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January 21, 2003

Arlen P. Smith, SID #3738655
Snake River Correctional Institution
777 Stanton Blvd.
Ontario, OR 97914

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

Dear Mr. Smith:

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 January 13, 2003, asks the Attorney General to "reconsider my petition for public records disclosure and direct Risk Management to appropriately respond to my requests." 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 previous petition for which you have requested reconsideration asked the Attorney General to direct the Department of Administrative Services, Risk Management Division (RMD) to make available to you the following records:

A. Copies of a list of the persons employed in the I.C.U. [Inmate Claims Unit] and their positions;
B. Copies of the position descriptions related to the above persons; and
C. Copies of any documents showing the management structure of the Inmate Claims Unit within the Risk Management Division.

On September 25, 2002, we denied your previous petition as premature because the RMD Claims Manager, Michael Baird, advised us that he and his staff were unable to locate

any correspondence from you requesting copies of the records described in your petition. Mr. Baird further told us, and we in turn stated in our order, that RMD would make available to you, upon prepayment of the Division's fee for making copies of public records available, copies of its records specified in your petition, including records maintained on the agency's website.

Your current petition states that you wrote to Mr. Baird on October 4 and November 22, 2002. In your October 4 letter you told Mr. Baird that you were having a law office obtain the available material from the agency's website, and that following your review of those materials you would likely be writing Mr. Baird to request additional RMD records. In your letter to Mr. Baird of November 22, 2002, there is no mention of, or request for, the RMD records specified in your previous petition. Given this correspondence that is subsequent to our September 25, 2002 order, we conclude that you do not have a pending request with RMD for the records that were the subject of your previous petition. Therefore, to the extent that your current petition asks that we order RMD to produce copies of these records we deny your petition for these records as premature.

Your current petition states that in your October 4 and November 22 letters to Mr. Baird you requested information regarding RMD policies. Specifically, your October 4 letter asks Mr. Baird to respond to "one specific inquiry," namely "Does Risk Management employ any written guidelines, standards, or criteria in its review of claims against state agencies? If so, where would a copy of such be obtained and what would it be called?" Your November 22 letter reiterates your request for this information.[1]

Your query to Mr. Baird in your October and November letters asks for information about records that may exist. Although the Public Records Law does not require an agency to respond to questions about records, Mr. Baird has told us that there are records of the character that you describe, that RMD is the custodian of the records, and that, for the most part, RMD maintains the records as a "Claims Manual." Because your October 4 and November 22 letters to Mr. Baird do not contain a request to either inspect or copy these records, RMD's failure to respond to your letters does not constitute a denial of a request for public records subject to review by the Attorney General. *See* ORS 192.450(1).[2]

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[1] Your petition states that as of the date of your petition you had not received any response from Mr. Baird regarding these requests for information. We have spoken with Mr. Baird regarding your current petition, and he has acknowledged to us that he has yet to respond to your letters, primarily because of ongoing and priority workload demands on him and the unit he manages, RMD's Claims Unit.

[2] You may direct a request to Mr. Baird for a copy of all or parts of RMD's Claims Manual, and, if you do, RMD will then decide whether to disclose or withhold the records from you in accordance with the exemptions from disclosure stated in the Public Records Law. Should RMD deny your request for these records, you may petition the Attorney General to review the records and determine if they may be withheld. ORS 192.450(1).

Under these circumstances, we have no authority at this time to order RMD to make copies of RMD records available to you. Therefore, we deny your petition as premature.

Sincerely,

Peter D. Shepherd

PETER D. SHEPHERD
Deputy Attorney General

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c: Mr. Michael Baird, Claims Manager, Risk Management Division