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January 2, 2001

Mr. David Maimon
SID No. 6211527
Oregon State Penitentiary
2605 State Street
Salem, Oregon 97310

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

Dear Mr. Maimon:

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. We received you petition on December 27, 2000. Your petition asks the Attorney General to direct the Oregon Department of Corrections to make available the following records:

1) The current proposed budget reduction plan referred in the attached inmate notification newsletter. Exhibit #101.

2) All reports submitted to the Sixty-eighth and Sixty-ninth Legislative Assembly as mandated under ORS 421.590(5).

3) All rules, procedures, and guidelines described in ORS 421.590(4) for implementing sex offender treatment programs.

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

The Public Records Law confers a right to inspect 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 inspection. ORS 192.450(1).

You state that you previously asked Director Dave Cook for the above-described records on December 15, 2000, and that he has not responded to your request within the last 12 days. on December 27, 2000, Assistant Attorney General Herbert F. Lovejoy spoke with Perrin Damon, Communications Manager for the Oregon Department of Corrections, concerning your records request. Ms. Damon informed Mr. Lovejoy that the Department of Corrections has received your request and is currently gathering the requested records and calculating the actual cost of providing the requested records to you. Ms. Damon further informed Mr. Lovejoy that the Department of Correction's response to your request will be sent to you shortly.

ORS 192.430(1) requires a custodian of public records to provide "proper and reasonable opportunities for inspection and examination of the records in the office of the custodian." The Attorney General may order a state agency to disclose records only when the agency has denied a request for the records. ORS 192.450(1). "The Public Records Law clearly contemplates that agencies have the opportunity to review the requested records and to act on the request before the Attorney General or the courts can review the matter." *Morse Bros., Inc. v. ODED,* 103 Or App 619, 622, 798 P2d 719 (1990) *citing* ORS 192.430(2). Whether the time that an agency takes to review records and act on a particular request is reasonable will depend on factors such as the volume of the records requested, the staff available to respond to the records request, and the difficulty in determining whether any of the records are exempt from disclosure. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1999) AT 7-8 (MANUAL). "The public records custodian acts reasonably even if the custodian does not comply with timelines imposed by the requestor, so long as the custodian provides access to the nonexempt records within a reasonable period of time." MANUAL at 8.

We do not find that the delay in responding to your records request amounts to a constructive denial of your request. Since the Department of Corrections has not denied your request for records, we deny your petition as premature.

Sincerely,

Peter D. Shepherd

PETER D. SHEPHERD
Deputy Attorney General

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c: Perrin Damon, ODOC Communications Manager