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August 21, 2002

David Isaac Maimon
SID #6211527
Oregon State Penitentiary
2605 State Street
Salem, OR 97310-0505

Re: *Petition for Public Records Disclosure Order:*
Records withheld by Judge Paul Lipscomb

Dear Mr. Maimon:

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 August 15, 2002, asks the Attorney General to direct Jessica Martinmaas, Transcript Coordinator for the Marion County Circuit Court, to make available a copy of an audiotape of a hearing conducted on March 14, 2002 in the matter of *Christenson v. Thompson*, Marion County Case No. 95C10949. For the reasons that follow, we respectfully deny your petition.

ORS 192.480 provides in pertinent part:

> In any case in which a person is denied the right to inspect or to receive a copy of a public record in the custody of an elected official, or in the custody of any other person but as to which an elected official claims the right to withhold disclosure, no petition to require disclosure may be filed with the Attorney General or district attorney, or if a petition is filed it shall not be considered by the Attorney General or district attorney after a claim of right to withhold disclosure by an elected official. In such case a person declined the right to inspect or to receive a copy of a public

> record may institute proceedings for injunctive or declaratory relief in the appropriate circuit court, as specified in ORS 192.450 or 192.460[.]

In this case, Ms. Martinmaas denied your request for a copy of the audiotape by referring to an order signed by Marion County Presiding Judge Paul Lipscomb. She also provided you with a copy of the order, dated June 20, 2001, in which Judge Lipscomb directs that a record of proceedings be provided only in the form of a written transcript. According to the terms of the order, a person may receive a "temporary record in the format of the original recording or reporting" only with "express authorization by the Presiding Judge or the Court Administrator."

It is unnecessary to determine the custodian of the audiotape. Arguably, the custodian could be the Marion Circuit Court or the Oregon Judicial Department, the State Court Administrator, Judge Lipscomb, or the Chief Justice of the Oregon Supreme Court as the officer with supervisory authority over the Oregon court system. *See* ORS 1.002(1). However, ORS 192.480 requires the Attorney General to decline consideration of a petition to disclose a public record "as to which an elected official claims the right to withhold disclosure," regardless of whether that official has actual custody of the record.

According to Bradd Swank of the Office of the State Court Administrator, Judge Lipscomb's 2001 order is still in effect. Because Judge Lipscomb, an elected official, has claimed the right to withhold disclosure of the audiotape copy you requested, the Attorney General must decline consideration of your petition to disclose the record.[1] ORS 192.480.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS10836
c: Judge Paul Lipscomb, Marion County Circuit Court
Bradd Swank, Office of the State Court Administrator

[1] While the Public Records Law provides for the possibility of judicial review of an elected official's withholding of records, ORS 192.480, under the terms of Judge Lipscomb's order it also appears that you may seek "express authorization" from either Judge Lipscomb or the Court Administrator for disclosure of the audiotape.