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May 14, 2008

Stephen L. Brown, SID #6484527
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. Brown:

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 May 7, 2008, asks the Attorney General to order the Oregon Department of Corrections (ODOC) to provide you with certified copies of following records:

> ANY AND ALL DOCUMENTS/RECORDS/INVESTIGATION REPORTS TO THE FOLLOWING CASE NO.S
>
> A. 03-3044
> B. 04-0271
> C. 04-0606
> D. 06-0620
> E. 06-0248

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).

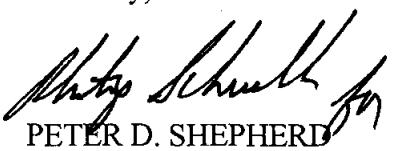
ORS 192.430 authorizes state agencies to adopt reasonable rules necessary for protecting the records and preventing interference with the regular discharge of duties of the custodian. Moreover, the Public Records Law permits public bodies to establish and recover fees reasonably calculated to reimburse 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).

Your petition states that you requested copies of ODOC records on March 26, 2007, but that your request for the records was denied in person by Inspector E. Fogleman. Submitted with your petition is a copy of a letter from you to Alan Scharn, Investigations Manager, dated March 26, 2007. That letter requests certified copies of ODOC's records pertaining to the same five cases identified in your petition. We therefore assume that your letter to Mr. Scharn is the request referenced in your petition.

We have spoken with Ken Jeske, Manager of ODOC's Special Investigations Unit (SIU) regarding your petition. Mr. Jeske told us that the case numbers you list refer to SIU cases. Mr. Jeske also told us that he reviewed your petition with both Alan Scharn and with Inspector E. Fogleman, and that they have no record or recollection of having received your March 26, 2007 letter requesting certified copies of ODOC records. Mr. Jeske told us, however, that in this instance ODOC will treat your petition to our office as a written request of the agency for certified copies of its records pertaining to the cases indicated. Upon your prepayment of ODOC's estimated fees for locating the records and reviewing them for material that is exempt from disclosure, ODOC will review the records and make copies of nonexempt records available to you.[1]

Under these circumstances, ODOC has not denied a request for public records. Agencies are allowed a reasonable time to respond to records requests, *see* ORS 192.430, and for whatever reason it does not appear that your request was previously received by the agency. Because there has been no denial, the Attorney General has no present authority to order ODOC to furnish copies of the records to you. *See* ORS 192.450(1). In light of ODOC's agreement to treat your petition as a request for records, we respectfully deny your petition as premature.

Sincerely,



PETER D. SHEPHERD
Deputy Attorney General

DM295576
c: Ken Jeske, SIU Manager, ODOC
Brian Belleque, Superintendent, Oregon State Penitentiary

[1] Mr. Jeske told us that he would send to you this week an estimate of ODOC's fees.