HARDY MYERS
ATTORNEY GENERAL

PETER D. SHEPHERD
DEPUTY ATTORNEY GENERAL



DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97301-4096
Telephone: (503) 378-4400
TTY: (503) 378-5938

April 22, 2004

William Joseph Birhanzl
c/o Douglas Bray, Trial Court Administrator
Multnomah County Courthouse
1021 SW Fourth Avenue
Portland, OR 97204

Re: *Petition for Public Records Disclosure Order:*
Multnomah County Trial Court Administrator Records

Dear Mr. Birhanzl:

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 April 15, 2004, asks the Attorney General to direct Douglas Bray, the Trial Court Administrator for Multnomah County to "provide access and furnish proper and reasonable facilities" for you to inspect:

1) The record of hearing, further proceedings scheduled 3/15/01, 10:00 a.m. TCP
2) The record of hearing, further proceedings scheduled 3/20/01, 9:00 a.m. TPC and
3) The record of hearing, further proceedings, scheduled 3/27/01, 9:00 a.m. before Judge Janice R. Wilson in State v. Birhanzl, Case #0101-41060, or at their discretion give me a certified copy thereof.

For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public record 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 review the record and determine if it may be withheld. ORS 192.450.

You requested the identified records from Mr. Bray in December 2003, and, in response, he provided you with the name and contact information for the court reporter who recorded the relevant hearings and suggested that you ask her about receiving a transcript of the hearings. We

spoke with Mr. Bray about your petition. He told us that his office maintains a record of the relevant hearings in the form of a stenographic tape, but that it has never ordered a transcription of the tape by the court reporter. Mr. Bray is willing to provide you with a copy of this tape.

Under ORS 192.440(2), a custodian of a requested record maintained in a machine readable or electronic form is required to "provide copies of the public record in the form requested, if available. If the public record is not available in the form requested, it shall be made available in the form in which it is maintained." According to Mr. Bray, the stenographic tape is unreadable in its current form, even with the use of a machine, to anyone other than the court reporter who created it, and who is trained in stenography. Consistent with the requirements of the Public Records Law, Mr. Bray has agreed to provide you with a copy of the stenographic tape.

The process by which a party to a court proceeding may request the creation of a transcript is governed by ORS 8.350.[1] Implementation of that statute is not subject to the Attorney General's review authority under the Public Records Law. ORS 192.450.

Because Mr. Bray has agreed to provide you with a copy of the existing record, *i.e.*, the stenographic tape, we deny your petition. Mr. Bray has asked that you contact him if you wish to receive a copy of the tape.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

PDS: AGS13869

c: Douglas Bray, Multnomah County Trial Court Administrator
Bradd Swank, Office of the State Court Administrator

---

[1] ORS 8.350 states:

> When a report of the proceedings, or any part thereof, has been made in any case as provided in ORS 8.340, if the court or either party to the suit or action or the party's attorney requests a transcript of the notes or audio records into longhand, the official reporter shall cause full and accurate typewritten transcripts to be made of the testimony or other proceedings, which shall when certified to as provided in ORS 8.360, be filed with the clerk of the court where such cause was tried or heard, for the use of the court or parties.

See also, ORS 21.479 (The fees of the official reporter of the circuit court for preparing transcripts on appeal as provided in ORS 8.350 shall be not more than $2.50 per page for the original copy* * *. Except as otherwise provided by law, the fees for preparing a transcript requested by a party shall be paid forthwith by the party * * *."