HARDY MYERS
ATTORNEY GENERAL

PETER D. SHEPHERD
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

1162 Court Street NE
Justice Building
Salem, Oregon 97301-4096
Telephone: (503) 378-4400
TTY: (503) 378-5938

April 5, 2007

Casey Lee Johnson, SID #12151379
Oregon State Penitentiary
2605 State Street NE
Salem, OR 97310

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

Dear Mr. Johnson:

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 March 29, 2007, asks the Attorney General to direct the Oregon Department of Corrections (ODOC) to make available to you for inspection or to produce copies of the following records:

1. ODOC Inmate Administrative hard file; and
2. OISC Medical & Mental Health records.

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

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).

This is the second petition you have submitted to this office in the past two weeks seeking an order from the Attorney General that directs ODOC to make available for inspection or furnish you with copies of its records to you.[1] Your current petition states that you requested to inspect and/or copy the records described in the petition on March 19, 2007, but that your request was denied by Mary Jenkins, a Records Specialist with ODOC. We spoke with Ms. Jenkins regarding your petition. She told us that on March 14, 2007 she sent you a letter in response to a request for copies of ODOC's inmate records pertaining to you that you had directed to Stan Czerniak, ODOC's Assistant Director for Operations, back in February of this year. Your February 13 letter to Mr. Czerniak and Ms. Jenkins' March 14 letter in response are attached for your convenience.

In her response to your February 13 request, Ms. Jenkins stated that ODOC charges from $.50 to $1.25 per page to provide copies of requested records, and that the agency's estimated fees for furnishing you with copies of the records you requested was $417.50. Public bodies may establish fees reasonably calculated to reimburse them for their costs in making records available. ORS 192.440(3). Ms. Jenkins' response was in accordance with ODOC's administrative rule governing the charging of fees for responding to records requests. OAR 291-037-0020(3). Ms. Jenkins' response advised you that because you had no funds in your inmate trust account to pay for the copies, ODOC would make copies of its records available to you upon its receipt of the estimated fee. "A public body may require prepayment of its estimated charges before taking further action on a request." ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL at 13 (2005).

[1] Like your first petition, you enclosed with your current petition a form records request, dated March 5, 2007, presumably as evidence of the existence of your request of ODOC for copies of its records as described in your petition. However, as with your first petition, the form records request that was enclosed with your current petition is not the records request of ODOC that is described in your current petition – but, is instead a form request for records addressed to Oregon's Solicitor General, Mary H. Williams, who is a lawyer with this office.

ODOC's requirement of prepayment is not a denial of your request. Consequently, the Attorney General lacks authority to order ODOC to disclose the records. We therefore deny your petition as premature.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS19528
Enclosures
c: Brian Belleque, Superintendent, Oregon State Penitentiary
Mary Jenkins, Records Specialist, Offender Information and Sentence Computation Unit (OISC), ODOC