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December 3, 2004

Naseem Rakha
16415 Herigstad Road
Silverton, OR 97381

Re: Petition for Public Records Disclosure Order
Records of Representative Tootie Smith

Dear Mr. Rakha:

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 November 29, 2004, via electronic mail, asks the Attorney General to order Representative Tootie Smith provide to you "documents [she] relied upon in support of a statement in a letter she mailed to voters in House District 18 * * * stating '[Jim] Gilbert Has Been Delinquent Paying Property Taxes and Child Support.'" 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. Any person denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to determine whether the record may be withheld. ORS 192.450(1).

Representative Smith is an elected official. Under the Public Records Law, when a petition to inspect or copy public records concerns records that are 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, the Attorney General may not consider the petition. ORS 192.480. The person requesting the record must institute proceedings in the appropriate circuit court to seek review of an elected official's denial of a right to receive a copy of a public record.[1] *Id.* There is

[1] During the period that the Oregon Legislative Assembly is in session, state legislators are not subject to civil process by virtue of section 9, Article IV of the Oregon Constitution. *See also* ORS 192.410(5). Additionally, the Public Records Law applies only to "public records," which are those records "containing information relating to the conduct of the public's business * * * prepared, owned, used or retained by a public body." ORS 192.410(4). Although the definition of a "public body" includes a "state officer," ORS 192.410(3), because this office has no jurisdiction over your petition, we have not

no alternative process provided when the action to be reviewed is, as you state, "the custodian's failure to provide the documents in a reasonable time." Accordingly, we deny your petition.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS14734
c: Representative Tootie Smith

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sought to determine whether the record you seek is a "public record" subject to disclosure under the Public Records Law.