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May 26, 2009

Lemuel Hentz, SID #6750414
Eastern Oregon Correctional Institution
2500 Westgate
Pendleton, OR 97801

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

Dear Mr. Hentz:

This letter is the Attorney General's order on your petition for disclosure under the Oregon Public Records Law, ORS 192.410 to 195.505. Your petition, which we received in this office on May 18, 2009, asks the Attorney General to order the Oregon Department of Corrections (ODOC) to provide you with the following records:

> A complete copy of Captain Taylor's notes and investigation reports of her investigation involving me, copies of any memos by Eastern Oregon Correctional Institution (EOCI) staff in regards to Captain Taylor's investigation of me.

For the reasons that follow, we deny your petition.

The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. Any person denied the right to inspect or to receive a copy of a 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 records. *See* ORS 192.450(1).

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. When a public record contains exempt and nonexempt material, the public body must separate

the exempt and nonexempt material and make the nonexempt material available for examination. ORS 192.505.

Your petition includes a copy of a May 6, 2009 letter from Doug Harder, Supervising Executive Assistant to the EOCI Superintendent and Public Information Officer, denying your request for the above record. Together with your petition, Mr. Harder's letter discloses that he initially denied your request for the records based on ORS 192.502(5), which exempts ODOC and Parole Board Records from disclosure under certain circumstances. In denying your request, Mr. Harder cited personal and institutional safety and security concerns.

We have spoken with Mr. Harder, Captain Jeri Taylor, and with ODOC's Chief of Investigations, Daryl Borello, regarding your petition. Captain Taylor told us that in December 2008 she conducted a brief informal investigation into certain allegations concerning your activities at EOCI. Captain Taylor told us that in the course of her investigation she took no notes and that the only writing she made was a report known as a Suspected Security Threat Intelligence Report (SSTIR) that she submitted to ODOC's Security Threat Management Unit. Captain Taylor and Mr. Harder told us that upon review they were unable to locate any memos created by EOCI staff in regards to Captain Taylor's informal investigation. Mr. Harder told us that he asked Daryl Borello to review Captain Taylor's SSTIR report in response to your petition.

Mr. Borello advised us that, upon further review of the SSTIR report submitted by Captain Taylor, ODOC is willing to make a redacted copy of the report available to you. ODOC will redact from the document the name and other personal identifiers of an informant, including the informant's SID and cell numbers, the date of the incident under investigation, and the narrative description of the suspected behavior. Mr. Borello explained to us that disclosure of the redacted information would allow you or other inmates that you might share the information with to determine the identity of the informant, and single out the informant for intimidation, extortion, and violent reprisal. Mr. Borello explained further that disclosure of the redacted information would provide you with specific security information that could be used by you to assist you in pressuring other inmates, in violation of ODOC rules governing inmate conduct. Mr. Borello explained that this would in turn pose a serious threat to the safety and personal security of other inmates and ODOC staff and volunteers, and substantially degrade ODOC's ability to maintain internal order and discipline in the institution.

We accept these explanations by Mr. Borello. With this background understanding, we turn to ORS 192.502(5). That statutory provision exempts from disclosure under the Public Records Law

> Information or records of the Department of Corrections * * * to the extent that disclosure thereof would * * * substantially prejudice or prevent the carrying out of the functions of the department, if the public interest in confidentiality clearly outweighs the public interest in disclosure.

The legislature has charged ODOC with the responsibility to exercise custody over convicted felons sentenced to a term of imprisonment until they are subject to lawful release, by safely

confining them in one of the state's correctional institutions. *See* ORS 423.020(1). ODOC has a legitimate and substantial interest in withholding from inmates information that could jeopardize the safety and security of inmates and staff, and threaten the orderly operation and management of Oregon's prisons. For the reasons explained to us by Mr. Borello, we agree that disclosure of the name and other personal identifiers of the informant, the date of the incident under investigation, and the narrative description of the suspected behavior contained in the Department's SSTIR report to you would impede ODOC's ability to fulfill its custodial duties, and substantially prejudice or prevent ODOC from the carrying out of the functions of the department. ORS 192.502(5).

The remaining question is whether "the public interest in confidentiality clearly outweighs the public interest in disclosure." ORS 192.502(5). In applying this exemption we have previously concluded that, when disclosure of records would threaten or impair the department's ability to preserve internal order and discipline in its correctional facilities, it will usually be clear that the public interest in confidentiality outweighs the public interest in disclosure. *See* Public Records Order, January 26, 1993, Patten.

You have not cited a public interest in disclosure that you claim outweighs the public interest in confidentiality. In the absence of any proffered public interest in disclosure, the public interest in keeping this information confidential clearly prevails. As a result, we conclude that ODOC properly relied on ORS 192.502(5) to deny your request for the information identified by Mr. Borello for redaction. Accordingly, we respectfully deny your request insofar as you were seeking the exempt material contained in the SSTIR report.[1]

Mr. Borello told us that he will provide you with a statement of ODOC's fees for making a copy of the redacted report available to you. Because ODOC is willing to make a redacted copy of the SSTIR report available to you upon receipt of your payment of ODOC's fees, we respectfully deny the remainder of your petition.[2]

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

DM1420319
c: Daryl Borello, Chief of Investigations, ODOC
Doug Harder, Supervising Executive Assistant to the EOCI Superintendent and Public Information Officer, ODOC

[1] Because you indicate in your petition that ODOC may redact the identity of the informant from the records you have requested, your petition suggests that you understand and acknowledge ODOC's authority under the Public Records Law to withhold this information from you.

[2] An agency may charge a fee to reimburse the agency for its actual cost in making records available, including its photocopy costs and time spent by agency personnel to redact exempt material from the records. ORS 192.440(3).