HARDY MYERS
ATTORNEY GENERAL

DAVID SCHUMAN
DEPUTY ATTORNEY GENERAL



DEPARTMENT OF JUSTICE

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November 7, 1997

Wilbur Gaston
PO Box 132
Mt. Angel, OR 97362

Re: *Public Records Disclosure Order*

Dear Mr. Gaston:

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 ORS 192.505. In early October 1997, you sent a multi-page letter to the following persons requesting disclosure of records regarding you and your daughter:

1. Judge Terry Leggert, Marion County Circuit Court Judge
2. Judge Greg West, Marion County Circuit Court Judge
3. Judge Joseph Ochoa, Marion County Circuit Court Judge
4. Kay Toran, State Office for Services to Children and Families
5. Hardy Myers, Attorney General
6. Dale Penn, Marion County District Attorney
7. Richard Condon, Attorney at Law
8. Shirley Hardwick
9. Detective Ken Pecyna, Oregon State Police

On October 31, 1997, we received a second letter, which states that you "demand, pro se, that all records, materials and communications be sent to" you and that you "shall appeal." Accordingly, the Attorney General is treating your most recent letter as a petition to the Attorney General for a public records

disclosure order to all persons named in your earlier letter for disclosure of the requested records.

In both letters, you refer to the Freedom of Information Act as the basis for your request for disclosure of records. Oregon public bodies are **not** bound by the requirements of the Freedom of Information Act, including its time frames. Your request, however, is being treated as a request under the Oregon Public Records Law.

For the reasons that follow, we respectfully deny your petition.

1. Records of Other than State Agencies

Under the Public Records Law, the Attorney General has the authority to issue a public records order only to "any person denied the right to inspect or to receive a copy of any public record of a **state agency**." ORS 192.450. Richard Condon and Shirley Hardwick are not state agencies nor employees of a state agency. Therefore, the Attorney General has no jurisdiction over this matter. If either Mr. Condon or Ms. Hardwick are employed by a "public body," as defined in ORS 192.410(3), other than a state agency, the district attorney of the county in which that public body is located would have jurisdiction. *See* ORS 192.460.

Judges Leggert, West and Ochoa and District Attorney Penn are elected public officials. Assuming they have actually denied your request to inspect or receive copies of a public record, you may seek judicial review of the denial in the Circuit Court for Marion County or the circuit court of the county in which the elected official is located. ORS 192.480. The Attorney General is prohibited from considering your petition with regard to these elected officials. *Id.*

2. Records of State agencies

Caleb Heppner, Deputy Administrator with the State Office for Services to Children and Families (SCF), informs us that SCF has not denied your records request. Mr. Heppner further informs us that he sent a letter to you on October 27, 1997, seeking to clarify your request and informing you that SCF was in the process of assessing the ability of SCF, within legal limitations, to share the information requested with you. Mr. Heppner sent a follow-up letter to you earlier this week to advise you of the status of your request. Finally, Mr. Heppner informs us that SCF will respond to your request as soon as it has made its determination.

Sergeant Fred Douthit of the Oregon State Police (OSP) informs us that OSP has not denied your records request. OSP is reviewing its records to determine the extent to which the agency has the records you have requested and may disclose such records to you.

The Attorney General has not denied your records request. Peter Cogswell and others in the Attorney General's office are reviewing records held by the Attorney General and the Department of Justice to determine the extent to which they have the records you request and may make such records available to you.

It is reasonable for an agency to review its records before responding to a public records disclosure request. Moreover, an agency is not deemed to have denied a request merely because the agency fails to comply with a deadline imposed by the requestor. OREGON ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 15 (1995).

Absent a denial of a records request by a state agency, the Attorney General has no authority to order disclosure. *See* ORS 192.450. Because SCF, OSP and the Attorney General have not denied your records request, your petition to order disclosure is premature. Accordingly, we deny your petition.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

JAA0275E/DS/jh
c: Caleb Heppner, SCF
Sgt. Fred Douthit, OSP
Peter Cogswell, DOJ
Judge Terry Leggert, Marion County Circuit Court
Judge Greg West, Marion County Circuit Court
Judge Joseph Ochoa, Marion County Circuit Court
District Attorney Dale Penn, Marion County
Richard Condon
Shirley Hardwick