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July 23, 2009

Arnold R. Huskey, SID #6674480
Two Rivers Correctional Institution
82911 Beach Access Road
Umatilla, Oregon 97882

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

Dear Mr. Huskey:

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 your petition on July 16, 2009. The petition requests the Attorney General's "assistance in obtaining [certain] Public Records Document(s) and/or information."

You initially requested records from the Board in a letter to Board Chair Steven Powers, dated May 22, 2009:

> I respectfully request the [following] records and statistical information from [the Board]:
>
> 1. The name(s) of all inmates who have appeared before the Board of Parole on aggravated Murder Review Hearings from January 1, 2006 through the present date, with the date each inmate appeared before the Board.
>
> 2. The name(s) of the above inmates who were: (a)-found to be rehabilitated or capable of rehabilitation within a reasonable time; and (b)-found not to be rehabilitated or capable of rehabilitation within a reasonable time.
>
> 3. The name(s) of inmates who appeared before the Board in these Murder Review Hearings between January 1, 2006, and the present date, who appeared (a)-in person (physically); and (b)-via video or telephonic conferencing (non-physically)

By letter dated June 1, 2009, the Board denied your request: "The Board does not compile this information as records or established data. We regret we are unable to comply with your request." You then restated your request in a June 4, 2009 letter to the Board. The Board did not respond to that second letter. Your petition to our office followed. For the reasons explained below, we respectfully deny your petition.

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. However, "[t]he Public Records Law does not impose on public bodies the duty to *create* public records," either to disclose "'knowledge' their staff might have" or "to explain or answer questions." ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2008) at 6. 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).

We have conferred with Nancy Sellers, the Board's Executive Director, who confirms that the Board understood you to be seeking the information in list format. Ms. Sellers further confirms that the Board does not have any such lists. Insofar, as the Board correctly understood you to be seeking one or more lists, we must respectfully deny your petition.

Ms. Sellers informs us, however, that the information you seek may be available from other documents that the Board does possess. Ms. Sellers states that the Board will inform you of that fact, and offer to prepare a fee estimate for making those records available if you wish to pursue that avenue. ORS 192.440(4) authorizes public bodies to charge fees "reasonably calculated to reimburse the public body for the public body's actual cost of making public records available." Once you pay the Board's estimated fee amount, Ms. Sellers states that the Board will proceed to make any non-exempt materials available, subject to applicable Oregon Department of Corrections (ODOC) rules and facility procedures that govern your possession of the records in question while you are incarcerated in an ODOC institution. Our understanding is that ODOC rules and procedures may prevent you from possessing the Board's records that pertain to other inmates, but that alternatives – such as sending out the records to your attorney or to another person in the community on your behalf – may be available. To the extent that your request was not specifically seeking a list, but was intended to reach any Board records that would provide you with the requested information, we respectfully deny your petition because the Board is willing to make its non-exempt records available, within the constraints of applicable ODOC regulations, upon receiving payment of the fee authorized by ORS 192.440.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

DM1514848-v2
c: Nancy Sellers, Executive Director, Oregon Board of Parole and Post Prison Supervision
Jeff Premo, Chief of Security, Department of Corrections Operations Division