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ATTORNEY GENERAL

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October 30, 2001

Greg Romair, SID #12586643
Two Rivers Correctional Institution
82911 Beach Access Road
Umatilla, OR 97882

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

Dear Mr. Romair:

This letter is my order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which was received on October 24, 2001, asks me to direct the Oregon Department of Corrections (ODOC) to make available to you for inspection the following records:

1. All personal records on file with the Oregon Department of Corrections, including, but not limited to, records of incarceration, evaluations/testings, disciplinary or conduct related files, both electronically stored or in standard files (paper); [and]

2. Any other records regarding transfers, wages/jobs, unit classifications, et al.

You also asked for a "[f]ull and comprehensive explanation of any undisclosed or exempt files, and their quantities, thus." For the reasons that follow, I respectfully deny your petition.

The Public Records Law confers a right to access any public record 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 inspection and/or copying of the record 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 public inspection. ORS 192.450(1).

Your petition states that you asked officials at the Two Rivers Correctional Institution (TRCI) to permit you to inspect the requested records on several occasions, but that your requests were denied. Your petition states further that your most recent request to inspect the records, made on October 11,

2001, was denied by Ms. Kris Horning, an office specialist assigned to the Records Office at TRCI. We have spoken with Ms. Horning regarding her denial of your request. She states that, to the best of her recollection, she recently received and responded to an inmate communication from you requesting copies of all records in TRCI's file pertaining to you. Ms. Horning states that she interpreted your request as pertaining to records maintained in TRCI's institution working file pertaining to you, and not to any other records that ODOC may maintain, in other paper files or in electronic form. I find Ms. Horning's interpretation of your request to be reasonable and, therefore, find that ODOC has not acted upon, and therefore has not denied, a request for records other than those maintained in TRCI's institution working file pertaining to you. Absent a denial of a records request by a state agency, I lack authority to order disclosure of public records. *See* ORS 192.450(1). Accordingly, I deny your petition as premature as to records other than those that are maintained by TRCI in its institution working file pertaining to you.

With regard to records in TRCI's institution working file pertaining to you, Ms. Horning states that she responded to your request by identifying for you the number of pages of non-exempt records maintained in the file.[1] She further states that she informed you that she would make copies of these non-exempt records available to you upon receiving from you a completed CD 28 Withdrawal Request Form, and verifying that you had sufficient funds in your inmate trust account to pay ODOC's fees for making the copies available to you. According to Ms. Horning, she received a completed CD 28 Withdrawal Request form from you authorizing ODOC officials to withdraw funds from your inmate trust account for the copies, but you lacked sufficient funds in your inmate trust account to pay for the copies. Ms. Horning has provided this office with a copy of your inmate communication dated October 20, 2001, in which you confirm that you are unable to purchase copies of the records at this time, but assert nevertheless that you have a right to review all of your records on file at TRCI.

ORS 192.430 authorizes state agencies to adopt reasonable rules and regulations necessary for protecting public records and preventing interference with the regular discharge of duties of the custodian. Under this statute, 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 the 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.[2] *See* Public Records Order, July 19, 1982, *Baucom* (copy attached for your convenience).

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[1] In a telephone conversation with Assistant Attorney General Jef Van Valkenburgh on October 26, 2001, you withdrew your request for the records maintained in TRCI's institutional working file pertaining to you that Ms. Horning has identified as being exempt from disclosure, specifically, a pre-sentence investigation report, a Mental Health Development Services Report, and hardcopy printouts of computerized criminal history records from the Law Enforcement Data System (LEDS). Therefore, the remainder of this order, addressing your petition only as it relates to the records maintained in TRCI's institutional working file pertaining to you, does not apply to these three sets of records.

[2] According to Ms. Horning, over the past several months you have submitted several general requests to the TRCI Records Office to review records pertaining to you that are maintained by that office. She has further explained that she and other TRCI officials have responded to your requests by informing you of ODOC's policy about copying records, for a fee, in lieu of allowing inspection of originals. Ms. Horning has provided this office with copies of a grievance you submitted to TRCI officials regarding this policy, dated April 18, 2001, and the institution's response dated May 15, 2001. The institution's response states that ODOC officials at TRCI requested that you submit a new request for copies of records to

The Public Records Law also permits state agencies 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 requested records to identify and delete exempt material. *See* ORS 192.440(3); *see also* Public Records Order, April 7, 1989, *Martin*. 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 (1999) at 12. Under ODOC administrative rules "[n]o inspection and/or duplication of record(s) is authorized until payment has been received." OAR 291-37-0020(3)(b).

Ms. Horning's response to your request for records was consistent with ODOC's administrative rules and policies regarding providing ODOC inmates with copies of ODOC records upon prepayment of reasonably calculated fees. Ms. Horning has told us that ODOC officials at TRCI remain willing to provide you with copies of the requested records upon prepayment of ODOC's fees. Under these circumstances, ODOC has not denied your request for records. Accordingly, this office lacks authority to order ODOC to make the records available to you for inspection or to provide you with copies of the records. ORS 192.450(1). Therefore, I dismiss the remainder of your petition, relating to records maintained in TRCI's institution working file pertaining to you, as premature.

Sincerely,

HARDY MYERS
Attorney General

AGS08920
Enclosure
c: Robert Schiedler, Superintendent, TRCI
Phillipe Magloire, Assistant Superintendent for Program Services, TRCI
Kris Horning, Office Specialist, Records Office, TRCI
Dave Schumacher, Administrator, Rules/Compliance/Hearings Office, ODOC

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the TRCI Records Office, specifying the particular records or types of records you desired. That response further informed you that, upon receiving a written request specifying the record or types of records you desired, the Records Office would advise you of the cost that you would be required to prepay in order to obtain copies of the records.