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

March 6, 2003

Dave Negation
c/o 818 SW 3rd Avenue, PMB 354
Portland, OR 97204

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

Dear Mr. Negation:

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 February 27, 2003, asks the Attorney General to direct the Oregon Department of Corrections (ODOC), to make available to you copies of the following records:

> All records containing mention of/relating to myself (Dave Negation) or the Anarchist Prisoners' Legal Aid Network (APLAN) within Oregon Department of Corrections institutions and administration, especially, but not limited to, those of Mr. Benny Ward, ODOC Security Threat Group Manager.

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 who is 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(1). The Attorney General may order a state agency to disclose records only when the agency has denied a request for the records. *See* ORS 192.450(1).

Your petition states that you requested copies of the above-referenced records by letter to ODOC Deputy Director Nick Armenakis dated January 13, 2003, but that as of the date of your petition you had yet to receive a reply to your request. We address your petition with regard to two sets of records, (A) those that ODOC has located and is willing to provide to you

upon receipt of payment of related fees, and (B) those that may exist but which ODOC staff have not yet identified.

A. Identified ODOC Records

We spoke with Benny Ward, ODOC's Security Threat Group (STG) Manager, about your petition. Mr. Ward told us that your January 13 letter was routed to him for response on January 22, 2003. Mr. Ward also told us that, following his receipt of your letter, he made inquiry of ODOC's STG staff and determined that, apart from your letter to Mr. Armenakis, neither he nor any other ODOC STG staff had any records as described in your letter.

According to Mr. Ward, based on his knowledge of ODOC operations it was reasonable for him to assume that no other segment within ODOC had records responsive to your request. Mr. Ward told us that his staff was in the process of responding to your letter when it was brought to his attention that two functional units within ODOC have such records. Those records consist of: (1) inmate disciplinary file records maintained by Oregon State Penitentiary's Hearings Section pertaining to two inmate disciplinary cases, case #0301A033A15 and #0301A034A15, including inmate misconduct reports, disciplinary orders (which also contain findings of fact and conclusions), and a letter from ODOC inmate Robert Thaxton to you dated November 25, 2002; and (2) copies of money orders that you sent to ODOC for deposit in several ODOC inmate trust accounts, and computer database records that reflect receipt and deposit of the same, maintained by ODOC's Central Trust Unit.

According to Mr. Ward, once he learned of the existence of the inmate disciplinary file and Central Trust Unit records that were responsive to your request, he discussed your request for records with the ODOC functional unit managers in the locations where the responsive records are maintained. Based on those discussions, Mr. Ward has stated that ODOC will make copies of these records available to you upon receiving payment of ODOC's fees and mailing costs.[1] Also, Mr. Ward told us that an ODOC official will send you a letter in the next week detailing those fees and costs and instructions regarding payment.

B. Possible Records

In addition to the records that ODOC has identified as being responsive to your request, Mr. Ward told us that, due to the extremely broad scope of your request, it is possible, although unlikely, that one or more additional ODOC functional units, institutions or offices may maintain responsive records. According to Mr. Ward, unless you are willing to narrow your request, to

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[1] The Public Records Law authorizes public bodies to establish and recover fees reasonably calculated to reimburse them for their actual cost in making public records available. ORS 192.440(3). A public body's "actual cost" may include charges for activities such as time spent by the public body's staff in locating and reviewing requested records in order to delete exempt material and in copying the records. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2001) 13. Consistent with the Public Records Law, ODOC has adopted administrative rule OAR 291-37-020(3)(b), which provides in pertinent part: "* * * [n]o inspection and/or duplication of record(s) is authorized until payment has been received."

identify the existence of such records ODOC officials would be required to review hundreds of thousands, if not millions, of ODOC records.

To undertake this task, Mr. Ward told us that ODOC will require you to prepay its estimated costs to conduct a search.[2] Although he has not undertaken to estimate those costs, Mr. Ward advises that, at a minimum, they would be hundreds of thousands of dollars. Mr. Ward further advises that ODOC's estimated costs would be reduced if you were to provide to him in writing specific information about the records that you seek, such as a description of the nature of the records or the area(s) of ODOC in which you believe they may be maintained. Receipt of this information would permit the agency to narrow the scope of any additional search for records, thereby lowering its costs. Mr. Ward asks that you contact him, in writing, to either (1) inform him that you wish to receive a cost estimate for ODOC to search for records under your current request; (2) provide information permitting ODOC to provide you with a cost estimate for a narrowed search for records; or (3) inform him that you wish to withdraw your request with respect to any responsive records that ODOC may maintain beyond those it has already identified.

C. Conclusions

We conclude that Mr. Ward, in good faith, believed that ODOC did not maintain records responsive to your request until such records were recently brought to his attention. Based on his explanation, we find Mr. Ward's good faith, although incorrect, belief to be reasonable. Preferably, Mr. Ward would have communicated his conclusion to you earlier. However, in light of the fact that ODOC is willing to provide you copies of the responsive records that it has identified, and is within its authority under the Public Records Law to require that you provide prepayment of fees prior to undertaking action to search for additional records, we conclude that ODOC has not denied your request. Therefore, the Attorney General lacks authority to order ODOC to disclose records to you.

Accordingly, with regard to the records ODOC has identified as responsive to your request and has agreed to provide upon receipt of payment of fees, we deny your petition as moot. Further, to the extent that your petition addresses potential additional records, not-yet-identified by ODOC, we deny your petition as premature.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

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[2] We have previously determined that a public body 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 (2001) 14; Public Records Order, April 7, 1989 (*Martin*). By doing so, the agency does not deny a request for public records.

AGS11984
c: Nick Armenakis, Deputy Director, ODOC
Benny Ward, STG Manager, ODOC