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August 7, 2007

Daniel J. Stotter
Irving & Stotter LLP
541 Willamette Street, Suite 307 E
Eugene, Oregon 97401

Re: *Petition for Public Records Disclosure Order*
Marion County Circuit Court Records

Dear Mr. Stotter:

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 July 20, 2007, asks the Attorney General to direct James H. Murchison, Trial Court Administrator for the Marion County Circuit Court, to make available the court's audio and video recordings of specified proceedings, and a copy of "the Stipulations of Facts filed in the Defendant Ginella on November 1, 2006, which is expressly listed as docket item # 47 on the * * * OJIN Report for" State v. Ginella, Marion County Case No. 05C42373. For the reasons that follow, we respectfully deny your petition.[1]

1. Marion County Circuit Court Audio/Video Recordings.

ORS 192.480 provides in pertinent part:

> 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 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. In such case a person declined the right to inspect or to receive a copy of a public record may institute proceedings for injunctive or

[1] We appreciate your granting an extension of the time in which we would ordinarily be required to issue our order.

declaratory relief in the appropriate circuit court, as specified in ORS 192.450 or 192.460[.]

In this case, Mr. Murchison denied your request for a copy of the audiotape by referring to an order signed by Marion County Presiding Judge Paul Lipscomb. He provided you with a copy of the order, dated June 20, 2001, in which Judge Lipscomb directs that a record of proceedings be provided only in the form of a written transcript. According to the terms of the order, a person may receive a "temporary record in the format of the original recording or reporting" only with "express authorization by the Presiding Judge or the Court Administrator."

We have addressed this issue in Public Records Order, August 21, 2002, Maimon (copy attached), and we adhere to our earlier reasoning. We observed that because of the operation of ORS 192.480, it is unnecessary to determine the custodian of the audiotape. Arguably, the custodian could be the Marion Circuit Court or the Oregon Judicial Department, the State Court Administrator, Judge Lipscomb, or the Chief Justice of the Oregon Supreme Court as the officer with supervisory authority over the Oregon court system. *See* ORS 1.002(1). But ORS 192.480 requires the Attorney General to decline consideration of a petition to disclose a public record "as to which an elected official claims the right to withhold disclosure," regardless of whether that official has actual custody of the record. Because Judge Lipscomb, an elected official, has by issuing the 2001 order claimed the right to withhold disclosure of the audiotape copy you requested, the Attorney General must decline consideration of your petition to disclose the record.

2. Docket Item #47.

Mr. Murchison informed us that the court has reviewed the file in State v. Ginella, Marion County Case No. 05C42373, and that it does not contain the record identified as docket item #47 on the OJIN report. Because the court does not have the record in its custody, we cannot order the record's disclosure.

For the foregoing reasons, we respectfully deny your petition.

Sincerely,

Peter D. Shepherd

PETER D. SHEPHERD
Deputy Attorney General

AGS20110
c: James H. Murchison, Trial Court Administrator, Marion County Circuit Court