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April 10, 2003

Darrick L. Hunter, SID# 7254111
Columbia River Correctional Institution
9111 NE Sunderland Avenue
Portland, OR 97211-1709

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

Dear Mr. Hunter:

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 April 3, 2003, requests the Attorney General to direct the Columbia River Correctional Institution (CRCI) and the Oregon Department of Corrections (ODOC) to make available to you for inspection and copying, the following documents pertaining to the time period 1985 through 2003:

1. Chronological history of inmate Darrick L. Hunter #7254111, stored and/or kept in its files and computers.
2. Pre-sentence reports concerning Darrick L. Hunter #7254111, stored and/or kept in its computers.
3. Sex Offender Risk Assessment forms concerning inmate Darrick L. Hunter #7254111, stored and/or kept in its files and computers.
4. Board of Parole and Post-Prison Supervision revocation recommendations from parole officers concerning Darrick L. Hunter #7254111, stored and/or kept in its files and computers.
5. Face sheets, including updates of Darrick L. Hunter #7254111, stored and/or kept in its files and computers.
6. Portland police reports, summaries and no-compliant police reports of Darrick L. Hunter #7254111, stored and/or kept in its files and computers.

For the reasons that follow, we respectfully deny your petition.

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 192.420. The law requires generally that the custodian of public records furnish proper and reasonable opportunities for their inspection or copying in the office of the custodian. ORS 192.430. 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).

ORS 192.430 authorizes state agencies to adopt reasonable rules and regulations necessary for protecting their records and preventing interference with the regular discharge of the duties of the custodian. Moreover, 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). Public bodies may preliminarily estimate charges for responding to a records request and require prepayment of the estimated charges before acting on the request. *See* ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (AG'S MANUAL) (2001) at 14.

Pursuant to these statutes, ODOC has adopted OAR 291-037-0020 relating to review of public records, which provides in pertinent part:

> (3)(a) The cost of duplication will be based upon actual cost, including staff time to locate, review and copy the record(s), all material and first class postage, where applicable:
>
> (A) Unless circumstances warrant a different conclusion, it may be presumed that, if the request is for a specific releasable document, the cost of the duplication is 50 cents a page;
>
> (B) Unless circumstances warrant a different conclusion, it may be presumed that, if the request requires record review and a determination of whether the record can or should be released, the actual cost of such review, determination and duplication is $1.25 a page;
>
> (b) * * * no inspection and/or duplication of record(s) is authorized until payment has been received.
>
> * * * * *
>
> (7) Proper and reasonable opportunity for inspection and/or duplication of record(s) will be provided, consistent with security requirements at each Department facility and functional unit and as circumstances warrant.

Your petition states that you requested copies of the above-listed records from three ODOC officials, but that your requests were denied. Specifically, your petition states that your requests were denied by Ms. Jennifer Bozied, CRCI Custodian of Records, "Gary Fields, Ph.D., Administrator for the Oregon Department of Corrections," and Glenn Riley, Assistant Director of ODOC's Information Systems and Services Division (ISSD). Upon further inquiry, we determined that the only proper public records request you made to any of the individuals listed in your petition was to Ms. Jennifer Bozied.[1]

We spoke to Jennifer Bozied regarding your petition, and she indicated that she forwarded your requests to Mr. Lloyd Copeland, CRCI Corrections Counselor. Mr. Copeland provided us with a copy of your March 15, 2003 Inmate Communication requesting a copy of your Sex Offender Risk Assessment forms. He also provided us with a copy of your March 17, 2003 letter requesting your chronological history reports, presentence reports, sex offender risk assessment forms, and parole, probation, and post-supervision revocation records. These communications do not include a request for face sheets or Portland police reports. Moreover, Mr. Copeland informed us that he has not received any additional requests from you for face sheets or Portland police reports that may be in your file. Although you did not make a proper written request to the agency, Mr. Copeland has agreed to treat your petition as a written request for these specific records.

As to the remaining records, we understand from Mr. Copeland that in response to your requests to inspect and copy records, you were orally notified that you lacked the necessary funds in your inmate trust account to cover the agency's fees for making copies of the requested records available to you. Mr. Copeland also provided to us a copy of an April 8, 2003 memorandum that he had hand-delivered to you reiterating that you lacked the necessary funds in your trust account to cover the costs of your request and setting forth the estimated costs that you will be required to pay before ODOC processes your request.[2] Mr. Copeland told to us that, pursuant to ODOC's rules, the necessary review will be conducted, and copies of any non-exempt records made available to you, *upon your prepayment to ODOC of its fees* for making available copies of the requested records.

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[1] With regard to your request to Glenn Riley, he is no longer employed by ODOC. He left his position as the ISSD Assistant Director on March 31, 2002, and Mr. John Koreski was hired as his replacement. Any correspondence addressed to Mr. Riley was likely forwarded to Mr. Koreski. We spoke with Charles Kliewer in Mr. Koreski's office regarding your petition. Mr. Kliewer was unable to locate any inmate communication or other request for copies of the records referenced in your petition. We also spoke to Gary Field, ODOC Counseling and Treatment Services Administrator about your petition. Mr. Field gave us a copy of a letter you sent to him on March 11, 2003, in which you requested an "opportunity to inspect the Chrono History." Mr. Field also gave us a copy of his response, also dated March 11, 2003, notifying you that he did not have "jurisdiction over information in your electronic chronos file" and that "[y]ou should see your institution counselor regarding your concerns about chrono documentation." Consistent with his letter to you, Mr. Field told us that he is not the custodian of the records you requested.

Pursuant to ODOC's administrative rules, requests for records "must be in writing, addressed to the Department's functional unit manager where the record(s) is located." OAR 291-037-0015(2). Absent a request for records and a denial of that request by the state agency, the Attorney General has no authority to order ODOC to make the records available to you. *See* ORS 192.450(1).

[2] A copy of Mr. Copeland's letter is enclosed.

As discussed above, a public body lawfully may require prepayment of its fees for making copies of public records available. *See* ORS 192.440(3); *see also* Public Records Order, April 7, 1989 (Martin), and AG'S MANUAL at 13-14. Under these circumstances, ODOC has not denied your request for public records. Accordingly, we have no authority to order ODOC to make copies of these records available to you. ORS 192.450(1). Because ODOC has agreed to provide you with nonexempt records responsive to your request upon prepayment of the necessary fees, we respectfully deny your petition.

Sincerely,

Peter D. Shepherd

PETER D. SHEPHERD
Deputy Attorney General

AGS12193
Enclosure: a/s
c: S. Frank Thompson, CRCI Superintendent
Lloyd Copeland, CRCI Corrections Counselor