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September 19, 2011

Ms. Mary Geddry  
340 North Collier Street  
Coquille, Oregon 97423

Re: Public Records Request involving the Port of Coos Bay

Dear Ms. Geddry,

On September 12, 2011, you petitioned my office for an order requiring the Oregon International Port of Coos Bay ("the Port") to disclose certain records to you. This petition followed a sequence of back-and-forth between you and the Port regarding your requests. In response to your most recent request in that sequence, the Port directed you to a handful of documents posted on the website, and asserted that remaining documents responsive to your request were exempt from public disclosure on the basis of the lawyer-client privilege, ORS 40.225, which is incorporated into the Oregon Public Records Law by ORS 192.502(9)(a). Your present petition seeks an order compelling the Port to disclose those records.

First of all, I must address the issue of whether I have jurisdiction to rule on this matter. If the Port of Coos Bay is a State Agency, then the Attorney General is the person needing to address this issue. If the Port of Coos Bay is an entity defined as local government, then the responsibility to rule on your request lies with my office.

I have concerns that I do not have the authority to rule on this matter. The Port Commission is not elected by the local citizens of Coos County. The Commission must be appointed by the governor and approved by the Oregon Senate. The individual members of the Commission are not subject to the recall provisions of Oregon Law and can only be removed by the governor or the legislature. In my view, that would make the Port a state agency thus making the Attorney General the one having jurisdiction over your request.

The Attorney General disagrees with my analysis and opines that the responsibility to rule on your request is with my office.

I have done some research on this matter. While I am not totally convinced that my position is wrong, there is authority indicating that the Port of Coos Bay is a local

government entity and thus for purposes of the public records law, within the jurisdiction of my office.

The Public Records Law as defined in ORS Chapter 192 does not define what a local government entity is nor does it define what a state agency is for purposes of this particular statute. When the specific law does not contain the necessary definition, one must then look to other statutes for appropriate definitions. ORS Chapter 174 provides guidelines and definitions to be used in the interpretation of the laws of the State of Oregon. ORS 174.116(1)(a) states that as used in the statutes of this state "local government" means all cities, counties and local service districts located in this state, and all administrative subdivisions of those cities, counties and local service districts. A local service district is defined in ORS 174.116(2)(gg) as any port organized under ORS 777.005 to 777.725 and 777.915 to 777.953. ORS 777.915 is the statute creating the Port of Coos Bay. Thus by definition the Port is a local service district and thus a local government entity.

If these two statutes are the correct definition of what a local government entity consists of for purposes of the Public Records Law, then I would have jurisdiction to rule on this matter.

Following receipt of your petition, Assistant Attorney General Michael C. Kron asked the Port to provide the records in question pursuant to ORS 192.470. The Port promptly complied with that request, providing 14 pages of materials, along with a cover letter which Mr. Kron subsequently forwarded to me. The materials in question were addressed from attorneys at Troutman Sanders, LLP to the Port in 2009.

I conclude that the materials constitute "confidential communications made for the purpose of facilitating the rendition of professional legal services to" the Port and consequently are protected by ORS 40.225(2). There is no reason to think that these materials were compiled in the course of investigating an allegation of wrongdoing by the Port. As a result, ORS 192.502(9)(b), which requires the disclosure of factual information from privileged communications in some circumstances, does not apply to these records. As a result, your petition is respectfully denied.

As to the jurisdictional issue, I am informed that the Attorney General agrees with my analysis that the documents are not subject to disclosure under the public records law. Consequently, if the Attorney General is the proper person to rule on this matter, the end result would be the same.

You are free to appeal this decision to the Circuit Court of Coos County (along with the jurisdictional issue that is of concern to me). There are strict timelines for which such an appeal must be filed. Please consult the public records law for that information.

Sincerely,



R. Paul Frasier