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June 27, 1990

James L. Francesconi
JAMES L. FRANCESCONI & ASSOCIATES, P.C.
Attorneys at Law
900 S.W. Fifth, Suite 1250
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Re: **Petition For Public Records Disclosure Order; Oregon Department of Corrections Records**

Dear Mr. Francesconi:

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 June 20, 1990, asks the Attorney General to direct the Oregon Department of Corrections (ODOC) to make available copies of the following records:

> "1. Copies of all records, investigative reports, dismissal proceeding records and disciplinary action reports pertaining to disciplinary actions against staff due to drug involvement since 1986 investigation, as mentioned, in the July 19, 1989 memorandum from Fred B. Pearce, Director of the Department of Corrections, to Governor Neil Goldschmidt.
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> "2. Copies of all records pertaining to discipline of State Parole Board or Oregon State Corrections employees for any infractions or crimes, including, but not limited to, Driving While Intoxicated (DWI), reckless driving, traffic offenses, shoplifting, and spousal or child abuse."

You state in your petition that you requested a copy of these records on March 16, 1990, from the Department of Corrections and the State Parole Board. You further state that the request was denied by Douglas W. Daughtry, Presiding Referee, Workers' Compensation Board. Attached to the petition is what appears to be a memorandum of law, together with several other attachments. For the reasons stated below, we deny your petition.

The Public Records Law requires a custodian of public records, unless otherwise expressly provided by statute, to furnish proper and reasonable opportunities for inspection and examination of records in the office of the custodian. ORS 192.430(1). Subject to ORS 192.480, which does not apply here, 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 public inspection. ORS 192.450(1). Under these provisions, an agency may be said to have "denied" the right to inspect or receive a copy of a public record only if a proper request for public records is presented to the custodian of the requested records. Public Records Order, July 7, 1989 (Baker).

Moreover, ORS 192.430 provides that the custodian of records may make reasonable rules and regulations necessary for the protection of the records and to prevent interference with the regular discharge of duties of the custodian. Pursuant to this statute, the Department of Corrections has adopted OAR 291-37-015(2), which provides in pertinent part:

> "The request must be in writing, addressed to the Department's functional unit manager where the record(s) is located, and must specify the record(s) from which information is requested, if known. Where applicable, the request must be accompanied by a signed release of information. If the record(s) is not in the location where the request is received, the request will be forwarded to the functional unit manager in the location where the record is situated."

We have spoken with Marianne Morris, Manager of ODOC's Personnel Services Unit, and with Roberta English, a personnel officer in the unit. They inform us that in February of this year, you made a written request of ODOC for a copy of the personnel file pertaining to your client, Mr. Cox, and that you were subsequently provided with a copy of both the personnel and grievance files relating to your client.

We further understand from your petition and its attachments that you served on counsel for the SAIF Corporation a document purporting to be a "Request For Production" for those additional records that are the subject of your current petition. The "Request For Production," a copy of which was attached to your petition, is captioned with a case before the Workers' Compensation Board. That pleading does not ask ODOC to make public records available for inspection and/or copying in the office of the custodian of the records. Instead, it asks that the records be produced at the offices of "Francesconi & Associates" located in Portland. As stated in the petition, the referee denied the "Request For Production." The referee noted that under the Public Records Law, you had the option of requesting those records from the custodian of the records and, if your request is denied, petitioning the Attorney General. See ORS 192.450(1).

From our review we conclude that you have not followed the procedure set forth in the Public Records Law, either before or since the referee's ruling. We understand from the Certificate of Mailing attached to the "Request For Production," and from speaking with Joyce Merritt, ODOC's Safety Risk Manager, that you mailed the original of the "Request For Production" to ODOC. Ms. Merritt informs us that upon reviewing the document, which on its face was a pleading in a pending workers' compensation case, she did not understand the request to seek public records from ODOC under ORS chapter 192. Accordingly, Ms. Merritt contacted the attorney assigned to that case to handle the matter. Ms. Morris and Ms. English, who reviewed a copy of the "Request For Production" from Ms. Merritt, reached the same conclusion, and placed a copy of the transmittal memorandum from Ms. Merritt in the personnel file pertaining to Mr. Cox. You also apparently did not consider the "Request For Production" to be a public records request of ODOC under ORS chapter 192; you did not follow up on the production request with Ms. Morris or any other responsible ODOC employee.

For these reasons, we conclude that you have not asked the Department of Corrections for disclosure of public records under the Public Records Law. Consequently, the department has not denied a proper request for disclosure. The referee's denial of your "Request For Production" does not take the place of a denial of a request by ODOC. Therefore, we deny your petition as premature.

You are free, of course, to submit to ODOC a written request for the records you seek. If you choose to do so, you should direct that request to Ms. Morris, Manager of ODOC's Personnel Services Unit.

Sincerely,

James E Mountain Jr

for PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

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