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October 20, 2004

Martin Allen Johnson
OPS 541-0056, USBOP/USPC Fed # 56167-065
OSP IMU C-3-21
2605 State Street
Salem, OR 97310

Re: Petition for Public Records Disclosure Order:
State Court Administrator Records

Dear Mr. Johnson:

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. You are represented on three separate matters by lawyers from the office of Public Defense Services. Mr. Eric Johansen authorized us to communicate directly with you on the subject of your petition. Your petition, which we received on October 18, 2004, asks the Attorney General to order the State Court Administrator to disclose[1]:

> [A]ll my records, for my indigent defense fee statements . . . with a complete itemized detailed list of any and all of the expenses, costs, hours, investigation, expert witnesses fees, etc, to include the original attorneys billing records, time card, hours spent, any affidavits, investigator expenses and hours worked, any costs for expenses such as food, miles, travel, lodging, testing, exhibits, mailing, legal work photocopying, etc, for all my criminal defense cases in the circuit court and on appeal to the State Court Administrator. [Cases are identified as including Washington County criminal cases, 98-2131, 99-0528, 01-1654, S48826, Clackamas County criminal case, 98-0590, A116113, S51591, and Multnomah County criminal case, 98-0534200, A119273.]

[1] Included in your itemized petition are statements regarding your request to the agency and others asking for information, primarily in relation to fees. We identified the records in the quoted portions of your petition to be those for which you sought an order to disclose.

> [A] duplicate complete copy of all the information released to the Oregonian newspaper, pages 1 & 2 attached, of all the total costs for all 254 aggravated murder cases, to include the attorneys names, investigators names, defendant's names, county name, case number, that is available as a public record.

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

The Public Records Law confers a right to inspect and obtain copies of any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.410. A person whose request to inspect or receive a copy of a public record is denied by a state agency may petition the Attorney General to order disclosure. ORS 192.450(1). We first address your petition as it relates to indigent defense fee statements for your criminal defense and then separately address records disclosed to *The Oregonian*.

1. Indigent Defense Fee Statements

Attached to your petition were copies of two letters. The first, dated January 30, 2003, is from an analyst with the Indigent Defense Services Division of the State Court Administrator's office and responds to your request "for indigent defense fee statements." She asked you to make your request through your appointed appellate counsel. The second letter, dated March 27, 2003, was from your counsel at the Office of Public Defense Services. He declined to request your indigent defense fee statements without a reason being provided for doing so. Apparently you took no further action until you filed your petition with the Attorney General on October 18, 2004.

We talked with Bradd Swank, Special Counsel, Government Relations, of the Judicial Department about your petition. He told us that your appellate counsel at the Office of Public Defense Services does not submit indigent defense fee statements to the State Court Administrator, so no fee statements exist as to the appellate cases you listed. With regard to indigent fee statement records for your cases in trial court, Mr. Swank told us that the agency will disclose the records upon receipt of payment of fees charged to recoup its cost of responding to your request. *See* ORS 192.440(3) (agency authority to establish fees). If you contact him directly, Mr. Swank will explain the form in which the records are available and inform you of the associated fees. Because the agency has agreed to disclose the available records, we deny your petition.

2. Records on 254 aggravated murder cases

You also petitioned for disclosure of a duplicate copy of the records released to *The Oregonian* concerning the defense costs for "all 254 aggravated murder cases." According to the newspaper article attached to your petition, the requested records were disclosed by the Office of Public Defense Services, which is not part of the Judicial

Department or the Office of the State Court Administrator. The Office of the State Court Administrator did not disclose records to *The Oregonian*, and Mr. Swank told us that it has no record of you making a request for the records described in your petition. For these reasons, we deny your petition.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

PDS:AGS14577

c: Bradd Swank, Special Counsel,
Government Relations, Judicial Department
Kathryn Aylward, Office of Public Defense Services
Walter J. Ledesma, Office of Public Defense Services
Eric Johansen, Office of Public Defense Services
Susan Drake, Office of Public Defense Services