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February 19, 1997

Bradley Cunningham
SID #10456927
Snake River Correctional Institution
777 Stanton Blvd.
Ontario, OR 97914

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

Dear Mr. Cunningham:

This 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 12, 1997, asks the Attorney General to direct the Oregon Department of Corrections (ODOC) and its employees to make available to you for inspection the following records:

1. All financial records of the Inmate Welfare Fund including financial statements, profit and loss statements and contracts for operating or purchasing goods at ODOC prison facilities, for the past three years.

2. Contracts for telephones at prison facilities, local and long distance charges and fee sharing agreements, all for 1996-1997.

3. Copies of private service contracts for canteen and kitchen facilities in 1996-1997 at ODOC facilities.

4. Services and uses of funds statements for the Inmate Welfare Fund for the past three (3) fiscal years.

5. Copies of all operative court orders and/or consent decrees that are now binding upon me (as an inmate) and the ODOC has of January 1997.

6. Copies of all reports, surveys, or summaries that detail all known fire-life-safety defects including, structural defects, at each ODOC facility.

7. Copies of photocopy machine leases or purchase contracts on inmate or staff accessed photocopy machines at ODOC facilities.

8. Copies of contracts and partnership agreements concerning the use of inmate labor when the ODOC, and construction of SRCI.

9. Copies of reports that detail cost overruns and/or construction schedule delays of the Snake River Correctional Institution.

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

The Public Records Law confers a right to access 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). Under these provisions, an agency may be said to have "denied" a request to inspect or to receive a copy of a public record only if it receives a proper request for public records. Public Records Order, July 7, 1989 (Baker).

ORS 192.430 authorizes state agencies to adopt rules and regulations necessary for protecting the records and preventing interference with the regular discharge of duties of the custodian. ORS 192.430. 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).

Pursuant to these statutes, the Oregon Department of Corrections (ODOC) has adopted administrative rules, OAR 291-37-020(2), (3)(b) and (7), which provide in pertinent part:

(2) The request [for public records] must be in writing * * *.

* * * * *

(3)(b) * * * [n]o inspection and/or duplication of record(s) is authorized until payment has been received.

* * * * *

(7) Proper 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 circumstances warrant.

In a discussion with Assistant Attorney General Jefry Van Valkenburgh, you indicated that you did not make a request for these records under the Public Records Law, but instead requested these records as part of the discovery process in a civil rights action filed in the United States District Court for the District of Oregon. This does not constitute a request to ODOC under the Public Records Law or under the administrative rules set forth above. The Attorney General has authority to order disclosure of public records under the Public Records Law only when the records have first been requested from, and denied by, a state agency.[1/] *See* ORS 192.450.

Accordingly, we deny your petition as premature.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH HARCHENKO
Special Counsel to
the Attorney General

ESH:AV:JVV:jpl:JAA02276E
Enclosure
c: Dan Johnson, Superintendent, SRCI (w/o encl)

[1/] You indicated to Mr. Van Valkenburgh that you will be requesting these records pursuant to the Public Records Law and the agency's administrative rules, and that you also intend to request a waiver of fees. Mr. Van Valkenburgh agreed to send you the relevant pages in the Attorney General's Public Records and Meetings Manual relating to fees and fee waivers. A copy of those pages is enclosed.