THEODORE R. KULONGOSKI
ATTORNEY GENERAL

THOMAS A. BALMER
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400
TDD: (503) 378-5938

April 30, 1996

Schon T. Tell
2605 State Street
Salem, OR 97310

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

Dear Mr. Tell:

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 April 24, 1996, asks the Attorney General to direct Lane County Circuit Judge Kip Leonard to produce a copy of a rape laboratory report in case no. 10-90-00910.[1/]

For the reasons that follow, we respectfully deny your petition. We have been informed by Bradd Swank of the State Court Administrator's office that the trial court does not have in its custody the laboratory report you requested because it was not introduced into evidence at your stipulated facts trial. The trial court cannot make

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[1/] Your petition also requested that the Attorney General order the District Attorney to make a copy of the record available to you. The Attorney General has no jurisdiction over records in the hands of the District Attorney. *See* ORS 192.450(1). If you wish to inspect or receive a copy of a record in the custody of the District Attorney, you will need to make your request directly to the District Attorney; if the District Attorney has denied your request for a record, your recourse is then to file a lawsuit in the Circuit Court. *See* ORS 192.460, 192.480.

available a record that it does not have, and the Attorney General cannot order its disclosure.[2/] *See* ORS 192.450(1). Accordingly, your petition is denied.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

LRR:AV:lrr/JGG0D9E8

c: Bradd Swank
Management/Legal Analyst
State Court Administrator's office
Supreme Court Building
Salem, OR 97310

Honorable Kip W. Leonard
Circuit Court Judge
Lane County Courthouse
125 E 8th
Eugene, OR 97401

[2/] We understand that Judge Leonard's office will be contacting you directly to explain that the trial court does not have the record you seek. Because the record you seek is not in the custody of the trial court, there has been no denial of a right to inspect or receive a copy of a public record by the court or its judges, and thus we need not examine whether there has been a claim of right to withhold disclosure by an elected official. *See* ORS 192.480.