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January 19, 1995

Paul B. Stevens
Vice President
Water, Food, & Research Lab, Inc.
P.O. Box 230099
Portland, OR 97281

Re: ***Petition for Public Records Disclosure Order: Department of Environmental Quality Records***

Dear Mr. Stevens:

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 January 6, 1995,[1/] asks the Attorney General to direct the Department of Environmental Quality (DEQ) to make available the name of the individual who informed DEQ of possible violations at your business, leading to a DEQ inspection on December 21, 1994. For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. Non-mandatory disclosures of information by citizens, however, are generally exempt. Specifically, the Public Records Law exempts:

> "Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public would suffer by the disclosure[.]"

ORS 192.502(3).

[1/] By telephone conversation on January 13, 1995 with Kurt Burkholder of our office, John Scholz, president of your firm, consented to an extension of the time within which the law would have otherwise obligated us to respond.

"The purpose of this exemption is to encourage citizens to provide relevant information voluntarily to governmental agencies, with some reasonable assurance that the information will be kept confidential. It is designed to protect the confidentiality of information which may lead to a further investigation." ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 41 (1993). Informants' names--particularly where, as here, the informants might be employees--should reasonably be considered confidential. Disclosure of these names would impair the public interest because disclosure would discourage citizens from providing valuable information to governmental agencies. *See, e.g.*, Public Records Order, July 14, 1989, Rhoten.

To exempt citizen information from disclosure under ORS 192.502(3), the agency must be able to show there was an understanding, at the time the citizen provided the information, that it would be held in confidence. ***Sadler v. Oregon State Bar***, 275 Or 279, 550 P2d 1218 (1976). This test is satisfied regarding the information you request. According to DEQ's records, the DEQ employee who received the information, Abby Goldenberg, represented that DEQ would provide confidentiality in response to the informant's request for confidentiality.

The informant in this case had no legal duty to provide the information to DEQ, and both DEQ and the informant understood the disclosure to be confidential. DEQ obliged itself in good faith not to disclose the information. The informant's name is information that reasonably should be considered confidential. Disclosure of the informant's name would harm the public interest by discouraging future similar disclosures.

For these reasons, we deny your petition to compel disclosure.

Sincerely,

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

ESH:RKC:AV:rkc/kbb/JAA0164E

c: Abby Goldenberg, DEQ
Rebecca Paul, DEQ