HARDY MYERS
ATTORNEY GENERAL

DAVID SCHUMAN
DEPUTY ATTORNEY GENERAL



DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97310-0506
Telephone: (503) 378-4400
TDD: (503) 378-5938

April 7, 1997

Michael Heidelberg, SID #4939497
Oregon State Correctional Institution
3405 Deer Park Drive SE
Salem, OR 97310-9385

Re: *Petition for Public Records Disclosure Order: Eastern Oregon Correctional Institution Records*

Dear Mr. Heidelberg:

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 March 25, 1997, asks the Attorney General[1/] to direct the Eastern Oregon Correctional Institution (EOCI) and its employees to make available to you copies of the following records:

> The taped conversation between Mr. Heidelberg and Lt. Tom Watson, Corporal Parklyn Maine on April 14, 1995 at 12:47 pm. and any and all notes during that interview

In a conversation with Assistant Attorney General Jef Van Valkenburgh of this office, you clarified that you are seeking a transcript, rather than a tape, of the conversation between yourself and Lt. Watson and Corporal Maine. Because EOCI has agreed to provide you with the records, 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

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[1/] Your petition was actually addressed to Umatilla County District Attorney David Gallaher. Under the Public Records Law, the Attorney General, not the District Attorney, has jurisdiction over petitions for disclosure of records when a request for the records was denied by a state agency, such as the Eastern Oregon Correctional Institution. ORS 192.450. Therefore, we are treating your petition as though it had been addressed to the Attorney General.

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).

Your petition states that you requested a copy of the above-referenced records on November 15, 1996, but that your request was denied by EOCI Superintendent George Baldwin and EOCI employees. You state in your petition that you received no reply to your request.

We have been unable to confirm with EOCI staff whether your November 15, 1996, request for records was received and denied by the agency. Nevertheless, Pat McKeone, Assistant Superintendent of EOCI, informs us that EOCI will furnish you with a copy of the transcript of the taped conversation that you seek upon your prepayment of the agency's costs at 50 cents per page.[2/] Ms. McKeone informs us that neither Lt. Watson nor Corporal Maine have any notes of the interview.

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[2/] ORS 192.430 authorizes states agencies to adopt reasonable rules and regulations necessary for protecting the 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 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(3)(a), (b) and (7), which provide in pertinent part:

> (3)(a) The cost of duplication will be based upon actual cost, including staff time to locate, review and copy the record(s), all material and first class postage, where applicable:
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> (A) Unless circumstances warrant a different conclusion, it may be presumed that, if the request is for a specific releasable document, the cost of the duplication is 50 cents a page;
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> * * * * *
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> (b) [N]o inspection and/or duplication of record(s) is authorized until payment has been received.
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> * * * * *
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> (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.

Because EOCI has agreed to furnish you with copies of the records you seek to the extent they exist, we respectfully deny your petition as moot.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

JVV:MAC:AV:mac/JGG0FA44
c: George Baldwin, Superintendent
Pat McKeone, Assistant Superintendent
Eastern Oregon Correctional Institution
2500 Westgate
Pendleton, OR 97801-9699