

January 7, 2004

Terry Lee Barker #3886090
Oregon State Penitentiary
2605 State Street
Salem, OR 97310

Re: Petition for Public Records Disclosure Order:
Attorney General, Department of Justice

Dear Mr. Barker:

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 31, 2003, asks the Attorney General "to order the Department of Justice and its employees to make available for inspection and copying the following records":

1. Appellate Court file, Union Co. Circuit Court Case No. 920534889;
2. Court of Appeals file, Case No. CA A75949;
3. Supreme Court File Case No. SC S41439; inclusive of the briefs and petitions of all parties.

On November 22, 2003, you requested copies of three of the briefs from the above-described cases. In your November letter, you offered to pay the cost of producing copies of these briefs. Because you have now petitioned for disclosure of the briefs, I will assume that you have not received a response from this office to your November request.

Because, as explained below, a petition for an order compelling disclosure of records of the Department of Justice is not available to you under Oregon law, we will treat your December 31, 2003 "petition" as a renewed request for the records that you previously requested, and as a request for additional records. As requested in your December 31, 2003 "petition", we will provide you with an estimate of the cost of extracting and copying the "briefs and petitions of all parties" for CA A75949 and SC S41439, to the extent that we have retained those records. Upon prepayment of those costs, and to the extent that we have retained the requested "briefs and petitions", they will be sent to you.

Your December 31, 2003 request is broader than your November 22, 2003 request. In the December 31, 2003 request, you ask for the "Appellate Court file", the "Court of Appeals file", and the "Supreme Court File" for specific cases. The requested documents describe files that would contain materials in addition to the briefs that were requested in the November 22, 2003 request. The Oregon Department of Justice does not maintain, compile, or keep the "Appellate", "Court of Appeals", or "Supreme Court" files. We are not obliged by the Public Records law to produce these files for you, because the Department of Justice is not the custodian of the court's files.

Oregon law does provide that a person who has been denied access to records may petition the Attorney General for an order directing the denying agency to disclose the requested records. ORS

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192.450. But Oregon law does not provide for such review of denials made by an elected official. The Attorney General heads the Department of Justice; therefore, the Department's denial of a public records request is not subject to a petition for a public records order. The pertinent law states in relevant part:

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 the right to receive or inspect a copy of a public record may institute proceedings for injunctive or declaratory relief in the appropriate circuit court, as specified in ORS 192.450 or 192.460 * * *.

We therefore respectfully deny your petition for lack of jurisdiction.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS13425