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March 5, 2003

Brian J. Posewitz
Tonkin Torp LLP
1600 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204

Re: Public Records Disclosure Order:
Clatsop County Trial Court Records

Dear Mr. Posewitz:

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 February 28, 2003, asks the Attorney General to order the Clatsop County Interim Trial Court Administrator, Sandra Officer, to make available the following records:

1. The tape recording and/or transcription of the hearing of February 7, 2003 before Judge Kurshner in In the Matter of Jacob Charles Savage, aka Jacob Charles Van Dusen, Case No. 03-J-14959.

2. The tape recording and/or transcription of the hearing of February 7, 2003 before Judge Kurshner in In the Matter of Andres Louis Lopez, Case No. 03-J-4960.

3. The tape recording and/or transcription of the February 20, 2003 hearing before Judge Brownhill in In the Matter of Jacob Charles Savage, aka Jacob Charles Van Dusen, Case No 03-J-14959.

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. Under ORS 192.450 the Attorney General may order a state agency to disclose public records when that agency has denied any person the right to inspect or receive a copy of the records.

Your petition asks the Attorney General to review the partial denial of your February 23, 2003, records request, which asked for the disclosure of records related to certain juvenile proceedings.[1] Both your request and Ms. Officer's February 26, 2003, response noted the application of ORS 419A.255 to the requested records.

ORS 192.502(9) exempts from public disclosure "[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law." This exemption incorporates into the Public Records Law any public records confidentiality statute in Oregon law. The applicable state law pertaining to juvenile court records is ORS 419A.255.

ORS 419A.255 provides, in part:

> (1) The clerk of the court shall keep a record of each case, including therein the summons and other process, the petition, and all other papers in the nature of pleadings, motions, orders of the court and other papers filed with the court, but excluding reports and other material relating to the child's or youth's history and prognosis. The record of the case shall be withheld from public inspection but shall be open to inspection by the child or youth, parent, guardian, court appointed special advocate, surrogate or a person allowed to intervene in a proceeding involving the child or youth under ORS 109.119(1), and their attorneys. The attorneys are entitled to copies of the record of the case.
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> (3) Except as otherwise provided in subsection (7) of this section,[2] no information appearing in the record of the case or in reports or other material relating to the child's or youth's history or prognosis may be disclosed to any person not described in subsection (2) of this section without the consent of the court. . . .

We conclude that ORS 419A.255, and in particular subsection (1), makes any record of a proceeding involving a child or youth confidential, including a recording or

[1] In Ms. Officer's February 26, 2003, response to your request she disclosed to you certain information regarding the charges and referred your request concerning the legal disposition of the youths to the county juvenile department, as provided in ORS 419A.255(8). We do not understand your petition to dispute Ms. Officer's response with respect to those records.

[2] The provisions in ORS 419A.255(7) allowing for disclosure of records are not germane to your request.

transcript of the hearing. Only the appropriate named parties may inspect or obtain copies of the record. We do note, however, that subsection (3) provides the opportunity to obtain disclosure with "consent of the court." ORS 419A.255 does not authorize the clerk of the court to release a record to the public unless it is specifically identified in subsections (5) and (6), or unless a court specifically orders its release. A transcript or recording of the hearing is a record that is covered by this confidentiality statute.

Your petition further states that even if the requested records are exempt from disclosure under ORS 419A.255, a recording or transcript must be provided under Article I, section 10 of the Oregon Constitution. That section provides:

> No court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay * * *.

You cite *State ex rel Oregonian Pub. Co. v. Deiz*, 289 Or 277, 613 P2d 23 (1980), to support your contention that Article I, section 10 compels the release of transcripts or recordings of juvenile court proceedings. We disagree. *Deiz* held only that the public cannot be excluded from juvenile hearings. ORS 419A.255(5)(c) protects that right by making the "date, time and place of any juvenile court proceeding" publicly available information. However, neither Article I, section 10 nor the Supreme Court's decision in *Deiz* compels the conclusion that records created as a result of a hearing must be provided to those who do not attend.

Because the requested records are exempt under ORS 192.502(9), we deny your petition.

Sincerely,

Peter D. Shepherd

PETER D. SHEPHERD
Deputy Attorney General

AGS11978
c: Bradd Swank, Office of the State Court Administrator
Sandra Officer, Interim Trial Court Administrator, Clatsop County