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April 11, 2008

Jerry Dusenberry, SID #6007317
Oregon State Penitentiary
2605 State Street
Salem, OR 97310

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

Dear Mr. Dusenberry:

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 March 28, 2008,[1] asks the Attorney General to order the Oregon Department of Corrections (ODOC) to provide you with the release date of another ODOC inmate, Jason Silvera, SID #12518716. 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).

Your petition states that you asked ODOC officials to notify you of inmate Silvera's release date from ODOC confinement, pursuant to an administrative rule promulgated by ODOC, OAR 291-070-0043.[2] Your petition incorporates by reference communications between you and ODOC officials regarding your request, copies of which you submitted with your

[1] We thank you for your courtesy in extending the time in which this office would ordinarily have been required to issue its order.

[2] OAR 291-070-0043 states, "Any agency or person may request notification of an inmate's release. The request must be in writing and placed in the detainer/notify section of the inmate's working file with notation on the Offender Profile System"

petition. Together with your petition, those communications disclose that ODOC officials denied your request for this information based on ORS 192.502(5), which exempts ODOC and Parole Board records from disclosure under certain circumstances. In denying your request, ODOC cited personal and institutional safety and security concerns.

We have spoken with Jeff Premo, ODOC's Chief of Security, and with Brandon Kelly, Acting Security Manager at the Oregon State Penitentiary, regarding your petition. They informed us that experience has shown Oregon corrections officials that inmates use knowledge of another inmate's calculated release date in a variety of ways that threaten the safe, secure, and orderly operation of Oregon's prisons. By way of example, they described how, for personal safety reasons, inmates often lie to other inmates about why they are incarcerated and the length of their sentence(s). Knowledge of a particular offender's release date is used by inmates to challenge the offender's claim regarding why he is incarcerated or how much time he is serving, and can be used to extort canteen and other property and favors from the offender or to target the offender for assault.

By way of another example, Mr. Premo and Mr. Kelly explained that individual inmates or groups of inmates, including prison gangs, will seek to pressure, intimidate, solicit and/or pay inmates who are nearing their release date to assault other inmates for them. In such circumstances the inmate that commits the assault on the targeted inmate or inmates is known as a "torpedo." They told us that inmates nearing release are also pressured or solicited by inmates or groups of inmates to engage in other types of misconduct, such as obtaining or carrying contraband for them, e.g., tobacco, illegal drugs, other inmates' canteen or other property.

We accept these explanations by ODOC security personnel. 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 minimizing opportunities for inmates to obtain 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. Premo and Mr. Kelly, we agree that disclosure of the Department's calculated release date for inmate Silvera 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 the context of 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, the public interest in confidentiality will, in most circumstances, clearly outweigh 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. Instead, you claim that, because ODOC makes offender release information publicly available under OAR 291-070-0043, there is no public interest in confidentiality. However, the rule you cite does not state that ODOC will comply with the request for notification in all circumstances. The rule simply establishes ODOC procedures for handling notification requests. Such a rule does not persuade us that ODOC has disclaimed any public interest in preventing inmates from using the Public Records Law to obtain documents that would "substantially prejudice or prevent the carrying out of the functions of the department." We understand that ODOC routinely complies with requests for notification that come from persons other than inmates. However, we do not believe that a policy making information available to the general public establishes the absence of a public interest in keeping the same information confidential with respect to incarcerated inmates, at least where corrections officials know that inmates are likely to misuse the information in ways that threaten safety, security, or the orderly operation of Oregon's correctional institutions.

In the absence of any proffered public interest in disclosure, the public interest in keeping an offender's projected release date confidential with respect to other inmates clearly prevails. As a result, we conclude that ODOC properly relied on ORS 192.502(5) to deny your request for inmate Silvera's calculated release date. Your petition is respectfully denied.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS21527
c: Brian Belleque, Superintendent, Oregon State Penitentiary
Brandon Kelly, Acting Security Manager, Oregon State Penitentiary
Jeff Premo, Chief of Security, ODOC