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DEPARTMENT OF JUSTICE

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October 13, 2005

Lemuel Hentz, SID #6750414
Snake River Correctional Institution
777 Stanton Blvd.
Ontario, OR 97914-0595

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

Dear Mr. Hentz:

This letter is the Attorney General's order on your petition for disclosure under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on October 7, 2005, asks the Attorney General to direct Jean Hill, Superintendent of the Snake River Correctional Institution (SRCI), and SRCI employees to disclose to you for inspection and copying records responsive to the following request:

> On August 23, 2005 inmate Williams #15693585 and inmate Hentz #6750414 were served several misconduct reports. I requested through the public disclosure act, the date and time each of our misconduct reports was assigned a case number and schedule for a disciplinary hearing.

For the reasons that follow, 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. Any person 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. However, the Attorney General does not have authority to order disclosure of public records unless the agency has denied a request for those records.

According to your petition, you made request of someone at SRCI for the above-described records and your request was denied by Superintendent Hill, by "inaction." We spoke with Bill Doman, Executive Assistant to Superintendent Hill, about your petition. He told us that Superintendent Hill's office received two Inmate Communications from you requesting records

similar to those described in your petition. Mr. Doman told us that your first request, dated September 19, 2005, asks for copies of print-outs of computer call-outs for the scheduling of any disciplinary hearings for you and for inmate Williams. But, your second request, dated September 25, 2005 and stamped "Received" "SEP 26 2005," asks Superintendent Hill to disregard your first request and to instead provide you with print-outs from the Disciplinary Misconduct System (DMS) indicating the exact dates and time each misconduct report was served on you and inmate Williams.[1] Copies of your Inmate Communications are enclosed for your convenience.

Mr. Doman told us that he has not yet responded on behalf of Superintendent Hill to your request of September 25th because of the press of other work and his recent week-long absence from the office. He also told us that he is currently reviewing your request and consulting with ODOC's assigned contact counsel in this office about whether one or more statutory disclosure exemptions apply to the requested records. Mr. Doman told us that he anticipates responding to your request within the next two weeks.

In responding to a public records request, an agency is permitted a reasonable opportunity to retrieve and review the requested records, and, if necessary, to consult with legal counsel before providing the records or denying the request. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2004) at 9; *Morse Bros., Inc. v. ODED,* 103 Or App 619, 622, 798 P2d 719 (1990). A public body does not constructively deny a request for public records merely because it fails to provide access to nonexempt records within the timeframe set by the requestor. *Morse Bros., Inc. v. ODED*, 103 Or App 619, 798 P2d 719 (1990).

According to Mr. Doman's estimate, ODOC will respond to your request within approximately one month of its receipt. Under the circumstances described, we conclude that the time ODOC is taking to respond to your request is not unreasonable. Therefore, we conclude that SRCI and Superintendent Hill has not denied your request for records.

Based on our analysis, we deny your petition as premature.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS16351
c: Bill Doman, Executive Assistant to Superintendent Jean Hill, SRCI

[1] Because your second request asks the Superintendent to disregard the first, the only records request currently pending is that for DMS print-outs showing the dates and time the misconduct reports were served.