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DEPARTMENT OF JUSTICE

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March 4, 2008

Lenny D. Fairley, SID #7483857
Oregon State Penitentiary
2605 State Street
Salem, OR 97310

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

Dear Mr. Fairley:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on February 26, 2008, asks the Attorney General to direct the Oregon Department of Corrections (ODOC) to make available to you a copy of confidential memo that was used to support two other ODOC reports – Unusual Incident Report SCRI 06-04-026, and ODOC Investigative Report #06-040 dated April 13, 2006. For the reasons that follow, we respectfully 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 who is 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 the records. *See* ORS 192.450(1).

Your petition states that you were informed by Bill Doman, an employee of the Snake River Correctional Institution (SRCI), that the agency had denied your request to inspect or to receive a copy of the memorandum in question, and that Mr. Doman told you to file a petition with this office in order to receive a copy of the memo. In support of your petition you submitted copies of correspondence between you and ODOC officials, including a letter from SRCI Superintendent Mark Nooth, signed by Mr. Doman for Superintendent Nooth, dated

January 4, 2008. That letter, a copy of which is enclosed for your convenience, appears on its face to support your contentions.

We have spoken with Mr. Doman, Transitional Services Manager at SRCI, regarding your petition. He told us that he drafted Superintendent's Nooth's January 4th letter responding to your request for a copy of the memo. Mr. Doman explained that in drafting the Superintendent's response he did not r eview SRCI's records to determine whether a confidential supporting memo was ever created in connection with 2006 incident in question, but that he instead responded to your request reflexively, relying on what he understood to be SRCI policy not to release information in confidential memos. Mr. Doman told us that since the filing of your petition with this office SRCI officials have reviewed the agency's records pertaining to the 2006 incident at SRCI and determined that no confidential supporting memo was ever created or provided by SRCI staff to the Oregon State Police or to the Malheur County District Attorney's Office in connection with the incident.[1]

We have also spoken with Ken Jeske, Assistant Chief Investigator in ODOC's Investigations Unit, regarding your petition. Mr. Jeske also confirmed to us that ODOC's Investigations Unit has no confidential supporting memo as described in your petition in its investigations file pertaining to the 2006 incident at SRCI.

This office has no authority to order ODOC to disclose a public record that it does not have. Accordingly, we deny your petition.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS
Enclosure
c w/encl: Mark Nooth, Superintendent, SRCI
Bill Doman, Transitional Services Manager, SRCI

[1] In addition to ODOC officials we have spoken with Malheur County Deputy District Erin Landis regarding your petition. Mr. Landis told us that he was the prosecuting attorney in the criminal action in which you were tried and convicted of assaulting a fellow inmate at SRCI in 2006. Mr. Landis told us that his office never received and has no "confidential memo" as described in your petition in his office's file pertaining to the case.