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February 12, 2007

Mr. Lemuel Hentz
SID #6750414
EOCI
2500 Westgate
Pendleton, OR 97801

Dear Mr. Hentz,

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

Dear Mr. Hentz,

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 5, 2007, asks the Attorney General to order Ms. Birdie Worley, Records Coordinator for the Oregon Department of Corrections (ODOC), to disclose the following:

(1) "The rule violation listed in the Prohibited Inmate Conduct Rule (OAR 291-105), which use the words: 'Inmate commits.' Is this the first notice to an inmate, if he commits these certain acts mentioned in the actual rule, he will be in violation?"

(2) "With regards to the original signed notice pertaining to Racketeering, and a certified copy of the amended rule OAR 291-105-0015(4)(k) Racketeering. . . Did your office file a copy of either one of these documents with a government agency[?] If so can you tell me the date and the name of the government agency?"

For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. The Public Records Law does not require a public body to create a record to disclose the reasoning behind its actions

or the knowledge held by its staff nor to explain or answer questions about its application of an administrative rule. *See* Public Records Order, May 26, 2005 (Andrade). If a state agency denies a request for disclosure of records, the requestor may petition the Attorney General for review of the denial. However, 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 request #1 is not a request to inspect or copy a public record maintained by ODOC. Rather, request #1 asks ODOC to explain to you how that agency has applied or will apply a particular administrative rule in an inmate disciplinary case. Similarly, request #2, by its terms, is also not a request to inspect or copy a public record maintained by ODOC. Instead, request #2 asks ODOC to confirm whether the agency filed an original signed copy or a certified copy of a notice of proposed rulemaking with respect to a particular rule adopted by the agency.

We have spoken with Ms. Worley regarding your petition. Ms. Worley told us that she responded to both of your information requests by letter dated January 4, 2007 (copy attached). In her letter, Ms. Worley answered both of your requests for information, and advised you that if you desired a copy of the agency's notice of proposed rulemaking relating to the Racketeering rule she would provide you with copies of the two-page document upon payment of the agency's fees.[1]

Under these circumstances, ODOC has not denied a request for public records. We accordingly deny your petition. ORS 192.450(1).

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS19259
cc: Birdie Worley, Records Coordinator, Oregon Department of Corrections

[1]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, and may require prepayment of its estimated charges before taking further action on a request. ORS 192.440(3); *See* Public Records Order, June 30, 2005 (Mills).