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

February 4, 2002

Mr. Guy Link
121 Bruno Lane
Cuba, MO 65463

Re: Petition for Public Records Disclosure Order:
Harney County Justice Court
Harney County Justice Court Judge Dewey A. Newton
Oregon State Police

Dear Mr. Link:

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.[1] Your petition, which we received on January 28, 2002, asks the Attorney General to direct the Harney County Justice Court to make available the following records:

1. A map of all Port of entries and hours of service;

2. The date the procedure for obtaining motor carrier permits was started, and how the state relayed the information for driver and trucking companies to comply;

3. Copies of all citations issued since this new procedure was started;[2]

4. A list of all incentive programs for the individual issuing citations, such as rewards, quotas and/or disciplinary actions;

---

[1] In your letter you characterize your request as including "The Freedom of Information Act." That Act is a federal law that does not ordinarily apply to state agencies. We therefore treat your letter as a petition for an order of disclosure under the Oregon Public Records Law.

[2] The Oregon Department of Transportation/Motor Carrier Transportation Division informs us that it changed its procedures regarding obtaining State of Oregon motor carrier tax operating authority effective September 1, 2000. Accordingly, we understand your request as being for citations issued from September 1, 2000 to the present.

5. A copy of the officer's personnel file, CVSA certification sections, and copies of all recertification documents to include, but not limited to, test results and certificate;

6. Copies of any audio and or video recordings of the arrest and issuance of Oregon Uniform Citation and Complaint No. D185367, Harney County Justice Court Case No. 01-T-06165 and 01-T-06166;

7. A copy of all complaint(s) made against the officer(s) and the result of those complaint(s).

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

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 public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material. *Turner v. Reed,* 22 Or App 177, 186 n 8, 538 P2d 373 (1975).

Your petition is ambiguous as to which public body's records are being sought. The Public Records Law provides that the custodian of *court records* is the trial court administrator. ORS 192.410(1)(a). *See also* ORS 7.110 (records and files of a court shall be kept in the office of the clerk or court administrator of the respective trial or appellate court); ORS 51.110 (records and files of a justice court are the docket and all papers and process filed in or returned to such court). Your petition indicates that you sent a letter, which was received on July 13, 2001, to the Harney County Justice Court requesting the above-mentioned records as discovery in Harney County Justice Court Case No. 01-T-06165 and 01-T-06166. In response to that letter, Judge Dewey A. Newton forwarded your discovery request to Oregon State Police Trooper Timothy J. Thomas, who sent some of the records you requested to the court which, in turn, sent those records to you.[3] Your petition further indicates that on September 10, 2001, you requested that your initial discovery request be treated as a request under the "Opens Records Act." Finally, your petition indicates that on September 21, 2001, Judge Newton denied your letter/motion of September 10, 2001 "in all particulars." We therefore treat your petition as arising from a request made to the Harney County Justice Court.

[3] Your petition indicates that the following records were sent to you on August 23, 2001: a copy of Trooper Thomas' CVSA certificate of proficiency, a copy of Trooper Thomas' driver vehicle inspection form, a copy of federal regulation §395.3, and a copy of Trooper Thomas' notebook concerning his contact with you on June 12, 2001.

On January 30, 2002, Assistant Attorney General Herbert F. Lovejoy spoke with Harney County Justice Court Clerk Sandy Richards. Ms. Richards informed Mr. Lovejoy that in regard to the records you seek:

1. The Harney County Justice Court only has a copy of an Oregon Department of Transportation/Motor Carrier Transportation Division Notice, which the court obtained from a previous defendant that lists the ports of entry for the State of Oregon.[4] The Harney County Justice Court does not have a map of all Port of entries for the State of Oregon nor documents listing their hours of service.

2. The Court has no such records in its custody.

3. The Court has the original citations issued to operators for violations of Oregon's motor carrier laws who are cited to appear in Harney County Justice Court.[5]

4. The Court has no such records in its custody.

5. The Harney County Justice Court has a copy of Trooper Timothy J. Thomas' CVSA certification, which you previously received on August 27, 2001. The Court has no other records in its custody.

6. The Court has no such audio or video recording in its custody.

7. The Court has no such records in its custody.

Ms. Richards has informed us that the Harney County Justice Court will make the records it has in its custody available to you upon prepayment of its estimated actual charges for complying with your records request. The Public Records Law permits a public body to charge fees "reasonably calculated to reimburse it for its actual cost" in making records available. ORS 192.440(3); ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (MANUAL) at 14. "Actual cost" includes the time agency staff spends locating the records, searching its records for the requested material (even if it does not locate any requested records), supervising a requestor's inspection of the records to protect the records' integrity, copying, certifying, and mailing the requested records, and separating exempt from non-exempt material. MANUAL at 13. Ms. Richards stated that she will contact you within 14 days of the date of this order, in writing, concerning the estimated actual costs for providing you the court's records. Because the Court Clerk has voluntarily agreed to disclose its records to you, we deny your petition as moot.

---

[4] Because the Harney County Justice Court has agreed to voluntarily provide you with this record, we need not decide whether the court is a "custodian" of this record.

[5] Ms. Richards also understands your request for "all citations issued since this new procedure was started" as beginning from September 1, 2000 to the present.

To the extent that your petition relates to records of Judge Newton in his capacity as a judge, we deny the petition because this office lacks jurisdiction. ORS 192.480 Provides:

> 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 if a petition is filed it shall not be considered by the Attorney General after a claim of right to withhold disclosure by an elected official.

Judge Newton is an elected justice of the peace of Harney County, Oregon. *See* ORS 133.525(1) (definition of judge includes any justice of the peace). Accordingly, the Attorney General may not consider your petition with respect to any records sought from Judge Newton in his capacity as a judge to the extent that Judge Newton has denied disclosure of those records.

Finally, to the extent that the records sought by the petition are records of the Oregon State Police, we deny your petition because you do not allege that a public records request was made to, or denied by, the Oregon State Police. On January 30, 2002, Mr. Lovejoy spoke to Sergeant David Scholten of the Oregon State Police concerning your petition. Sergeant Scholten informs Mr. Lovejoy that the Oregon State Police has not received nor denied a public records request for the records you seek. Absent such a request and denial, the Attorney General has no authority to issue an order to the Oregon State Police. *See* ORS 192.450.

For these reasons, we respectfully deny your petition to compel disclosure under the Public Records Law.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS09512
c: The Honorable Dewey A. Newton, Harney County Justice Court
Sandy Richards, Harney County Justice Court
Sergeant David Scholten, Oregon State Police