JOHN R. KROGER
ATTORNEY GENERAL

MARY H. WILLIAMS
DEPUTY ATTORNEY GENERAL



DEPARTMENT OF JUSTICE

1162 Court Street NE
Justice Building
Salem, Oregon 97301-4096
Telephone: (503) 378-4400

November 17, 2009

Mark J. Wilson
SID # 7449142
3405 Deer Park Dr. S.E.
Salem, OR 97310

Re: Petition for Public Records Disclosure Order:
Board of Parole and Post-Prison Supervision Records

Dear Mr. Wilson:

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 10, 2009, asks the Attorney General to order the Board of Parole and Post-Prison Supervision ("Board") to produce the following records:

1. AGGRAVATED MURDER ATTORNEY GENERAL ADVICE. The "Attorney General advice" which was issued sometime after 1988, and instructed the Board that it did not have the authority to set a parole release date for a prisoner sentenced for aggravated murder until the Board determined, pursuant to ORS 163.105, that the prisoner was capable of rehabilitiation. *See e.g., Severy v. Board of Parole*, 318 Or 172, 175, 864 P2d 368, 369 (1993)(En Banc).

2. PUBLIC DISCLOSURE OF HEARING SUBMISSIONS. Any and all public documents which form the basis of the Board's afore-quoted understanding, policy and/or position, including but not limited to any published and/or unpublished judicial decisions, Attorney General advice, and/or other communications. I also request any and all public records which establish the scope of this newly expressed public disclosure policy, including but not limited to information relating to whether this position extends to "anything submitted" by any party in opposition to an offender as well (i.e., "victim/prosecutor letters," anonymous letters, etc).

We understand the "afore-quoted understanding" to which you refer in the second paragraph to be the following statement contained in your request to the Board:

> On September 6, 2009, I was informed by a potential Board hearing witness:
>
> I checked with Nancy Sellers at the Parole Board about submitting confidential statements on behalf of persons appearing before the board. She said they had recently received a judicial decision that anything submitted is a public document and are required to deliver to the press the entire package submitted on behalf of an inmate, if requested to do so.

You state that you made your request to the Board on October 19, 2009, but that the Board had not responded to the request by the date of your petition, November 4, 2009. You state that one of the Board's administrative rules "requires the Board to respond to said request within ten (10) days." In fact, OAR 255-015-0005(3) provides that the Board's "chairperson or designee * * * within ten (10) working days shall advise the [requestor] whether the requested information is available and may be disclosed." Your petition implicitly argues that the Board's failure to respond within that timeframe means that the Board has effectively denied your request.

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 who is 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 record and determine if it may be withheld. ORS 192.450(1). The Attorney General may order a state agency to disclose records only when the agency has denied a request for the records. *See* ORS 192.450(1). The Public Records Law "allows the public body a 'reasonable' time to actually provide copies of the requested records or make them available for inspection," an amount of time that "will depend upon the volume of 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 at 10 (2008).

We have conferred with Nancy Sellers, the Board's Executive Director, who informed us that the Board did not intend to deny your petition by inaction, but that staff absences have resulted in workload backlogs in several areas, which the Board is working to resolve. Ms. Sellers further informed us that the Board is reviewing your request and will issue its response within two days of this order. Under these circumstances, we do not construe the Board's noncompliance with its own timing rule as a denial of your request. Certainly nothing in the text of the Board's rule suggests that the underlying request is denied if response is not timely under the rule. Nor has the Board's delay in responding to your request been so unreasonable as to amount to a denial.

Because we conclude that the Board has not denied your records request, your petition must be denied. If you disagree with any aspect of the Board's decision, you will be free to renew your petition with this office.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

DM1724009
c: Nancy Sellers, Board of Parole and Post-Prison Supervision