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November 14, 1995

Patrick Morrison, SID #5027645
Oregon State Penitentiary
2605 State St., N.E.
Salem, OR 97310

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

Dear Mr. Morrison:

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 November 7, 1995, asks the Attorney General to direct David Cook and the Oregon Department of Corrections (ODOC) to make available to you for inspection or produce copies of the following records:

1. All communications concerning contact between myself and Luise von Durckheim;

2. All communications with persons concerning contact between myself and Luise von Durckheim;

3. All parts of my inmate file concerning Luise von Durckheim;

4. All contact between personnel of the Oregon Department of Justice and the Oregon Department of Corrections and/or parties in South Africa concerning and/or partaining (sic) to contact between Luise von Durckheim and myself;

5. All documents concerning my correspondence and/or communications.

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

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 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). Under these provisions, an agency may be said to have "denied" a request to inspect or to receive a copy of a public record only if it receives a proper request for public records. Public Records Order, July 7, 1989 (Baker).

ORS 192.430 authorizes state agencies to adopt reasonable rules and regulations necessary for protecting the records and preventing interference with the regular discharge of duties of the custodian. ORS 192.430. 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).

Pursuant to these statutes, the Oregon Department of Corrections (ODOC) has adopted administrative rules. OAR 291-37-015(2) provides:

> (2) The request must be in writing, addressed to the Department's functional unit manager where the record(s) is located, and must specify the record(s) from which the information is requested, if known. Where applicable, the request must be accompanied by a signed release of information. If the record(s) is not in the location where the request is received, the request will be forwarded to the functional unit manager in the location where the record is situated.

OAR 291-37-020(3)(b) and (7) provide in pertinent part:

> (3)(b) * * * [n]o inspection and/or duplication of record(s) is authorized until payment has been received.
>
> * * * * *

> (7) Proper and reasonable opportunity for inspection and/or duplication of record(s) will be provided, consistent with security requirements at each Department facility and functional unit and as circumstances warrant.

Your petition states that you requested to inspect and/or receive copies of the records listed in your petition on August 4, 1995, and that Oregon State Penitentiary (OSP) Superintendent Frank S. Thompson denied your request.

We have spoken with Superintendent Thompson's staff at OSP regarding your petition. Tamara Blair, OSP's Support Services Manager, informs us that after reviewing the institution file in which your request for records would have been maintained, she has found no inmate communication or other written request from you addressed to Superintendent Thompson or to any other OSP official for the records listed in your petition. Ms. Blair further advises us that she has received a very recent written request, dated November 2, 1995, which you directed to ODOC Director David Cook, for some of the records listed in your petition. She advises that this request was received in Director Cook's office on November 7, 1995, and was just forwarded to her in accordance with ODOC rules. Significantly, the date of this recent written request for public records is the same as your petition filed with the Attorney General.

Because ODOC officials at OSP have no record of receiving a written request for public records from you as stated in your petition, and OSP officials have not had a reasonable period of time within which to review and respond to your November 2 public records request, the agency has not denied a request for disclosure of public records. *See Morse Bros. v. ODED*, 103 Or App 619, 798 P2d 719 (1990) ("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."). Therefore, we deny your petition as premature.

Sincerely,

ELIZABETH S. HARCHENKO
Special Counsel to the Attorney General

ESH:AV:JVV:jpl:clr/JAA01AD0/JGG0CA72
c: Frank S. Thompson, Superintendent
Tamara Blair, Support Services Manager
Oregon State Penitentiary