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September 26, 2001

Mr. Anthony Elliott
SID No. 6815530
Two Rivers Correctional Institution
82911 Beach Access Road
Umatilla, OR 97882

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

Dear Mr. Elliott:

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 September 24, 2001,[1] asks the Attorney General to direct the Department of Administrative Services, Risk Management Division to make available for inspection and to produce copies of the following records:

> [A] full and complete copy of the entire investigation to include and not be limited to reports names of person(s) interviewed, etc. [relating to Risk Management Claim No. L86365].

We respectfully deny your petition on the ground that the records you requested constitute "public records pertaining to litigation" that are exempt from disclosure under ORS 192.501(1).

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 195.420. If a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material. *Turner v. Reed,* 22 OR App 177, 186 n 8, 538 P2d 373 (1975).

[1] Your petition included an Affidavit of Mailing, which was dated September 17, 2001. Because your petition was sent to the Department of Justice, Appellate Division, it was not actually received by the Office of the Attorney General until September 24, 2001.

ORS 192.501(1) conditionally exempts from disclosure:

> Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this subsection shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation [.]

The Oregon Court of Appeals has held that this exemption applies only to records "* * * compiled or acquired by the public body for use in ongoing litigation or, if a complaint has not been filed, if the public body shows that such litigation is 'reasonably likely to occur.'" *Lane County School Dist. v. Parks,* 55 Or App 416, 420, 637 P2d 1382 (1981); ATTORNEY GENERAL PUBLIC RECORDS AND MEETINGS MANUAL (1999) (MANUAL) at 24. One indication that litigation is reasonably likely to occur is that a person has filed a notice of tort claim against the state. Public Records Order, January 12, 1990 (Bischoff); Public Records Order, June 8, 1990 (Madrid); MANUAL at 25.

On April 23, 2001, you filed a notice of tort claim with the Department of Administrative Services, Risk Management Division. In response to that notice, and at the division's request, the Department of Corrections prepared the records you seek. We have reviewed the records and conclude that they were prepared by a public body for litigation that is reasonably likely to occur. The records therefore, fall within the exception of ORS 192.501(1).

The exemptions listed in ORS 192.501 are conditional in that they exempt specific types of records or information "unless the public interest requires disclosure in the particular instance." ORS 192.501. An interest in private litigation does not qualify as a public interest requiring disclosure of records under ORS 192.501(1). MANUAL at 25. You have not asserted a public interest requiring disclosure of the litigation records in this instance, and in reviewing your petition and original request for disclosure of this information, we can discern none.

Consequently, because the records you seek were compiled in preparation of litigation, *i.e.* in response to the filing of your tort claim, ORS 192.501(1) exempts those records from disclosure.[2] For that reason, we deny your petition to compel disclosure.

Sincerely,

Peter D. Shepherd
Deputy Attorney General

PDS/AGS08612

[2] Because we find that the records you seek are exempt from disclosure under ORS 192.501(1), we need not determine whether the records also are exempt under ORS 192.502(5) (Corrections and Parole Board Records).