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March 14, 2002

Charles Williams, SID #3831427
Eastern Oregon Correctional Institution
2500 Westgate
Pendleton, OR 97801

Re: Public Records Disclosure and Fee Waiver Orders:
Oregon Department of Corrections Records

Dear Mr. Williams:

This letter is the Attorney General's order on your petition for disclosure of records and for a partial fee waiver under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on March 8, 2002, asks the Attorney General to order the Oregon Department of Corrections (ODOC) to: (1) provide you with copies all blood test results maintained by ODOC pertaining to you from 1973 through 1996; (2) grant you a partial fee waiver for the copies of blood test results provided to you; and (3) permit you to inspect the medical file pertaining to you at the Eastern Oregon Correctional Institution (EOCI). 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).

ORS 192.430 authorizes public bodies to adopt reasonable rules necessary for protecting public records and preventing interference with the regular discharge of duties of the custodian. The Public Records Law also 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 the requested records and reviewing them for exempt material. *See* ORS 192.440(3); ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (AG MANUAL) (2001) at 13. ODOC has adopted such a rule, which provides for charges for copying and staff time. OAR 291-037-0020.

1. ODOC Blood Test Records

This is your second petition seeking a public records disclosure order from the Attorney General relating to records of blood test results maintained by ODOC. In your current petition you state that EOCI Health Services staff have provided you with copies of some, but not all, of the blood test results that ODOC maintains in its files pertaining to you. More specifically, your petition states that you have received copies of blood test results from the years 1997 to January, 2002, but that you have not been provided with any test results from prior years even though you have been incarcerated in the state's prison system since 1973.

We have spoken with Barbara McLean, Health Services Manager at EOCI, regarding your petition. Repeating what EOCI Nurse Manager Debra Gardner told us in February, in connection with your previous petition, Ms. McLean states that the Health Services staff at EOCI has provided you copies of all blood test results from medical files maintained at EOCI. Ms. McLean also tells us that, since the filing of your current petition, she caused a search to be conducted of ODOC's archived records pertaining to your prior state incarceration(s). As a result of that search, ODOC has provided you an additional 9 pages of blood test results from 1982, photocopied from microfiche. According to Ms. McLean, ODOC has provided you copies of all the blood test results pertaining to you that it maintains. Because ODOC has provided you with copies of the requested records, we deny your petition to order their disclosure as moot.

2. Reduction of Fees

Your petition states that you requested EOCI Health Services staff to reduce its $1.25 per page fee for making copies of the requested ODOC blood test records available to you, but that your request was denied.[1] According to Ms. McLean, ODOC provided the blood test records to you without first requiring that you prepay ODOC's fees. However, Ms. McLean says that, in accordance with OAR 291-037-0020(3)(a)(B) and (5), ODOC charges your inmate trust account to recover the fees, at the rate of $1.25 per page, if and when funds in the account become available in an amount that corresponds to the number of copies provided.

The Public Records Law authorizes a public body to waive or reduce fees if the public body "determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public." ORS 192.440(4). The "public interest standard" requires an analysis of whether disclosure of the records would benefit the public, and not merely the private interests of the requestor. Because the proper focus must be on the benefit to the public, a personal benefit to be derived by the requestor alone is insufficient cause for a fee waiver or reduction. *See* AG MANUAL at 16-17. According to Ms. McLean, you made no representation or showing to EOCI Health Services staff that the disclosure to you of the requested information serves any purpose other than your private interests. Neither does your

[1] Your petition states that fees established at the rate of $1.25 per page are "unreasonable." The Public Records Law authorizes a public body to establish fees "reasonably calculated to reimburse it for its actual cost" of making records available. ORS 192.440(3). However, the Public Records Law does not authorize a person to petition the Attorney General to review the fees established by a state agency and, likewise, does not authorize the Attorney General to determine whether such fees represent the agency's actual cost. *See* AG'S MANUAL at 14-15.

petition state a benefit to the public of ODOC's disclosure of the requested records to you. Therefore, we conclude that the ODOC's denial of your request for a partial fee waiver was not unreasonable. ORS 192.440(5). Accordingly, we deny your petition that we order ODOC to grant you a fee reduction in this instance.

3. Inspection of EOCI's Health Services File

The last issue you raise in your petition is directed at the refusal of EOCI Health Services staff to permit you to inspect its original medical file pertaining to you in its offices at EOCI. Ms. McLean states that, because of space and staffing constraints and in order to preserve the integrity of the original records, it is the policy and practice at EOCI to furnish inmates making public records requests with copies of records, for a fee, in lieu of allowing inspection of original records.

Pursuant to ORS 192.430, ODOC has promulgated an administrative rule providing that "[p]roper 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 the circumstances warrant." OAR 291-37-0020(7). ODOC has determined that, for a fee, it will provide copies of records to ODOC inmates in response to requests made under the Public Records Law, in lieu of allowing inspection of original records. We have previously concluded that ODOC's decision to furnish copies to ODOC inmates, in lieu of allowing inspection of original documents, is valid. *See* Public Records Order, July 19, 1982, *Baucom* (copy enclosed for your convenience); *see also* Public Records Order, October 30, 2001, *Romair*. Accordingly, we deny your petition that we order ODOC to allow inspection of original records.

Sincerely,

Peter Shepherd

PETER D. SHEPHERD
Deputy Attorney General

AGS09770
Enclosure
c: Barbara McLean, Health Services Manager, EOCI