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March 26, 2004

Mr. Alonza Weeks
SID No. 13784709
777 Stanton Blvd.
Ontario, OR 97914

Re: *Petition for Public Records Disclosure Order*:
Department of Administrative Services, Risk Management Division Records

Dear Mr. Weeks:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Laws, ORS 192.410 to 192.505. Your petition, which we received on March 22, 2004, asks the Attorney General to direct the Department of Administrative Services, Risk Management Division (DAS/RMD) to make available for inspection or to produce copies of the following records:

Investigation of incident at SRCI during visit on August 23, 2003
Claim number L95673

We respectfully deny your petition on the ground that the records you requested constitute "public records pertaining to litigation" that are exempt from disclosure under ORS 192.501(1).

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 195.420. Any person denied the right to inspect or to receive a copy of any public record of a state agency may petition the Attorney General to review the public record to determine if it may be withheld from disclosure. ORS 192.450(1).

On October 24, 2003, DAS/RMD received the tort claim notice you filed concerning the visitation incident on August 23, 2003. In response to your tort claim notice, and at the division's request, the Department of Corrections prepared the records you seek. DAS/RMD denied your tort claim by letter dated December 22, 2003. On January 20, 2004, you requested DAS/RMD's investigation file regarding the August 23, 2003 visitation incident, which DAS/RMD received on January 26, 2004. DAS/RMD denied your request by letter dated January 27, 2004. According to the official court records of the small claims department of the Malheur County Circuit Court, you filed a small claims complaint in relation to the visitation incident against Snake River Correctional Institution Superintendent Jean Hill on March 2, 2004, which was served on Superintendent Hill on March 10, 2004.

ORS 192.501(1) conditionally exempts from disclosure:

> Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this subsection shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation [.]

The Oregon Court of Appeals has held that this exemption applies only to records "* * * compiled or acquired by the public body for use in ongoing litigation or, if a complaint has not been filed, if the public body shows that such litigation is 'reasonably likely to occur.'" *Lane County School Dist. v. Parks*, 55 Or App 416, 420, 637 P2d 1382 (1981). This office has stated that "[o]ne indication that litigation is reasonably likely to occur is that a person has filed a notice of tort claim against the public body. Notes or reports prepared in response to such a notice would fall within the exemption." ATTORNEY GENERAL PUBLIC RECORDS AND MEETINGS MANUAL (2001) (MANUAL) at 27.

As already stated, the investigation report you requested from DAS/RMD was prepared in response to your tort claim notice, and, subsequent to DAS/RMD denying your tort claim, you filed a small claims complaint regarding the visitation incident. For this reason, the requested records come within the exemption for public records pertaining to litigation.

The exemptions listed in ORS 192.501 are conditional in that they exempt specific types of records or information "unless the public interest requires disclosure in the particular instance." ORS 192.501. An interest in private litigation does not qualify as a public interest requiring disclosure of records under ORS 192.501(1). MANUAL at 28. You have not asserted a public interest requiring disclosure of the litigation records in this instance, and in reviewing your petition and original request for disclosure of this information, we can discern none.

Consequently, because the records you seek were compiled in preparation for litigation, *i.e,*. in response to the filing of your tort claim, ORS 192.501(1) exempts those records from disclosure. For that reason, we deny your petition to compel disclosure.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

pds/AGS13746
c: SRCI Superintendent Jean Hill