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

February 14, 1995

Charles K. Johnson
c/o Roland W. Johnson
Kirby & Johnson
P.O. Box E
Enterprise, OR 97828

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

Dear Mr. Johnson:

This 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 February 7, 1995, asks the Attorney General to direct the Trial Court Clerk for the Wallowa County Circuit and District Courts, and District Court Judge Eric Valentine, to make available for inspection and copying a copy of an affidavit or other record supporting issuance of a search warrant issued by Judge Valentine on December 14, 1994 to search Charles K. Johnson's dwelling and premises. For the reasons that follow, we respectfully deny your petition.

ORS 192.480 provides:

> In any case in which a person is denied the right to inspect or to receive a copy of a public record in the custody of an elected official, or in the custody of any other person but as to which an elected official claims the right to withhold disclosure, no petition to require disclosure may be filed with the Attorney General or district attorney, or if a petition is filed it shall not be considered by the Attorney General or district attorney after a claim of right to withhold disclosure by an elected official. In such case a person denied a right to inspect or to receive a copy of a public record may institute proceedings for injunctive or declaratory relief in the appropriate circuit court * * * .

In this case, we have been informed by Linda Zuckerman of the State Court Administrator's office that Marilyn Anderson, the Wallowa County Trial Court Clerk, would not allow inspection or copying of the record without the permission of Judge Valentine. Judge Valentine denied the request to allow inspection or copying of the record. Therefore, the requested record is one for which an elected official has claimed the right to withhold disclosure.[1/] Under this circumstance, the Attorney General may not issue an order requiring disclosure. Any further proceedings must be undertaken as described in ORS 192.480 and 192.490. Accordingly, your petition is denied.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

c: Linda Zuckerman, Legal Counsel
Office of the State Court Administrator
Supreme Court Building
1163 State Street
Salem, OR 97310

Marilyn Anderson
Trial Court Clerk
Wallowa County Circuit and District Court
101 S. River #204
Enterprise, OR 97828

Hon. Eric Valentine
District Court Judge
101 S. River
Enterprise, OR 97828

[1/] We have also been provided with a copy of a letter dated January 20, 1995, from District Attorney Daniel Ousley to Marilyn Anderson, in which Mr. Ousley directs Ms. Anderson to withhold disclosure of the affidavit supporting the search warrant issued regarding Mr. Charles Johnson. Mr. Ousley is also an elected official. Thus, his letter provides another basis for the Attorney General to decline to issue an order in this matter.