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

January 2, 2001

Mr. David Maimon
SID No. 6211527
Oregon State Penitentiary
2605 State Street
Salem, Oregon 97310

RE: *Petition for Public Records Disclosure Order*
State Court Administrator

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. We received you petition on December 27, 2000. Your petition asks the Attorney General to direct the Court Administrator to make available the following records:

1. In Adams v. Thompson, Marion County Circuit Court Case No. 96C-11605 and Court of Appeals Case NO. A98488, the record contains a transcript of a hearing held in the Marion County Circuit Court on April 21, 1997, before both Judge Lipscomb and Judge Ochoa, of which three exhibits were provided and made part of the record, that are the documents sought in this matter, Exhibit #101, #102, and #104. (See attached transcript of the proceedings in Conway v. Thompson, Marion Co. Cir. Ct. No. 97C-11984, which refers to the same exhibits as Conway was consolidated with Adams and many others).

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

The Public Records Law confers a right to inspect 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).

You state that you have requested the above-described documents on several occasions and were informed that they were missing from the court files. You attached to your petition a copy of a letter dated December 18, 2000, to the Court Administrator of the Oregon Court of Appeals. On December 28, 2000, Assistant Attorney General Herbert F. Lovejoy spoke with John Koskela, a paralegal for the Oregon Supreme Court, Records Section, concerning your records request. Mr. Koskela informed Mr. Lovejoy that the Oregon Supreme Court received your records request on December 20, 2000, and has not denied your request. In addition, Mr. Koskela informs us that the records you requested do exist and are approximately 170 pages in length.

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). "The Public Records Law clearly contemplates that agencies have the opportunity to review the requested records and to act on the request before the Attorney General or the courts can review the matter." *Morse Bros., Inc. v. ODED,* 103 Or App 619, 622, 798 P2d 719 (1990) (citing ORS 192.430(2)). Whether the time that an agency takes to review records and act on a particular request is reasonable will depend on factors such as the volume of the records requested, the staff available to respond to the records request, and the difficulty in determining whether any of the records are exempt from disclosure. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1999) AT 7-8 (MANUAL). "The public records custodian acts reasonably even if the custodian does not comply with timelines imposed by the requestor, so long as the custodian provides access to the nonexempt records within a reasonable period of time." MANUAL at 8.

We do not find that the delay in responding to your records request amounts to constructive denial of your request. Since the State Court Administrator has not denied your request for records, we deny your petition as premature.[1]

Sincerely,

Peter D. Shepherd

PETER D. SHEPHERD
Deputy Attorney General

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[1] We understand that the Supreme Court may now have responded to your records request. If you believe that that response denied you an opportunity to inspect or to obtain copies of the records that you seek, you may again petition this office.

A custodian of public records may charge fees to reimburse it for its actual costs in making records available. ORS 192.440(3). It is not a denial of a records request for the custodian to assess such a fee.