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August 16, 2004

James Bobbitt, SID #11775755
Santiam Correctional Institution
4005 Aumsville Hwy SE
Salem, OR 97301-9112

Re: Petition for Public Records Disclosure Order:
Oregon Department of Corrections (ODOC) Records

Dear Mr. Bobbitt:

This letter is the Attorney General's order on your petition for disclosure under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on August 9, 2004, asks the Attorney General to direct ODOC and its employees to provide you with a copy of a "Tort Claim Investigative Report." For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. Any person denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld. ORS 192.450.

According to your petition, you requested a copy of the subject report by letter to Mill Creek Correctional Facility (MCCF)/Santiam Correctional Institution (SCI) Institution Security Manager Bil Carter, dated March 30, 2004.[1] In a memorandum dated April 15, 2004, Mr. Carter identified the requested report as a "confidential departmental document" and advised that you could acquire a copy for litigation purposes through discovery. We construe Mr. Carter's communication as a denial of your request.

[1] Your petition incorporates by reference correspondence between you and Mr. Carter.

We spoke with Mr. Carter about your petition. He told us that the report you requested was prepared by ODOC Lieutenant J. Etter pursuant to a request of ODOC from the Risk Management Division (RMD) of the Department of Administrative Services, in connection with RMD's processing of a notice of tort claim that you filed against ODOC.

The Public Records Law conditionally exempts from disclosure public records held by a public body if the records either pertain to litigation to which the public body is a party or pertain to litigation that the public body shows is "reasonably likely to occur." ORS 192.501(1). One indication that litigation is reasonably likely to occur is that a person has filed a notice of tort claim against the public body. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2004) (AG'S MANUAL) at 29. The Attorney General has previously determined that notes or reports prepared by a public body in response to a notice of tort claim filed against it would fall within the exemption. AG'S MANUAL at 29 *citing* Public Records Order, January 12, 1990, Bischoff; Public Records Order, June 8, 1990, Madrid.

A record meeting the above requirements of ORS 192.501(1) is exempt from disclosure "unless the public interest requires disclosure in the particular instance." AG'S MANUAL at 28. This office has concluded that "[a]n interest in private litigation does not qualify as a public interest requiring disclosure." AG'S MANUAL AT 29 *citing* Public Records Order, June 8, 1990, Madrid. Neither your petition nor your March 30, 2004, letter to Mr. Carter identifies a public interest that requires disclosure of the requested report, and we are not aware of a public interest requiring disclosure in this particular instance.

Because the requested report was prepared by ODOC in response to a notice of tort claim that you filed against that agency, and because you have failed to identify, and we have not found, a public interest requiring disclosure of the report in this instance, the report is exempt from disclosure under ORS 192.501(1). For these reasons, we deny your petition.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

PDS:gvk/AGS14403
c: Frank Thompson, Superintendent, MCCF/SCI
Bil C. Carter, Institution Security Manager, MCCF/SCI