DEPARTMENT OF JUSTICE
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January 5, 1993

William J. Birhanzl
P. O. Box 66496
Portland, OR 97266

Re: Petition for Public Records Disclosure Order: Clackamas County Trial Court Records

Dear Mr. Birhanzl:

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 December 29, 1992,[1/] asks the Attorney General to direct the Clackamas County Trial Court Administrator to make available, on a daily basis, copies of the face side of all major traffic offense citations (reckless driving, driving with a suspended or revoked license, hit and run, driving under the influence of intoxicants, and attempting to elude a police officer). You have asked that those records be made available to you within 48 hours of their receipt, and that the documents be reduced to approximately 80% of the original size and copied four citations to each 8½ inch by 13½ inch paper. 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. The public body must furnish "reasonable and proper" access to the records:

> (1) The custodian of any public records, including public records maintained in machine readable or electronic form, unless otherwise expressly provided by statute, shall furnish proper and reasonable opportunities for inspection and examination of the records in the office of the custodian and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them. If the public record is maintained in machine readable or electronic

> form, the custodian shall furnish proper and reasonable opportunity to assure access.
>
> (2) The custodian of the records may adopt reasonable rules necessary for the protection of the records and to prevent interference with the regular discharge of duties of the custodian.

ORS 192.430.

The records you have requested from the Clackamas County Trial Court Administrator are public records, and no exemption applies to the records. We have been informed that Mr. Shofner told you in writing that the records you seek are available for inspection and copying during the regular business hours of the court. However, he also informed you that staff constraints make it impossible for the trial court office to accommodate your request to provide copies of the records within your time frame. The law permits records custodians to respond to requests in a manner that would "prevent interference with the regular discharge of duties of the custodian." We have confirmed with Mr. Shofner that his staff is unable to accommodate your request for records in the time frame you have outlined. The Public Records law only requires that there be a "proper and reasonable" opportunity to obtain records, and does not require that the agency's regular duties be disrupted.

We understand that your request would require the court staff to screen all the incoming traffic citations, to separate the types of citations you have identified and then to copy those citations in a specific manner, by copying four to a page on a reduced format. The administrator informs us that the staff time to perform this service on a daily basis is not available. Specific requests for records will be accommodated when time is available to search for and copy the records.

An agency must produce copies of non-exempt records within a "reasonable" time but need not do so within forty-eight hours. An agency has not denied a request for disclosure of public records merely because it fails to comply with a deadline the requestor seeks to impose. See Public Records Order, May 9, 1989 (Hribernick). An agency may charge the actual costs of providing copies, including the costs of staff time necessary for locating the requested records and copying them. ORS 192.440(2).

The Trial Court Administrator is obligated to furnish "proper and reasonable opportunities for inspection and examination," and has done so. The Administrator has provided a factual justification for his decision that the trial court

office cannot reasonably accommodate your request that the records be screened on a daily basis by the court staff to identify the particular records you wish to obtain and to make the copies within the time frame you specify. We conclude that this decision is reasonable. While the Administrator may accommodate a request such as yours, the Public Records Law is satisfied if the public agency makes its records available for inspection and provides an opportunity to obtain copies of records. You may either make other arrangements to obtain the records on a daily basis[2/] or make specific requests on the trial court administrator and obtain the records when the staff is able to search for and find the records. For these reasons, we deny your petition to compel disclosure.[3/]

Sincerely,

Amy Veranth
Opinions Coordinator
General Counsel Division

ALV:lrr:tmt/JGG0562B
Enclosures
c: James W. Shofner, Trial Court Administrator (w/enc)
Clackamas County Courthouse, #104
Oregon City, OR 97045
Bradd Swank, Legal Analyst (w/enc)
Office of the State Court Administrator
Supreme Court Building
1163 State Street
Salem, OR 97310

[1/] Your petition was received on the Attorney General's facsimile machine at 6:15 p.m. on December 28, 1992, after the close of business hours. Accordingly, we treat the petition as received on the next business day.

[2/] By "other arrangements," we mean that you may wish to search and copy the records yourself at the county courthouse, or arrange to have someone else do so, rather than the court staff.

[3/] Enclosed at your request are copies of the non-exempt written materials received by our office regarding your petition. The Public Records Law does not require an agency to create records that do not exist. See ORS 192.420. Thus, there is no duty to make a written record of the substance of oral communications. Nonetheless, the substance of the oral information we received from officials from the State Court