HARDY MYERS
ATTORNEY GENERAL

DAVID SCHUMAN
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97310-0506
Telephone: (503) 378-4400
TDD: (503) 378-5938

June 15, 2000

Gary D. Davis, SID #3356649
Oregon State Penitentiary
2605 State Street, N.E.
Salem, OR 97310

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

Dear Mr. Davis:

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 April 5, 2000,[1/] asks the Attorney General to direct the Oregon Department of Corrections (ODOC) to make available to you a copy of an unspecified disciplinary hearing transcript relating to you. For the reasons that follow, we 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

---

[1/] We apologize for our delay in issuing our order. Your letter to the Attorney General was initially characterized and treated by administrative staff in this office as constituent mail, rather than as a petition for disclosure of public records. The apparent reason for this is that your letter does not reference the Public Records Law. Moreover, your letter states that your request for a copy of an inmate disciplinary hearing transcript relates to a tort claim and/or discovery request in a civil action filed in federal court. A request for records in the context of discovery in civil litigation is *not* a request for records under the Public Records Law.

Although it is a close question, we elect to treat your letter to the Attorney General as a petition for disclosure of public records under the Public Records Law. We do so because your letter contains the essential elements necessary to petition the Attorney General under that law for disclosure of state agency records, i.e., that you had first requested and been denied by agency officials copies of public records, and that you request the Attorney General to cause the agency to make copies of the agency's records available to you.

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).

ORS 192.430 authorizes state agencies to adopt reasonable rules necessary for protecting the records and preventing interference with the regular discharge of duties of the custodian. Moreover, the Public Records Law permits public bodies 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 the requested records in order to delete exempt material. *See* ORS 192.440(3); *see also* Public Records Order, April 7, 1989 (Martin).

Your petition states that you first requested a copy of the disciplinary hearing transcript from the facility Superintendent (presumably Joan Palmateer, Superintendent of the Oregon State Penitentiary, where you are currently incarcerated), but that your request was denied.

We have spoken with Superintendent Palmateer and with OSP Hearings Support Specialist Connie Barnett regarding your petition. They inform us that no transcript of the disciplinary hearing in your recent disciplinary case, Disciplinary Case 0002-A071-A06, has been prepared.[2/]

The Public Records Law requires agencies to provide copies of nonexempt public records in their custody, but it does not impose on public bodies the duty to *create* public records. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1999) at 5; ORS 192.410(4). Thus, this office lacks authority to order ODOC to create a transcript of the hearing record and to provide you with a copy of it. We therefore deny your petition.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

AGS05013
c: Connie Barnett, OSP Hearings Support Specialist

[2/] Superintendent Palmateer and Ms. Barnett inform us that you may request and obtain a copy of the tape recording of the hearing record in the case from the Superintendent's office if you have sufficient funds available in your inmate trust account to pay ODOC for its costs in making a copy of this record available to you. Ms. Barnett's estimates that the cost will amount to approximately $9.00.