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November 29, 2004

Keta Tom
2650 NE Asbahr
Corvallis, OR 97330

Re: Petition for Public Records Order: Department of Education Records

Dear Ms. Tom:

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.[1] Your petition, which we received on November 22, 2004, requests the Attorney General's assistance in obtaining records pertaining to results of the official 2004 Oregon Statewide Assessment Tests from the Oregon Department of Education. You requested the results "with scale scores, SES (socio-economic scale) rank, and number and percent, by grade, students tested on 3.5" disk in Excel," along with "[a] print out of the 2003 test scale scores, by grade, with SES rank, number of students tested, and percent students tested." You state that you mailed your request to the Department of Education "October 22, 2004 and have not received a response." Your petition also requests that "any fees be waived for the information because it is in the public interest;" however, it does not appear that you requested a fee waiver in your October 22 letter to the Department of Education.

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. If a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material. *Turner v. Reed*, 22 Or App 177, 186 n 8, 538 P2d 373 (1975). But the Attorney General may order a state agency to disclose records only when the agency has denied a request for the records. *See* ORS 192.450(1).

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[1] It is not clear form your letter whether you intended it to be a petition for a public record order or simply an informal request for the Attorney General's assistance. We have elected to treat it as a petition under the Public Records Law.

We have conferred with Randy Harnisch, the Executive Director to the State Board of Education, and with Steve Slater, the agency's Assessment Coordinator. They have informed us that the agency will provide you with the records you requested by depositing them in the mail to you on or before Wednesday, December 8, 2004, and will waive costs for providing the records on this occasion.

Because the agency has agreed to provide access to the records, we respectfully deny your petition as moot.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

c: Randy Harnisch, Exec. Director to the Board of Education
Steve Slater, Assessment Coordinator