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January 2, 1996

Jerry Allen Miller
SID # 4606964
2500 Westgate
Pendleton, OR 97801

Re: ***Petition for Public Records Disclosure Order: Lane County Trial Court Records***

Dear Mr. Miller:

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 11, 1995,[1/] asks the Attorney General to direct the Lane County Trial Court to produce a copy of the following records:

1. Qualification certificates for John P. Daugirda and Meg E. Kieran.

2. A list of all cases the named attorneys handled except those cases that are confidential.

For the reasons that follow, we respectfully deny your petition. The Lane County Trial Court responded to your request for these records by a letter from Judge Jack Mattison, Presiding Judge.[2/] Judge Mattison's letter does not deny your request for the records, but offers to provide the records to you upon payment of the appropriate copying and search fees, which were listed.

[1/] We appreciate your extending until January 3, 1996, the time within which the law would have otherwise obligated us to respond.

[2/] Judge Mattison informed us that he did not intend, by sending this letter, to "claim the right to withhold disclosure" in his elected official capacity. *See* ORS 192.480. Therefore, the Attorney General still has jurisdiction to issue this order pursuant to ORS 192.470.

The Public Records Law authorizes a public body to establish and charge fees for the actual cost of making records available. ORS 192.440(3). These fees may include a charge for the time spent by the public body's staff to locate the requested records. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1995) at 10. We understand from Bradd Swank, Office of the State Court Administrator, that the "research fee" was calculated by the staff at the Trial Court Administrator's office in Lane County based on the time needed for the staff to find the records you requested. It is not a denial of a request for a public record to require payment of copy and search fees in advance. *Id.* 10-11.

From your petition to the Attorney General, it is not evident why you believe you were denied the records you requested. Your petition does not specifically address the fee charged for the records you requested. Nonetheless, if you filed your petition with the Attorney General because the records were available only upon payment of a fee, we deny your petition because the Lane County Trial Court Administrator is authorized to require advance payment of fees for copies of records.

Waiver of fees for providing records is permitted in the circumstances described in ORS 192.440(4), when a public body determines that a reduction or waiver is in "the public interest because making the record available primarily benefits the general public." Inability to pay because of indigency does not meet the statutory requirement. OREGON ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1995) at 13. If you are unable to pay the required copy costs, you may arrange to have someone inspect the records in person at the office of the Trial Court Administrator.

Because your request for disclosure of the records has not been denied, the Attorney General has no authority to order disclosure of the records. *See* ORS 192.450. Accordingly, your petition for an order requiring disclosure of public records is denied.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

ESH:AV:LRR:lrr:jpl:JGG0CE9D

c: Judge Jack Mattison, Lane County Circuit Court Judge
Bradd Swank, Office of State Court Administrator
Mary Helf, Lane County Trial Court Administrator