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April 8, 2009

Daniel J. Casey, Esq.
P.O. Box 82818
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Re: Petition for Public Records Disclosure Order:
Marion County Circuit Court Records

Dear Mr. Casey:

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 March 20, 2009, asks the Attorney General to direct the Marion County Trial Court Administrator, James H. Murchison, to produce copies, or allow inspection, of the following records:

> Back-up audio recordings made by court reporters Maureen Gager and Mary Fagan of the post conviction trial in *Thompson v. Belleque* (99C-15857) held on September 13 and 14, 2007.

For the reasons that follow, we are unable to consider your petition.[1]

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 who is denied the right to inspect or to receive a copy of any public record for which a state agency is the custodian may petition the Attorney General to review the record and determine if it may be withheld. ORS 192.450(1). However, ORS 192.480 provides that

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

[1] Thank you for extending the time within which ORS 192.450(1) would otherwise require us to issue our order.

require disclosure may be filed with the Attorney General or district attorney, or if a petition is filed it shall not be considered by the Attorney General or district attorney after a claim of right to withhold disclosure by an elected official.

We conclude that this provision applies to your request.

We acknowledge that your request was directly denied by Mr. Murchison, who is not an elected official. Mr. Murchison explained his denial of your request:

> It appears that this request has already been made, and the trial Judge, Hon. Don A. Dickey, has entered an Order in this case denying such a request. Given that this request has already been ruled upon, and that the Order is in the records denying such a request, I am therefore unable to provide any further assistance to you in conflict with the Order of the Court.

In your petition, you assert that Judge Dickey did not deny your public records request, and that Mr. Murchison's denial is therefore insufficient. After you filed your petition, Mr. Murchison asked Judge Dickey about the intended scope of the order. Mr. Murchison reports that Judge Dickey did not intend or anticipate that his order would address public records law issues. Thus you are correct that Judge Dickey's order does not deny your public records request.

What Judge Dickey's order does do, however, is implement a Marion County Circuit Court standing order issued in 2001 by the Honorable Paul J. Lipscomb, then Presiding Judge. The 2001 standing order provides, in part, that

> the temporary record in the format of the original recording or reporting shall not normally be provided except to Officers of the Court for use in accordance with their official duties with a restriction on any further copying or other unauthorized usage, and that such temporary copies may otherwise only be provided upon express authorization by the Presiding Judge or the Court Administrator.

You cited this standing order in your January 11, 2009 motion asking the current Presiding Judge, the Honorable Jamese Rhoades, "for an order authorizing [you] to obtain a copy of the audio record." Thus your motion sought to make use of the exception the 2001 standing order provides to its general rule of nondisclosure. When Judge Dickey denied your request on behalf of Presiding Judge Rhoades, the result was to subject your request to the general rule of nondisclosure under the 2001 standing order.

In previous Public Records Orders, we have concluded that the 2001 standing order is a claim, by Judge Lipscomb, of the right to withhold disclosure of the record under the Public Records Law, and that the Attorney General consequently lacks jurisdiction to review denials that are based on the standing order. *See* Public Records Order, August 21, 2002, Maimon; Public Records Order, August 7, 2007, Stotter. Although Judge Lipscomb is no longer the Presiding Judge, Presiding Judge Rhoades has similarly claimed the right to withhold disclosure

under the Public Records Law by leaving the 2001 order in place. Because the denial of your request ultimately rests on the 2001 standing order, ORS 192.480 prevents the Attorney General from considering your petition.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

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