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December 19, 2000

Jeffrey T. Wimmer
1250 Wallace Rd NW #34
Salem, OR 97304

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

Dear Mr. Wimmer:

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 your petition on December 14, 2000. Your petition asks the Attorney General to direct the State Court Administrator to make available computer records relating to any access of a certain website by any State Court Administrator employee during a specified time period, certain records related to an employee of the State Court Administrator named Beth A. Wimmer, and copies of certain policies and other documents of the State Court Administrator. You also request a waiver of fees under ORS 192.440.[1]

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). A custodian of public records may charge fees to reimburse it for its costs in making records available. ORS 192.440(3). A custodian may waive or reduce fees if it determines that the waiver or reduction is

[1] Your petition requests that the Attorney General order disclosure of eleven categories of records and grant a waiver of fees. In comparing your petition to your November 21, 2000, public records request to the State Court Administrator, it appears that your petition may ask for the disclosure of records beyond that requested from the State Court Administrator. In addition, your letter to the State Court Administrator does not include a fee waiver request. The Attorney General has authority to determine whether a custodian of public records acted within its authority in withholding records from inspection and in denying a fee waiver request. ORS 192.440(5) and 192.450(1). To the extent that a petition submitted to the Attorney General is broader in scope than the request for public records submitted to the records custodian, the Attorney General may act only in relation to that portion of the petition previously submitted to the custodian.

in the public interest because making the records available primarily benefits the public. ORS 192.440(4).

Your petition states that you requested these records of the State Court Administrator on November 21, 2000, and that your request has been denied. You also state that Bradd A. Swank, Special Counsel in the Office of the State Court Administrator, "did appear to indicate my request was still under consideration."

Assistant Attorney General Keith Kutler spoke with Mr. Swank regarding your petition. Mr. Swank informed Mr. Kutler that the State Court Administrator has not denied your request. Rather, Mr. Swank informed you that responding to the portion of your request regarding whether State Court Administrator computers accessed a website would entail certain costs, that performing the task would have to be scheduled, and that the State Court Administrator's office would determine what the expected costs would be and provide that information to you, along with an estimate of any copying and other costs that it expected would be incurred. Mr. Swank informed Mr. Kutler that he anticipated that the State Court Administrator would provide this information to you this week.

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 (AG'S 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." AG'S MANUAL at 8.

At this point, the State Court Administrator has not denied your request for records, nor has it received from you or ruled on a request for waiver of fees. Because the State Court Administrator has not denied your request for records or denied a request for waiver of fees, we deny your petition as premature.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

AGS06126
c: Bradd Swank, State Court Administrator's Office