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

January 2, 2007

Mr. Edward H. Stokes
SID No. 8474236
Snake River Correctional Facility
777 Stanton Blvd
Ontario, Oregon 97914-8334

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

Dear Mr. Stokes:

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. On December 26, 2006, we received your request via facsimile transmission from Marcy Fenicottero at the Snake River Correctional Facility (SRCI). The petition asks the Attorney General to direct the Oregon Department of Corrections (ODOC) to make available:

> * * * for inspection of any nonexempt records being managed and maintained regarding my person in any file containing information regarding my custody, classification, discipline, housing, employment, medical, treatment, programming, education, and/or reason(s) for my segregation within the Oregon Department of Corrections; including, but not limited to, the following specifically named files::
>
> a.) inmate Central File (as maintained by SRCI);
> b.) electronic DOC 400 file as maintained at SRCI;
> d.) any separate personal and/or public records maintained by:
> *i.) corrections counseling staff;*
> ii.) Property records (including but not limited to, Shakedown reports, disciplinary, and Receiving and Release files and records);
> *iii.) Counseling and Treatment Services (CTS);*
> iv.) Health Services;

*v.) SNIEC committee and/or it's secretary (only entries regarding my person);*
vi.) Education department;
*vii.) Administrative Segregation and/or Special Housing staff;*
viii.) Religious Services and/or any associated staff;
*ix.) all Grievance investigation records pertaining to redress of grievances.*

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. If a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material. *Turner v. Reed*, 22 Or App 177, 186 n 8, 538 P2d 373 (1975). 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).

You state in your petition that you have been requesting the above records from the SRCI function unit managers for the past year. You also state that some of those individuals have in fact answered your requests. However, you do not state that anyone at SRCI has denied your requests. We have spoken with Polly Stewart, Executive Support for the Superintendent of SRCI, regarding your petition. Ms. Stewart informs us that, other than your January 29, 2006 written requests for shake down reports and unusual incident reports, the Superintendent's office has not received any written requests for records from you. Ms. Stewart further informs us that SRCI will provide to you any public records that are not exempt under the Public Records Law when you have sufficient funds in your inmate trust account to pay for such records.[1]

[1] ORS 192.430 authorizes public bodies to adopt reasonable rules necessary for protecting public records and preventing interference with the regular discharge of duties of the custodian. The Public Records Law also 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 the requested records and reviewing them for exempt material. *See* ORS 192.440(3); ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (AG MANUAL) (2005) at 13-14. ODOC has adopted such rules, which provide for charges for copying and staff time. Specifically, Oregon Administrative Rule (OAR) 291-037-0020(7) provides that "[p]roper and reasonable opportunity for inspection and/or duplication of record(s) will be provided, consistent with security requirements at each Department facility and functional unit and as the circumstances warrant." ODOC has determined that, for a fee, it will provide copies of records to ODOC inmates in response to requests made under the Public Records Law, in lieu of allowing inspection of original records. We have previously concluded that ODOC's decision to furnish copies to ODOC inmates, in lieu of allowing inspection of original documents, is valid. *See* Public Records Order, July 19, 1982, *Baucom*; Public Records Order, October 30, 2001, *Romair*; Public Records Order, March 14, 2002, *Williams*. Moreover, public bodies may require a requestor to prepay the agency's estimated costs. AG MANUAL at 13.

Accordingly, because it does not appear that SRCI has denied your requests, and because SRCI has agreed to provide to you the non-exempt public records that you seek upon prepayment of its costs, we deny your petition as both premature and moot.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS19079

cc: Jean Hill, Superintendent of SRCI