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ATTORNEY GENERAL

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DEPARTMENT OF JUSTICE
1162 Court Street NE
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Salem, Oregon 97310
Telephone: (503) 378-4400
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January 31, 1996

Lars Larson
KPTV News, Northwest Reports
P.O. Box 3401
Portland, OR 97208

Re: ***Petition for Review of Denial of Fee Waiver: Clatsop County Trial Court Records***

Dear Mr. Larson:

This letter is the Attorney General's order on your petition for review of a denial of a fee waiver for records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on January 24, 1996, asks the Attorney General to review a denial of a fee waiver requested for a transcript of a portion of the judicial proceedings in the case of *State v. Vorce* and to order the Clatsop County Trial Court Administrator "to make the requested records available at no fee 'or a substantially reduced fee' as provided for in ORS 192.440." For the reasons that follow, we respectfully deny your petition.

We understand that the record you sought was a transcript of a ruling made by Judge Paula Brownhill in the case of *State v. Vorce* in which Judge Brownhill denied a request for public access coverage of the trial pursuant to UTCR 3.180. This ruling was made by Judge Brownhill on Tuesday, January 23, 1996. At the time you requested a transcript of that ruling, no such record existed. The public record existed only in the notes produced by the court reporter's steno machine.

The Public Records Law does not impose on public bodies the duty to create public records or to provide them in formats in which they do not exist. For instance, if a copy of a tape recording of a meeting is requested, the public body is not obligated to transcribe it in response to a public records request. *See* ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1995) (Manual) at 5.

Because the transcript you requested did not exist and the court had no duty to create a transcript,[1/] you apparently were referred to Rick Adams, the court reporter who would be able to create this document for you. Thus, the charge for transcribing the court proceeding was not a fee for a copy of a public record, but was a fee for creating a particular document in transcript form.[2/]

There has been no denial of a request for public records in the custody of the Clatsop County Trial Court and no fee charged by the Clatsop County Trial Court Administrator for a public record that is subject to a fee waiver request under ORS 192.440(4). The fee arrangement between you and Mr. Adams for creating the transcript is not a fee for a public record under the Public Records Law, but a private transaction between the two of you. The Attorney General has no authority to order the Trial Court Administrator to waive a fee that he did not impose for records that he had no duty to create.

For these reasons, we respectfully deny your petition for a fee waiver.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

LRR:AV/JAA01BF9
c: Bradd Swank, State Court Administrator's office
Phil McCollister, Clatsop County Trial Court Administrator

[1/] A transcript is required only if requested by the court or a party for the use of the court or the party, ORS 8.350, or if needed for an appeal. ORS 19.029. In each case, the costs of preparing a transcript are paid by the court or by the party, depending upon who requests the transcript or designates that it be made. ORS 19.084, 21.470. Here, the court did not request the transcript, nor was the court under any duty to do so.

[2/] We understand that, at your request, the court reporter agreed to transcribe the portion of the proceeding relevant to your request and that, working on his own time on the evening of January 24, 1996, he transcribed nine pages and faxed them to you that same evening. He also faxed you a bill for $27.00 for the transcription services. That charge is what you ask the Attorney General to order be waived.