the staff resources to respond to your requests if you would submit in advance a check for $52.09 to reimburse the agency for the necessary staff time. An agency is entitled to estimate the actual cost of locating requested records and require prepayment before acting on the request. OREGON ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1995) at 10-11. The agency may charge a requester for these costs even if the agency fails to locate any records responsive to the request. *Id.* at 10. Mr. Nesmith informs us that you have not paid the agency's estimate of the costs to locate the records.

Because you have not prepaid its costs as requested, Energy had no obligation to attempt to locate the records, and cannot be considered to have denied your request. Accordingly, this office respectfully denies your petition as to these records.

Sincerely,

THOMAS A. BALMER
Deputy Attorney General

TAB:jpl/45939167.W51
Enclosure