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September 29, 2004

William D. Stark
Attorney at Law
876 Welcome Way SE, Ste 200
Salem, OR 97302

Re: Petition for Public Records Disclosure Order:
Economic and Community Development Department Records

Dear Mr. Stark:

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 September 22, 2004, asks the Attorney General to order the Economic and Community Development Department (ECDD) to make available all of your client Steven Santos' "personnel records, as defined by ORS 652.750" and to provide copies of all documents "required by ORS 652.750."

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 state agency denies a request for disclosure of records, the requestor may petition the Attorney General for review of the denial. ORS 192.450. ORS 652.750 generally requires an employer to furnish a terminated employee with copies of his or her "personnel records," but, contrary to your petition, it does not define the term.

Your petition states that you initially requested the records on March 17, 2004. It does not state whether you have received any records from ECDD. We spoke with Sally Beilstein, ECDD Human Resources Manager, and Assistant Attorney General Tessa Sugahara about your petition. They both told us that, on behalf of ECDD, AAG Sugahara disclosed records to you in response to your request under cover of letters dated April 26 and April 27, 2004. The April 27th letter refers to records disclosed on April 26th as Mr. Santos' "personnel file" and the records disclosed on April 27th as the "supervisory file" maintained by ECDD in relation to your client. According to AAG Sugahara and Ms. Beilstein, all records maintained by ECDD that qualify as "personnel records" for purposes of ORS 652.750 were disclosed to you on April 26th and 27th.

We note that AAG Sugahara's April 27th letter states that ECDD was not disclosing some records maintained in its "supervisory file." According to the letter, ECDD withheld records because they either constituted attorney-client privileged communication or did not constitute "personnel records" for purposes of ORS 652.750.[1]

We understand your letter to ask the Attorney General to order ECDD to provide you with all records subject to disclosure under ORS 652.750. The Attorney General is charged with determining whether the Public Records Law provides an exemption for records which *that* law would otherwise require to be disclosed. ORS 192.450(1). The Public Records Law does not authorize the Attorney General to enforce an agency's obligations under ORS 652.750 or determine what meaning the legislature intended for "personnel records" for purposes of that statute. Therefore, we deny your petition insofar as it objects to ECDD withholding records that it has determined do not constitute "personnel records" within the meaning of, and subject to disclosure under, ORS 652.750.

AAG Sugahara's April 27th letter does not specify whether ECDD considers records withheld as attorney-client privileged communication to be "personnel records" under ORS 652.750. Notwithstanding the further identification of such records, attorney-client privileged communications are exempt from disclosure under the Public Records Law, ORS 192.502(9). Because the Public Records Law provides ECDD with an unconditional basis upon which to withhold records of that nature from inspection, we also deny your petition as it relates to those records.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

PDS:AGS14521
c: Sally Beilstein, ECDD

[1] AAG Sugahara told us that the two records addressed in the final section of her April 27th letter, under the heading "5. Redacted information," were disclosed to you on September 17, 2004, by the Employment Relations Board ALJ in connection with pending litigation case # MA-34-03. Therefore, we do not address them in the body of this order.