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December 18, 2013

Martin A. Johnson
OPS 5410056
Death Row Cell #3
2605 State Street
Salem OR 97301

Re: Petition for Public Record Disclosure Order
Oregon Department of Corrections
DOJ File No. 291011-GA0130-13

Dear Mr. Johnson:

This letter is the Attorney General's order in response to your petition asking that we direct the Oregon Department of Corrections (ODOC) to provide certain public records to you under the Oregon Public Records Laws, ORS 192.410 to 192.505. Your petition raises two issues. First, you object to the hourly employee rate, the amount of employee time, and the per-page cost that are included in the fee established by ODOC. Second, you object to ODOC's denial of one aspect of your public records request based on the fact that ODOC's rules prohibit your possession of the requested materials while incarcerated. We respectfully deny your petition for the reasons that follow.

With respect to the fee issues, "there is no provision in the Public Records Law that authorizes a person to petition the Attorney General to review an agency's fees." ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2011) (MANUAL) at 16. Although our authority to enforce the inspection provisions of the law "may require [our office] to evaluate an agency's fees where the amount of the fee in comparison to the nature of the request suggests that the true purpose of the fee is to constructively deny the request," we see no basis to conclude that is the case here. We therefore deny your petition in this regard.

As for the records that were denied to you on the basis of ODOC's institutional rules regarding possession of materials, we have long held that the Public Records Law does not override ODOC's authority to establish rules for the control and governance of ODOC's

institutions. MANUAL at A-4 ("The Public Records Law does not authorize inmates to possess materials that are forbidden by the rules of the Oregon Department of Corrections.") To the extent that your petition seeks an order requiring ODOC to provide the materials to you personally, it is respectfully denied.

However, we understand that ODOC has sent a letter offering to make the materials available to an un-incarcerated person on your behalf if you are willing to pay the fees associated with making the records available. To the extent your petition was seeking this outcome, it is moot and respectfully denied on that basis.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

cc via email only:
Anita Nelson, ODOC
Jeff Premo, Superintendent, Oregon State Penitentiary