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

September 18, 1997

William J. Birhanzl, SID No. 6410207
Multnomah County Detention Center
CPMS No. 69645
1120 SW 3rd Ave.
Portland, OR 97204

Re: *Petition for Public Records Disclosure Order: Department of Corrections Records and Oregon Board of Parole and Post-Prison Supervision Records*

Dear Mr. Birhanzl:

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 September 9, 1997,[1/] asks the Attorney General to direct the Oregon Board of Parole and Post-Prison Supervision (board) and the Department of Corrections to produce the following records for inspection and copying:

1. The names of each board member in February, 1997, and the names of the current members of the board.

2. ORS chapter 144 and Oregon administrative rules applicable to hearings for alleged violations of post-prison supervision.

3. Documents relating to your arrest on August 6, 1997 which allege violations of post-prison supervision and are signed by the person or persons asserting such allegations.

[1/] We appreciate your agreeing to an extension of time within which the law would have otherwise required us to respond.

4. The warrant or order of arrest and the affidavit in support of such warrant or order, pertinent to your arrest on August 6, 1997.

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

Your petition states that requests to inspect or copy these records was made to the Multnomah County Justice Center[2/] and to the Oregon Parole Board, but does not state that you made a request to the Department of Corrections. You also have informed Assistant Attorney General Jim Russell that you did not request these records from the Department of Corrections. Because there has been no request, there has been no denial by that state agency. Therefore, our office has no authority to order the Department of Corrections to disclose records. *See* ORS 192.450(1); Public Records Order, February 28, 1992 (Ferderber) (where no request for personnel records was made to Executive Department there has been no denial and Attorney General had no authority to order this agency to provide such records). Accordingly, we deny your petition with respect to records of the Department of Corrections.

In your petition you state that your request to inspect or copy these records was made to the "Oregon Parole Board, 2575 Center Street NE, Salem, OR 97310," and that your request was denied by "Larry Monagon, Representative of the Board, and the Board's records custodian."

Larry Monagon is employed by Multnomah County as a hearings officer. Although Mr. Monagon may serve as the board's agent to conduct post-prison supervision revocation hearings, he does not serve as the custodian of board records. Board rule OAR 255-015-0005(2) requires that a public records request be in writing and addressed to the chairperson of the board. The board has no record of your request, and thus did not have the opportunity to grant or deny your request. As stated above with respect to Department of Corrections' records, this office has no authority under the Public Records Law to order the board to provide you the requested records when the board has not denied your request.

Moreover, upon receipt of a copy of your petition, the board has complied or agreed to comply with your request, as follows:

[2/] The Multnomah County Justice Center is not a state agency. To the extent that the records you seek are in the custody of the Justice Center, *see* ORS 192.410(1)(b), and you requested and were denied those records by the Justice Center, you would need to petition the District Attorney for Multnomah County, not the Attorney General. *See* ORS 192.460.

1. In a letter to you dated September 12, 1997, Jim Eckland, Executive Director of the board, provided you with the names of the persons serving as board members during February 1977, and the names of the current board members.

2. In this same letter, Mr. Eckland informed you that the legal library at the Multnomah County Detention Center should have ORS chapter 144 and the relevant Oregon administrative rules. Mr. Eckland also offered to make the rules available to you and advised you of the costs if you should wish to obtain copies of these rules from the board.

3. Mr. Eckland also stated in his September 12 letter his understanding that you have been furnished a copy of the supervision violation report, which is the document you seek in item #3 above. Mr. Eckland further informs us that if you have not obtained a copy of that document, the board will provide a copy to you. Please contact Mr. Eckland if you still wish to obtain a copy from the board.

4. Jim Eckland informs us that he sent the warrant and supporting information[3/] to you on September 16, 1997.

Because the board has provided you with all the records you requested or has agreed to do so, we deny your petition as moot with respect to records of the board.

As an additional matter, you state that you filed several petitions for disclosure orders between March and June 23, 1997, and would like copies of those petitions and our responses. We have conducted a thorough file search of our records, and we find no petitions from you or responses by this office for the period in question.

Sincerely,

STEPHANIE L. STRIFFLER
Special Counsel to the Attorney General

SLS:jh/74609397.W51
c: Jim Eckland, Executive Director
Oregon Board of Parole and Post-Prison Supervision

[3/] The parole officer's information in support of a warrant is not in an affidavit form.