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December 3, 2001

By FAX (503-203-1813) & First Class Mail
Ryan Frank
The Oregonian, Wash. Cty Bureau
10100 SW Park Way
Portland, OR 97225

Re: Petition for Public Records Disclosure Order:
Oregon Department of Justice, Criminal Justice Division

Dear Mr. Frank:

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 November 26, 2001, asks the Attorney General to direct the Criminal Justice Division within the Oregon Department of Justice to produce "all records in its possession concerning the Wyoming tenure of James Brooks, currently police chief of King City, Oregon."[1] 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. Any person denied the right to inspect or to receive a copy of a public record may petition the Attorney General to determine whether the record may be withheld from inspection. ORS 192.450(1).

Your petition states that you made a written request of the Criminal Justice Division on October 17, 2001, for "all records gathered by the Criminal Justice Division in its investigation of Brooks." Your petition further states that you have received no response from the Criminal Justice Division and that you are treating the lack of a formal response as a denial of your request.

[1] When Assistant Attorney General Kelly Carlson contacted you by telephone on November 28, you explained that your petition is for all records received by the Criminal Justice Division from the office of the Wyoming Attorney General.

We have spoken with the Department of Justice personnel involved in reviewing your October 17th request and have learned that the Criminal Justice Division had sought advice from the General Counsel Division with regard to responding to your request. An Assistant Attorney General in the General Counsel Division was in the process of responding to the request for assistance at the time you submitted your petition.

The Attorney General may order a state agency to disclose records only when the agency has denied a request for the records. *See* ORS 192.405(2). There is nothing in your petition to cause us to conclude that the Criminal Justice Division denied your request.[2] Additionally, the Public Records Law clearly contemplates that agencies have the opportunity to review the requested records, including consultation with legal counsel, and to act on the request before the Attorney General or the courts can review the matter. ***Morse Bros., Ind. V. ODED***, 103 Or App 619, 798 P2d 719 (1990). Your petition recognizes this aspect of the Public Records Law, but then suggests that the fact that the Criminal Justice Division is part of the Department of Justice, and therefore had access to legal counsel from the day it received your request, somehow sets it apart from state agencies. The Criminal Justice Division is no different from an agency in this regard, however, since all agencies have access to legal counsel on an ongoing basis.

The Public Records Law allows a public body a "reasonable" time to respond to a records request. What is "reasonable" will depend upon many factors, including the difficulty in determining whether the records are exempt from disclosure. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETING MANUAL (1999) at 8. In light of the fact that you submitted your request in mid-October, you filed your petition in November, and the Criminal Justice Division is working with the General Counsel Division to respond to your request, we conclude that the Criminal Justice Division has not denied your request. Accordingly, we deny your petition as premature.

For your information, Assistant Attorney General Daina Vitolins of the Criminal Justice Division informs us that the Division anticipates responding to your request, with regard to records received from the office of the Wyoming Attorney General, within the next five days.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS09099
c: Daina Vitolins, DOJ Criminal Justice Division
Bill Carroll, DOJ Criminal Justice Division

[2] Your petition states that a representative from the Criminal Justice Division responded to an inquiry as to action on your request by "advising" you to "do what you have to do." We do not interpret this statement as a denial.