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ATTORNEY GENERAL

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DEPARTMENT OF JUSTICE

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March 26, 2007

Les Zaitz
Senior Investigative Reporter
The Oregonian
900 Court St. NE, #41
Salem, OR 97301

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

Dear Mr. Zaitz:

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 19, 2007, asks the Attorney General to direct the Oregon Department of Corrections (ODOC) to make available to you for inspection the following records:

1. All e-mail correspondence within the Oregon Department of Corrections (ODOC) or its representatives and between ODOC and its representatives with any agent of the federal government relating to requests for documents from federal investigators related to the Fred Monem criminal investigation.

2. All handwritten notes, phone messages, and any other memorialization in whatever form regarding contact between ODOC and the federal government relating to the above-described request.

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).

The petition states that you requested these materials via e-mail to Perrin Damon, Communications Director for ODOC, on March 2, 2007. The petition describes various other communications between you and Ms. Damon via telephone and e-mail regarding your requests for the records described in your petition and for other ODOC records. The petition states that in one of those communications, on March 15, you notified Ms. Damon via e-mail that you believed that ODOC was not lawfully fulfilling its obligation to make the records available to you. In that email, you asked that Ms. Damon notify you by no later than close of business of the next day that the records were available for your inspection or that ODOC was withholding the records under a statutory disclosure exemption, otherwise you would file a petition with the Attorney General to order ODOC to disclose the records to you. Your petition was filed with this office the following day, March 19.

We have spoken with Ms. Damon regarding your petition. Ms. Damon told us that, as Communications Manager for ODOC, she is the ODOC official responsible for receiving, processing, and responding to media requests for agency records. Ms. Damon told us that since she received your e-mail request for the records she has acted in good faith to work with you to clarify for her the records you seek from ODOC, to locate and identify those records that are responsive to your request with agency officials, and to seek to review the records for application of statutory disclosure exemptions. Ms. Damon told us that in addition to processing your request for records that is the subject of this petition, she has had an extraordinary number of other work demands with which she has had to devote her time during this same time frame. These demands include, but are not limited to, several separate requests for other ODOC records from you and from Bryan Denson of The Oregonian, requests from other media organizations (e.g., the Statesman Journal Newspaper, Willamette Week, McClatchy Newspapers), and a major video project for ODOC. Ms. Damon also told us that given the scope of your request for records, the process of locating and identifying the records you have requested has been more extensive and has involved reviewing more staff's records than was suggested in your petition. Further, she stated that there are records falling within the scope of your request that must be reviewed with federal authorities and with the agency's assigned legal counsel in this office for possible application of one or more statutory disclosure exemptions. Ms. Damon told us that for all these reasons, ODOC was unable to compile and review the records by the date on which you filed your petition.[1] Ms. Damon told us that ODOC will continue to work in good faith to complete its processing of your request and to make available to you nonexempt records in the near future.[2]

The fact that ODOC was not able to compile, review for the application of statutory disclosure exemptions, and provide you with copies of the agency's nonexempt records responsive to your requests in the time frame you requested is not a denial of those requests. As

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[1] Ms. Damon also told us that she was out of the office for several days during this period.

[2] Ms. Damon told us that she will be out of the state to attend to personal family matters this week and part of the following week. She anticipates that ODOC will be able to complete its processing of this and your other pending ODOC record requests within the week following her return to the office.

your petition correctly observes, the Public Records Law affords an agency a "reasonable" time to respond to a records request. We have explained that "[t]he amount of time that is reasonable will depend upon the volume of records requested, the staff available to respond to the records request and the difficulty in determining whether any of the records are exempt from disclosure." Attorney General's Public Records and Meetings Manual (2005) (Manual) at 9. Moreover, "[t]he public records custodian acts reasonably even if the custodian does not comply with timelines imposed by the requestor, so long as the custodian provides access to the nonexempt records within a reasonable period of time. It is not a denial entitling the requestor to petition for release of the records if the custodian does not provide access to the nonexempt records within the timeframe set by the requestor." *Id.*

Under these circumstances we conclude that ODOC's failure to compile and review the records responsive to your requests and make copies of nonexempt records available does not constitute unreasonable delay, particularly when ODOC has expressed its intent to continue the work of compiling the records and making them available to you in a reasonable time. We therefore conclude that there has been no denial of your request. As a result, this office lacks authority to order disclosure. ORS 192.450(1). We respectfully deny your petition to compel disclosure as premature.

Sincerely,

Stephanie Stuppler

for PETER D. SHEPHERD
Deputy Attorney General

AGS19479
c: Perrin Damon, Communication Manager, ODOC