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March 16, 2009

Jamie Amaya, SID #10607321
Oregon State Penitentiary
2605 State Street N.E.
Salem, OR 97310

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

Dear Mr. Amaya:

On March 9, 2009, the Attorney General received your letter dated March 6. In that letter, you state that you requested certain records from the Oregon Department of Corrections (ODOC) a month prior. You state that, as of the date of your petition, you had received no response from ODOC. We treat your letter as a petition for an order under ORS 192.450 compelling ODOC to disclose records to you.[1] Your petition describes the requested records as "documentation (inmate file in its entirety, memos, statements, photos, etc. . .) but not limited to only this case, throughout my incarceration" (ellipses in original). This letter is the Attorney General's order on your petition. For the reasons that follow, your petition is respectfully denied.

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. The law requires generally that the custodian of public records furnish proper and reasonable opportunities for inspection and 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).

We have spoken with Ms. Joan Barton, Classification Manager, in ODOC's Office of Population Management regarding your petition. Ms. Barton provided us with a copy of your written request for certified copies of ODOC records, including the records listed in your petition, dated February 22, 2009 and stamped received in her office on February 24, 2009, ten days before

[1] Your letter also asks the Attorney General to "look into" your current placement in the IMU. Under Oregon law, authority over the management and operation of Oregon's prisons is vested in the Oregon Department of Corrections and its officials, not in the Attorney General and Department of Justice. ORS 423.020(1). Moreover, under Oregon law the Attorney General and Department of Justice represent the legal interests of the State, including ODOC. ORS 180.060. Accordingly, we will not be reviewing ODOC's decision to place you in the IMU. If you would like legal advice on that issue, we recommend that you consult with legal counsel of your choosing.

the date of your petition (copy enclosed for your convenience). Ms. Barton also provided us with a copy of her initial response to your request, dated March 11, 2009 (copy also enclosed for your convenience). In her response Ms. Barton acknowledged receipt of your records request and informed you that the Office of Population Management is the custodian of some, but not all, of the records that you have requested of her, and that she will be providing you with an estimate of time and the Department's fees for making copies of non-exempt records available to you within a reasonable time. Ms. Barton's response further advised you that she has forwarded your requests for copies of the records that are maintained at the Oregon State Penitentiary to its Superintendent, Brian Belleque, for response. Ms. Barton told us that due to the nature and scope of your request for copies of records maintained by her office, she will be consulting with legal counsel in this office before responding, but that she anticipates that she will be able to provide you with a substantive response to your requests for these records within the next 10 business days.

The Public Record Law permits a public body to provide a requester with an initial response acknowledging receipt of the request, and advising the requester that it is a custodian of at least some records and will be providing the requester with the agency's estimate of the time and fees for making copies of nonexempt records available within a reasonable time. *See* ORS 192.440(2). Ms. Barton's response of March 11 fulfills these requirements.

Under these circumstances, ODOC has not denied a request for public records. *See* Public Records Order, May 9, 1989, *Hribernick* (public body does not actually or constructively deny a request for public records by seeking advice of counsel before responding); ***and 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").

Because ODOC has not denied your request for public records, we have no authority to order it to make copies of the records available to you. *See* ORS 192.450(1). We therefore deny your petition as premature.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General
Administration Section

DM1323637
Enclosures
c: Guy Hall, Administrator, Office of Population Management, ODOC (w/enc)
Joan Barton, Classification Manager, Office of Population Management, ODOC (w/enc)