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

November 10, 2008

Marshall Mann, SID #3142197
Eastern Oregon Correctional Institution
2500 Westgate
Pendleton, OR 97801

Re: Petition for Public Records Disclosure Order:
Department of Administrative Services, Risk Management Division Records

Dear Mr. Mann:

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 November 3, 2008. The petition asks the Attorney General to direct the Oregon Judicial Department to produce copies of the following records:

1. All investigative notes regarding Claim # L137171;

2. The names of all investigative officers and their titles;

3. All investigative correspondences with everyone who was involved with claim # L137171;

4. A legible signed copy of the Findings of Facts and evidence to substantiate the Findings of Fact on Claim # L137171; and

5. The Order and/or Law (Statutory, Constitutional or Case Law) used to base such an erroneous Findings of Fact, that lead to their conclusion that Douglass County, District Court Judge, William L. Lasswell has judicial immunity against exceeding his judicial lack of jurisdiction to preside over my two felony cases in August of 1994, which violates States Statutes and Oregon Constitution as well as the Constitution of the United States and, Separation of Powers (State).

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. A custodian of public records must provide "proper and reasonable opportunities for inspection and examination." *See* ORS 192.430.

You requested the above described records from the Oregon Department of Administrative Services, Risk Management Division. The Risk Management Division received your request on September 15, 2008 and responded on September 18, 2008. That response directed you to make your request of the Oregon Judicial Department as the custodian of the requested records.

Many of the records you request do not exist. However, to the extent that they do exist, the records you requested would, in fact, be in the custody of the Risk Management Division. Specifically, such records would be included in the tort claims file created in response to your tort claim notice, which the Risk Management Division received on July 9, 2008. Risk Management Division staff now inform us of their intent to deny your request based on the exemption in ORS 192.501(1) for records of a public body pertaining to litigation or litigation likely to occur. We treat your request as denied on that basis, and resolve your petition based on that understanding.

As we just noted, the records you requested would exist, if at all, as part of the tort claims file. ORS 192.501(1) conditionally exempts from public disclosure

> Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this subsection shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation.

This exemption does not apply if "the public interest requires disclosure in the particular instance." ORS 192.501.

Because, to the extent they exist, the records at issue were created in response to your recent tort claim notice, the Risk Management Division has properly concluded that "litigation is reasonably likely to occur." In addition, the investigatory materials you have requested clearly "pertain to" that reasonably likely litigation. Therefore, the materials created in response to the tort claim notice are exempt from disclosure under ORS 192.501(1) "unless the public interest requires disclosure," ORS 192.501. You have not asserted to the Risk Management Division or to our office that the public interest requires that the requested records be disclosed to you. The nature of the records you requested does not suggest any public interest that would require disclosure. *See* Public Records Order, August 16, 2004, Bobbit (an interest in private litigation is not a public interest that will require disclosure.) Accordingly, we respectfully deny your petition.

Sincerely,

for PETER D. SHEPHERD
Deputy Attorney General

DM1141702-v2