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 30, 1996

Maurice Baker
Pacific Energy Service Company, Inc.
1821 NE 2nd Avenue
Portland, OR 97212-3933

Re: Petition for Public Records Order: Oregon Department of Education
DOJ File No. 581-090-GE0008-96

Dear Mr. Baker:

This letter is the Attorney General's order on your petition for disclosure of public records under the Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on October 23, 1996, asks the Attorney General to direct the Oregon Department of Education (ODE) to make available the following records:

1. Signed Memorandum of Understanding establishing basis of Oregon Collaborative for Energy Education and the Environment (OCEEE) and copies of Minutes of all meetings to date.

2. Location of all data substantiating 8/3/95 press release claiming school savings of $1.3 million.

The Oregon Public Records Law imposes a duty on the Attorney General to review petitions of persons who allege they have been denied access to any public record of a state agency. ORS 192.450. However, the Attorney General's jurisdiction in this area is limited by ORS 192.480, which provides in relevant part:

> In any case in which a person is denied the right to inspect or to receive a copy of a public record in the custody of an elected official, or in the custody of any other person but as to which an elected official claims the right to withhold disclosure, no petition to require disclosure may be filed with the Attorney General or district attorney, or if a petition is filed it shall not be

> considered by the Attorney General or district attorney after a claim of right to withhold disclosure by an elected official. In such case a person denied the right to receive or inspect a copy of a public record may institute proceedings for injunctive or declaratory relief in the appropriate circuit court, as specified in ORS 192.450 or 192.460 * * *.

(Emphasis added.)

Deputy State Superintendent C. Gregory McMurdo has informed us that Superintendent Paulus chooses to invoke her right as an elected official under ORS 192.480 to withhold disclosure of the records described in your petition. A copy of Mr. McMurdo's letter is enclosed. Accordingly, the Attorney General has no jurisdiction to consider your petition or to order the department to disclose the records. We therefore deny your petition.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

Enclosure
ESH:jpl/JAA020FA
c: Norma Paulus, Superintendent
C. Gregory McMurdo, Deputy Superintendent