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Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400

July 23, 1987

Alan K. Ota
The Oregonian
1320 SW Broadway
Portland, Oregon 97201

Re: Public Records Request

Dear Mr. Ota:

This letter responds to your July 16, 1987 petition to the Attorney General for a public records disclosure order. After investigating the circumstances of your petition, we find that your petition is premature. You did not follow prescribed procedures in making your initial request for disclosure from the Corrections Department, and we do not have a denial of disclosure sufficient to trigger our review process. Nevertheless, as noted below, information of the type you seek in your petition soon will be made available for your inspection.

ORS 192.430 requires the custodian of a public record to grant reasonable opportunity for examination and inspection of public records subject to

> " . . . reasonable rules and regulations necessary for the protection of the records and to prevent interference with the regular duties of the custodian."

The Department of Corrections has adopted rules consistent with ORS 192.430 which include the requirement that a request for records be submitted to the function unit manager in writing. OAR 291-37-015(2).

The wisdom of this rule is illustrated in this case. According to your letter of July 16, 1987, you are

> " . . . seeking the release of Special Management Unit Incident Reports and Restraint Memoranda for the Oregon State Penitentiary."

You further assert that your request for these documents was allowed by Al Chandler of the penitentiary and later denied by Robey Eldridge of the Corrections Department and, therefore, petition the Attorney General for review pursuant to ORS 192.450.

However, Al Chandler indicates that actually you were provided all records you requested of him, with the exception of medical records regarding specific inmates. Those records are not subject to disclosure. ORS 192.525. According to Mr. Eldridge, you requested copies of all incident reports leading to an inmate's placement in the Special Management Unit (SMU) together with the initial admission form. While those particular records may be subject to disclosure, we do not reach that question because your petition does not seek disclosure of the records you asked Mr. Eldridge to produce.

There is a document entitled "SMU Incident Report/Restraint Memorandum" in some inmate files. We do not reach the issue of whether those documents are subject to disclosure because the agency was not properly requested to produce those records pursuant to ORS 192.430 and OAR 291-37-005 et seq. Absent agency denial of such a request, the Attorney General declines to review the request to produce. ORS 192.450(1).

It is not our intent, however, merely to stand on procedure. Corrections Department procedures ensure clarity by the requestor and preserve the integrity of agency records and efficiency of agency operations. Nevertheless, to assist you in promptly securing the information you seek, the Corrections Department and our office, through Assistant Attorney General Scott McAlister, have offered to make restraint information available to you during the week of July 27, 1987, following the filing of such information in discovery procedures in pending litigation.

If you have any questions, please contact Mr. McAlister or me.

Yours very truly,

JAMES E. MOUNTAIN, JR.
Special Counsel to the
Attorney General

JEM:cm
cc: Scott McAlister
Robey Eldridge
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