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August 15, 2001

Lemuel Hentz, #6750414
Snake River Correctional Institution
777 Stanton Blvd.
Ontario, OR 97914-0595

RE: *Petition for Public Records Disclosure Order: Oregon Department of Correction Records*

Dear Mr. Hentz:

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 August 9, 2001, asks the Attorney General to direct the Department of Corrections to make available certain records concerning your work assignment at Snake River Correctional Institution.[1] For the reasons that follow, we respectfully deny your petition.

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 192.420. The law requires generally that the custodian of public records furnish proper and reasonable opportunities for inspection and 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).[2]

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[1] The documents you seek were listed in a letter addressed to Patricia Sullivan, formerly Malheur County District Attorney. You noted in your petition that the District Attorney "denied" your petition "by inaction to date." Because the records you seek are in the custody of a state agency, the district attorney cannot order their disclosure. ORS 192.460 (district attorney reviews denial of access to public records "of a public body other than a state agency").

[2] Your petition is entitled "Complaint for injunctive relief or declaratory relief (appeal under ORS 192.450(2)) of petition to review records of state agency." We are treating this document as a petition for the Attorney General to issue a public records order under ORS 192.450(1). The

Your petition states that you requested to inspect or receive copies of certain records from Mr. R.O. Lampert, SRCI Superintendent, and that the request was denied by "inaction." We have spoken with Polly Stern of the Superintendent's office. Ms. Stern informs us that ODOC has not denied your records request and will make the records available to you upon prepayment of copy charges.[3] Ms. Stern also informs us, however, that you have not yet submitted a properly completed CD28 form authorizing payment from your inmate funds for the copies; the form attached to your petition was not complete because it was not signed in the presence of an ODOC staff witness. Upon receipt of a properly completed form, ODOC will provide you with the requested records.

Because there has not been a denial of a records request by a state agency, the Attorney General has no authority to order the agency to disclose the record to you. *See* ORS 192.450(1). Accordingly, we respectfully deny your petition as premature.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS08344
c: Robert O. Lampert
Superintendent
Snake River Correctional Institution
777 Stanton Blvd.
Ontario, OR 97914-0595

Attorney General has seven days to issue an order on a public records petition. ORS 192.450(1). Until that time, it is premature to file any appeal under ORS 192.450(2).

[3] An agency may charge a fee to reimburse the agency for its actual cost in making records available, including its photocopy costs and the time spent by agency personnel. ORS 192.440(3).