HARDY MYERS
ATTORNEY GENERAL

PETER D. SHEPHERD
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97301-4096
Telephone: (503) 378-4400
TTY: (503) 378-5938

June 10, 2004

Lemuel Hentz, SID #6750414
Snake River Correctional Institution
777 Stanton Boulevard
Ontario, OR 97914-0595

Re: *Petition for Public Records Disclosure Order*:
Oregon Department of Corrections Records

Dear Mr. Hentz:

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 June 3, 2004, asks the Attorney General to direct Cynthia Cain, Program Services Manager at the Snake River Correctional Institution (SRCI), and SRCI employees to make available to you copies of the following records:

1. A copy of any and all memos, incident report, misconduct report and e-mails wrote (sic) against, Lemuel Hentz #6750414 between January 1, 2004 to April 21, 2004 by any staff;

2. A copy of any and all memo's, incident report, misconduct report and e-mails wrote (sic) by Ms. C. Cain, between January 1, 2004 to April 21, 2004 in reference to inmate, Lemuel Hentz #6750414; [and]

3. A complete list of the dates, which inmate Hertz continued this behavior of watching female staff while in the shower; these dates should not include February 25, 2004.

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. The Attorney General does not have authority to order disclosure of public records unless the agency has denied a request for those records. In responding to a public records request, an agency is permitted a reasonable time to retrieve and review the requested records, and, if necessary, to consult with legal counsel before providing the records or denying the request. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2004) at 9; *Morse Bros., Inc. v. ODED,* 103 Or App 619, 622, 798 P2d 719 (1990).

According to your petition, you asked that you be furnished copies of the requested records on May 16, 2004. You state that, as of the date of your petition, you had not received a response to your request. We spoke with Bill Doman, Executive Assistant to the SRCI Superintendent, about your petition.

Mr. Doman told us that Ms. Cain forwarded your request for records to him for response, and that on June 8, 2004, he sent a memo to Ms. Cain requesting that she provide him with an estimate of the costs for locating, reviewing, and making copies of non-exempt records available to you. Mr. Doman has provided us with a copy of your Inmate Communication to Ms. Cain in which you request copies of SRCI records, and his memo to Ms. Cain requesting an estimate of costs. Mr. Doman told us that he will respond to your records request once he has received the cost estimate from Ms. Cain.

Under these circumstances, we conclude that SRCI has not denied your request for public records.[1] Therefore, we deny your petition as premature.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

c: Bill Doman, Executive Assistant to Superintendent Jean Hill, SRCI

PDS:AGS14165

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[1] Mr. Doman told us that the current balance of your inmate trust account was ten cents. The Public Records Law permits public bodies to establish and recover fees reasonably calculated to reimburse them for their actual cost in making public records available, including the time spent by agency staff in locating and reviewing the requested records in order to delete exempt material. *See* ORS 192.440(3); *see also* Public Records Order, April 7, 1989 (Martin). Moreover, public bodies may require a requestor to prepay the agency's estimated costs for doing so. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2004) at 14. Mr. Doman told us that, in accordance with ODOC's rules governing release of its public records, in order to obtain copies of any non-exempt records you will be required to have sufficient funds in your inmate trust account to pre-pay SRCI's estimated costs of locating, reviewing, and making available to you copies of the records.