HARDY MYERS
ATTORNEY GENERAL

PETER D. SHEPHERD
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97301-4096
Telephone: (503) 378-4400
TTY: (503) 378-5938

June 12, 2001

Daryl S. Garrettson
Garrettson, Goldberg, Fenrich & Makler
Attorneys at Law
638 NE 5th Street
McMinnville, OR 97128

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

Dear Mr. Garrettson:

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 June 7, 2001, asks the Attorney General to direct the Oregon Department of Corrections (ODOC) "to make available for inspection and/or to produce a copy of the following records":

1. All blueprints and building plans used to remodel Warehouse One into an arsenal at the Oregon State Penitentiary.

2. Copies of all plans filed with, and permits obtained, from the City of Salem for the remodeling of Warehouse One into an arsenal at the Oregon State Penitentiary.

3. Copies of all purchase orders and all other financial documents, including, but not limited to, staff work hours (including overtime) billed to the remodeling of Warehouse One into an arsenal at the Oregon State Penitentiary.

4. All memos, letters, and any other documentation, whether in writing or electronically stored, relating to the remodeling of Warehouse One into an arsenal at the Oregon State Penitentiary.

For the reasons that follow, we respectfully deny your petition as premature.

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. Any person denied the right to inspect or to receive a copy of a public record may petition the Attorney General to determine whether the record may be withheld from disclosure. ORS 192.450(1).

Your petition states that the Association of Oregon Corrections Employees (AOCE), who you represent, made written request of ODOC for the above-listed records by memorandum sent to Stan Czerniak, Superintendent of the Oregon State Penitentiary (OSP), on May 9, 2001. Your petition further states that there has been communication between representatives of ODOC and AOCE to clarify the nature and scope of AOCE's request for records, but that ODOC has failed to make the requested records available to AOCE as of the date of your petition.

We have spoken with Unoda Moyo, human resources consultant for ODOC, regarding your petition. Mr. Moyo informs us that he and personnel at OSP are in the process of locating and reviewing the requested records, and of consulting with this office, in order to: (1) determine the applicability of Public Records Law exemptions to the requested records; and (2) prepare an estimate of ODOC's costs in making the non-exempt records available to AOCE.

The Attorney General may order a state agency to disclose records only when the agency has denied a request for the records. *See* ORS 192.405(2). There is nothing in your description of communications with ODOC to cause us to conclude that ODOC has denied AOCE's records request. Additionally, the Public Records Law clearly contemplates that agencies have the opportunity to review the requested records, including consultation with legal counsel, and to act on the request before the Attorney General or the courts can review the matter. *Morse Bros., Ind. v. ODED*, 103 Or App 619, 798 P2d 719 (1990). The Public Records Law allows a public body a "reasonable" time to respond to a records request. What is "reasonable" will depend upon many factors, including the difficulty in determining whether the records are exempt from disclosure. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETING MANUAL (1999) at 8.

In light of the fact that AOCE made its request only last month, and ODOC is working to respond to the request and is in the process of receiving legal advice regarding how to do so, we conclude that ODOC has not denied AOCE's records request. Accordingly, we deny your petition as premature.

Sincerely,



PETER D. SHEPHERD
Deputy Attorney General

AGS07920
c: Stan Czerniak, ODOC
Unoda Moyo, ODOC