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October 2, 1989

Vern L. Faatz, Chairperson
Oregon State Board of Parole
2575 Center St. NE
Salem, OR 97310

Ann Farmer Kelley
2265 Greenwood
Rickreall, OR 97371

Re: **Petition for Public Records Disclosure Order; Oregon State Board of Parole Records**

Dear Ms. Kelley and Mr. Faatz:

This letter is the Attorney General's order on Ms. Kelley's petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 through 192.505. The petition, which we received on September 25, 1989, asks the Attorney General to order the Oregon State Board of Parole (board) to disclose certain documents which the board may consider in an initial parole release date hearing for inmate Bryan Mikesell. We understand that the board already has disclosed two of the three documents requested. Thus, as to those documents, the petition is moot. The board, however, refused to disclose the psychological report by Gary E. Nielsen, Ph.D. The board based its refusal on its determination that the document "was submitted with the expectation of confidentiality and which would be an unreasonable invasion of privacy if disclosed." For the reasons that follow, we grant the petition with respect to this report.

We note initially that Ms. Kelley has requested the report pursuant to ORS 144.120(7), which entitles a "victim," including a crime victim's next of kin, to "the information that the board * * * will rely upon" at a hearing on an initial release date. The report at issue plainly falls within that provision.

We see nothing in the Public Records Law that would permit the board to withhold this record from Ms. Kelley. Three exemptions are arguably relevant. First, ORS 192.502(2) exempts personal information from disclosure

> "if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance."

We disagree with the board's suggestion that disclosure of this report would constitute an unreasonable invasion of privacy. Mr. Mikesell's attorney submitted the report to the board on behalf of his client, with no restriction on subsequent disclosure of the report. That report may form part of the basis for the board's decision on Mr. Mikesell's parole release date: a matter of substantial public importance. Moreover, the legislature plainly intended for persons in Ms. Kelley's position to have access to the report with "adequate time to rebut the information," ORS 144.120(7), so that crime victims may play a meaningful role in the board's decisionmaking process. See In re Collins, 308 Or 66, 73 n 12, 775 P2d 312 (1989) (noting "legislative policy permitting meaningful participation by crime victims in the criminal justice decision making process"). It is apparent to us that the legislature has effectively decided that disclosure of this information to a victim pursuant to ORS 144.120(7) is not an unreasonable invasion of privacy, and is required by the public interest.

Second, ORS 192.502(3) exempts from disclosure information voluntarily submitted to a public body in confidence, where the information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and the public interest would suffer by disclosure. The document in question does not satisfy these elements. Although Dr. Nielsen stamped the document "confidential" before submitting it to Mr. Mikesell's attorney, the attorney, in submitting the report to the board, did not attach any such conditions to the submission. Nor did the board grant any assurance of confidentiality; in light of ORS 144.120(7), it could not have done so. Moreover, for the reasons stated above concerning the personal privacy exemption, the information in the report should not reasonably be considered confidential, and the legislature effectively has determined through ORS 144.120(7) that the public interest requires disclosure to Ms. Kelley.

The third potential exemption, ORS 192.502(4), exempts board records

> "to the extent that disclosure therof would interfere with the rehabilitation of a person in custody of the [D]epartment [of Corrections] or substantially prejudice or prevent the carrying out of the functions of the department, if the public interest in confidentiality clearly outweighs the public interest in disclosure."

Again, this exemption does not justify nondisclosure. We have been given no information suggesting that disclosure to Ms. Kelley would interfere with Mr. Mikesell's rehabilitation or prejudice the carrying out of the department's functions. Further, through ORS 144.120(7) the legislature has effectively determined that the public interest in disclosure of the report to Ms. Kelley outweighs any public interest in confidentiality.

For these reasons we grant Ms. Kelley's petition with respect to Dr. Nielsen's report. ORS 192.450(2) affords the board seven days from the date of this order in which to comply.

Sincerely,

PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

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