JOHN R. KROGER
ATTORNEY GENERAL

MARY H. WILLIAMS
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

1162 Court Street NE
Justice Building
Salem, Oregon 97301-4096
Telephone: (503) 378-4400

November 14, 2011

John Arthur Megahan
SID #15007206
Oregon State Penitentiary
2605 State Street
Salem, OR 97310-1346

Re: Public Record Request – Oregon Judicial Department

Dear Mr. Megahan:

On November 7, 2011, we received your correspondence asking the Attorney General to compel the Oregon Judicial Department to provide various records to you. Pursuant to ORS 192.450, we review your correspondence as a petition under the Oregon Public Records Law, ORS 192.410 to 192.505. For the reasons that follow, we respectfully deny your petition.

You request that the Oregon Judicial Department be ordered to produce, at no cost to you, two categories of documents: certified copies of documents submitted by you to the court; and a transcript of a hearing held on September 16, 2011. The Public Records Law requires, under certain circumstances and with certain exceptions, that a public body produce copies of public records held by it. It does not, however, require that a public body create a public record. Both of your requests would require the Oregon Judicial Department to manufacture records that are not contained in their files.

You first request that the Oregon Judicial Department be required to provide copies, variously described by you as certified copies and as copies stamped "filed/entered," of pleadings, motions and other documents you have submitted to the court. Nothing in the Public Records Law requires that the Judicial Department prepare certified copies on your behalf and at no cost. ORS 7.130 allows the clerk of the court to make a copy of a record contained in the court files and to certify that the copy is an accurate copy of the court record. The clerk is required to collect a fee for so doing, as well as charges for the cost of a copy. ORS 21.020. Copies of documents provided by you cannot be certified as copies of the court records because they are not.

To the extent that you request that the clerk stamp copies provided by you as "filed" or "entered," your request requires that the Judicial Department create a public record that purports to be a copy of the documents that is contained in the court file but in fact is not. We are advised that the department is willing to date stamp and return your document to you, thereby documenting the date it was received by the clerk of the court. However, nothing in the Public Records Law allows or requires the department to create a document that misrepresents its contents. We have been provided with correspondence to you from the Judicial Department that explains this distinction.

With regard to the transcript of the September 16, 2011 hearing, your request is not simply that the Judicial Department produce, at no cost to you, copies of documents presently contained in their files. Rather, you requested that the department have that hearing transcribed on your behalf. Procedures do exist that allow a court, on motion of a party and in appropriate cases, to request preparation of a transcript at state expense. Once again, however, nothing in the Public Records Law authorizes the Attorney General to order that the Judicial Department create a record that does not exist.

For the reasons set forth, your petition for a public records order is respectfully declined.

Sincerely,

KEITH S. DUBANEVICH
Chief of Staff and Special Counsel to
the Attorney General

MHW:dgf/#3088572
c: Nori Cross, Oregon Judicial Department