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December 11, 1995

J. Kristen Pecknold
Reeves, Kahn & Eder
P.O. Box 86100
Portland, Oregon 97286

Re: *Petition for Public Records Disclosure and Review of Denial of Fee Waiver: Oregon Department of Fish and Wildlife*

Dear Ms. Pecknold:

This letter is the Attorney General's order on your petition[1/] for disclosure of records and for review of the denial by the Oregon Department of Fish and Wildlife (ODFW) of your request for a full fee waiver under the Oregon Public Records Law, ORS 192.410 to 192.505. By letter dated October 27, 1995, we understand that ODFW agreed to make available all records and documents containing information regarding cougar complaints, as well as any records and documents pertaining to cougar population studies. ODFW also agreed to waive part, but not all, of its fee for searching its files and gathering the information you requested. For the reasons that follow, we respectfully deny your petition to order the agency to release the requested records on the ground that the agency has agreed to release the records and, therefore, the Attorney General lacks authority to compel disclosure. *See* ORS 192.450(1). We further find that the agency's denial of a complete fee waiver was not unreasonable and, therefore, respectfully deny your petition for a full fee waiver.

1. Disclosure of Public Records

Your petition requests the Attorney General to order ODFW to provide you copies of three categories of records: 1) the standard form, if one exists, containing

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[1/] Your petition was filed on behalf of your client, the Predator Defense Institute.

questions ODFW routinely asks when a person contacts ODFW regarding cougar encounters or sightings; 2) any documents pertaining to cougar population studies conducted by ODFW during the last ten years; and 3) all records or documents containing information regarding complaints or reports of cougar sightings or other encounters, "including documents showing the names and addresses of all individuals making or involved with these complaints and reports from January 1, 1994 to the present."

We understand from Jim Greer, Assistant Director of the ODFW Wildlife Division, that ODFW is willing to release all of the information you requested. As Mr. Greer explained in his letter to you dated October 27, 1995, however, fulfilling your request will take considerable time and effort by ODFW staff because the documents are kept in 21 different district offices. Contrary to the suggestion in the newspaper articles you included in your petition, Mr. Greer informs us that the department does not yet have a uniform method for collecting reports related to cougar sightings, nor does the department collect all of the documents related to those sightings in one location or office. Rather, each district office keeps track of cougar sightings and encounters for that district alone. In addition, each district is responsible for maintaining all of the relevant documents related to those sightings and encounters. Some district offices keep cougar information separate from other wildlife reports, others do not.

You have requested all of the documents related to cougar sightings throughout the state, i.e., from all 21 district offices. This will require each district biologist to pull together all of the documents related to cougar sightings and forward it to the Portland office. Those districts that routinely separate cougar information from other wildlife reports will be able to provide the information quite readily. The districts that do not currently separate cougar information, however, must search their files to pull out all of the relevant documents. For those district offices that must separate the information, the amount of time necessary to pull together the information specific to cougars may be quite lengthy.

We understand from Mr. Greer that the department was waiting to hear from you concerning the partial fee waiver before it began the lengthy process of collecting the documents you requested. According to Mr. Greer, you have not contacted the department, therefore it has not yet begun to search the 21 district office files for the relevant documents. Because the department has indicated its willingness to release

the information as soon as it hears from you and gathers the information from its 21 offices, you have not been denied access to the records. Thus, the Attorney General lacks authority to order disclosure. *See* ORS 192.450(1).

2. Fee Waiver

ORS 192.440(4) allows agencies to furnish copies of public records:

> without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public.

It is important to note that Oregon law does not mandate a fee waiver or reduction; instead it makes the decision to waive or reduce fees discretionary with the public agency. The legislative history demonstrates an intent to place a great deal of discretion in the custodian of the records. *See* Attorney General's Public Records Order, May 19, 1993, to Bruce E. Smith. Accordingly, we review an agency's denial of a fee waiver not on how we might have responded, but rather on the basis of whether we believe the agency's decision is reasonable.

ODFW's denial of a complete fee waiver is based upon its balancing of competing public interests: the public interest in the department completing its regular duties and functions versus the public interest articulated by your client. The department determined that it would have to divert at least 50 hours of staff time to fulfill your request. This estimate was based on the fact that the documents are not kept in one location, but in the department's 21 district offices. Since the department does not have a uniform, statewide method or procedure for collecting the information you requested, it must ask each of its 21 district biologists to identify and retrieve the relevant documents from their files. We also understand that the number of documents that meet your request may be quite extensive. Each of these factors support the department's discretion in denying a complete fee waiver. *See* ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1995) at 14.

Given the extent of time and expense to ODFW in searching files in 21 district offices and the potential volume of the records requested, we conclude that the

agency's decision not to charge for copying the requested records and to reduce the fees for searching the records by 25 percent was not "unreasonable."

For these reasons, we respectfully deny your petition to compel disclosure and deny your petition for a complete fee waiver.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

ESH:JA:AV:JGG0CD6A
c: Jim Greer, ODFW