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DEPARTMENT OF JUSTICE

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June 16, 2008

Elwood Fogleman
P.O. Box 965
Turner, OR 97392

Re: Petition for Public Records Disclosure Order and for Review of Denial of Fee Waiver: *Oregon Department of Corrections Records*

Dear Mr. Fogleman:

This letter is the Attorney General's order on your petition for disclosure under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received in this office on June 2, 2008,[1] asks the Attorney General to order the Oregon Department of Corrections (ODOC) to provide you with copies of following records:

1. All documents in Public Services Division (PSD) management working files pertaining to you
2. All documents provided by ODOC to SAIF in response to your Workers' Compensation claim
3. All documents provided by ODOC to DAS Risk Management Division in response to your two (2) tort claims.

Your petition also asks the Attorney General to order ODOC to waive its fees for making copies of the requested records available to you. 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).

[1] We thank you for your courtesy in extending the time in which we otherwise would have been required to issue our order.

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. ORS 192.440(3); *see* Public Records Order, April 7, 1989 (Martin). A public body may require pre-payment of its estimated fees before acting on a request. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2008) ("MANUAL") at 15. ORS 192.440(5) authorizes a public body to waive its fees if it determines that the waiver is in the public interest "because making the record available primarily benefits the general public." However, even if a public body determines that waiving fees is in the public interest, "the decision to waive or reduce fees is discretionary with the public body, although it must act reasonably." MANUAL at 20. Under ORS 192.440(6), "a person who believes that there has been an unreasonable denial of a fee waiver * * * may petition the Attorney General * * * in the same manner as a person petitions when inspection of a public records is denied."

I. Petition for Public Records Disclosure Order

In your petition you describe separately making the three requests set out above. With respect to your first request, your petition states that, as of the date of your petition, you had received no response from ODOC. Regarding your second request, you indicate that ODOC officials advised you it would make copies of the records available to you, but that a copy of your official personal file was the only record ODOC provided to SAIF. Finally, with respect to your third request, you indicate that ODOC officials advised you that you would have to seek the records from DAS Risk Management Division.

We have spoken with Benita Martin-Walls, Legal Affairs and Affirmative Action Manager of ODOC's Human Resources Division's Labor Relations Unit, regarding your petition. Ms. Martin-Walls told us that, upon further review of your requests, she advised you by letter dated June 12, 2008, that ODOC would process your requests and make copies of its nonexempt records available to you upon your pre-payment of ODOC's fees. A copy of that letter is attached for your convenience. Based on this response by ODOC, we deny your petition as moot. Should you ultimately disagree with ODOC's substantive response, you may petition for review by the Attorney General.

II. Request for Fee Waiver

Your petition also asks the Attorney General to order ODOC to waive its fees for making copies of the requested records available to you. As justifications for that request, you cite ODOC's untimely production of the records, its failure to respond, and its failure to provide you with accurate information. Your petition fails to indicate how these factors would justify a finding that waiver of the agency's fees in this instance is in the public interest "because making

the record available primarily benefits the general public."[2] Your petition also fails to indicate that you first requested a fee waiver from ODOC, and that your request was denied. Ms. Martin-Walls told us that, to the best of her knowledge and belief, you did not make a written fee waiver request of ODOC.

The Attorney General's authority with respect to fee waivers and reductions is limited to reviewing the reasonableness of agency decisions denying requests for waiver or reduction. ORS 192.440(6). Because it does not appear that you requested a fee waiver from ODOC, there is no denial for us to review. Even if you had made such a request, your petition fails to explain how making the documents available to you would primarily benefit the public. The nature of the documents you seek suggests to us that disclosure would primarily benefit you. For those reasons, we are compelled to deny your request that we order ODOC to waive its fees. Nevertheless, we understand from Ms. Martin-Walls that ODOC has offered you a significant discount.

For the foregoing reasons, your petition is respectfully denied.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

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c: Benita Martin-Walls, Legal Affairs and Affirmative Action Manager,
Human Resources Division-Labor Relations Unit, ODOC

[2] We have previously concluded that the personal legal or litigation interests of a requester are alone insufficient to satisfy the fee waiver statute's "public interest" requirement. Public Records Order, October 14, 2004 (*Jeans*).