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November 27, 1995

Lucy Morrison
310 Second Street, SE #1107
Minot, ND 58701

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

Dear Ms. 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 20, 1995, asks the Attorney General to direct the Oregon Department of Corrections (ODOC),[1/] to make available to you for inspection or produce copies of the following records:

1. All communications concerning contact between Patrick Hugh Morrison and Luise Alais Durckheim;

2. All records of telephone contact with Luise Alais von Durckheim and/or third parties to her;

3. All communications concerning Luise Alais von Durckheim;

4. All communications with Savage, Jooste & Adams, M.Van Staden;

5. All files concerning Patrick Hugh Morrison's correspondence.

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 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 asked to inspect and/or copy the records listed in your petition above on October 5, 1995, but that your request was denied by Tamara Blair, Support Services Manager at the Oregon State Penitentiary (OSP).

We have spoken with Ms. Blair regarding your petition. Ms. Blair advises us that your original request for records sought only copies of correspondence between your son Patrick Morrison and a Luise von Durckheim. She has also provided us with a copy of her letter to you dated October 16, 1995, informing you that after a search of the institution working file where such correspondence would be maintained, no such correspondence was found.

Notwithstanding the above, Ms. Blair advises us that subsequent to your request for records and the mailing of her response, OSP has obtained and maintains a copy of a letter between your son and Ms. von Durckheim in its institution working file on your son. She advises us that OSP will make a copy of the letter available to you upon your prepayment to ODOC of its costs in doing so at its fee schedule of 50 cents per page. ***See*** OAR 291-37-020(3)(b). Accordingly, insofar as your petition seeks such correspondence, we deny your petition as moot.

Because OSP has not received a proper written request for records other than the aforementioned correspondence, 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 the remainder of your petition as premature.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the Attorney General

ESH:JVV:clr:cfs/JGG0CBBD
c: Tamara Blair, Support Services Manager, OSP

[1/] Your petition purports to seek an order directing disclosure not only by the Oregon Department of Corrections, but also by two named individuals. The first individual, Jan Peter Londahl, is an Assistant Attorney General and is employed by this office, and not ODOC. The second individual, John S. Foote, is ODOC's former Inspector General, and is not currently employed with ODOC. Because your petition states that your request was denied by a third individual, a Ms. Tamara Blair at the Oregon State Penitentiary (OSP), we will assume that your petition is directed only towards ODOC and/or OSP.