HARDY MYERS
ATTORNEY GENERAL

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DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
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September 14, 2001

Jerry Trout
P.O. Box 365
Dallesport, WA 98617

Re: Petition for Public Records Disclosure Order:
Oregon State Police Records

Dear Mr. Trout:

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 September 7, 2001, asks the Attorney General to direct the Oregon State Police (OSP) to produce information regarding a "laser unit" used by OSP Trooper Gary J. Peterson in conjunction with issuance of citation D341604 to you,[1] a copy of any audio or video tape taken by Trooper Peterson of the incident described in citation D341604, and the names and witness contact information of the individuals cited immediately before and after issuance of that citation using the same laser unit. Your petition states that your records request was denied by Trooper Peterson and OSP Division Commander Lieutenant Michael Davidson. For the reasons that follow, we respectfully deny your petition.

Your July 6, 2001, records request to OSP was made to the attention of Lt. Davidson and stated that you would need the specified information "to defend [your] case." Lt. Davidson informs us that he does not remember either receiving or responding to a request that he construed as being made under the Public Records Law. Lt. Davidson states that he may have spoken with you regarding what he considered to be a discovery request and explained to you that such requests must be made of the relevant district attorney's office. Among the materials you submitted with your petition is a July 14, 2001, letter to you from Trooper Peterson in response to your July 6 request. Trooper Peterson's letter also construes your request as one for

[1] You request the name, serial number and model number of the unit used by Trooper Peterson on May 10, 2001, at approximately 5:00 p.m., the purchase date and service record of that unit, the calibration record of that unit, a copy of the factory operating manual for that unit, and a copy of any OSP manuals and/or service bulletins on that unit.

discovery and states that discovery requests must be made through the district attorney's office. We have identified no other communication by OSP to you regarding your request for the information that is the subject of your petition.

Because your July 6 request to OSP was not identified as a request under the Public Records Law, we find it reasonable that Lt. Davidson and Trooper Peterson considered it to be a discovery request that should be addressed to the district attorney. By directing you to the district attorney's office, neither Lt. Davidson or Trooper Peterson intended to deny a request made under the Public Records Law. For this reason, we conclude that OSP has not denied a request for records under the Public Records Law.

ORS 192.430(1) requires a custodian of public records to provide "proper and reasonable opportunities for inspection and examination of the records in the office of the custodian." The Attorney General may order a state agency to disclose records only when the agency has denied a request for the records. ORS 192.450(1). We realize that the August 18 letter to you from Eric J. Nisley, Wasco County District Attorney, responded to the request and petition you sent to his office, at least in part, by directing you to make a public records request to the Attorney General. We regret the misunderstandings that appear to have occurred with regard to interpreting your requests for records. Because we conclude that OSP has not denied your request, however, this office is without jurisdiction to order disclosure. Therefore, we deny your petition as premature.[2]

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS08561
c: Sgt. David Scholten, OSP

[2] OSP Sergeant David Scholten, Office of Professional Standards, states that he will respond in writing to your request for the OSP records within the next fourteen days. The agency may charge you for its actual cost of making the records available to you. ORS 192.440(3).