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DEPARTMENT OF JUSTICE

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January 9, 2013

Martin Allen Johnson, OSP #5410056
Death Row Cell #3
2605 State Street
Salem, OR 97310

Re: Petition for Public Records Disclosure Order
Oregon Office of Public Defense Services Records
DOJ File No. 404001-GA0002-13

Dear Mr. Johnson,

This letter is the Attorney General's order in response to your petition under the Oregon Public Records law. As we understand your petition, you ask us to require the Oregon Office of Public Defense Services (OPDS) to do five things:

1. Provide you with a list of records in its possession responsive to your request;
2. Provide you with an index of the types of records that exist, including information about the record;
3. Tell you where the records are located so that you can have someone inspect them on your behalf;
4. Provide you with a condensation of facts;
5. Waive its fees in connection with your request.

You seek these remedies in connection with your request to OPDS for copies of billing records in connection with two litigation matters in which your legal services were arranged through OPDS.

We respectfully deny your petition with respect to items 1 and 2 because Oregon's public records law does not impose any obligation to create a specific list or index of responsive records in the manner that you are requesting. Moreover, in its response to your request, OPDS informed you that it possesses approximately 180 responsive records pertaining to one of the matters to which your request pertains, and has located 5 records pertaining to the other matter. We have no authority to order OPDS to do more.

With respect to item 3, we respectfully deny your petition because it does not appear that you ever requested that OPDS provide an opportunity for inspection to a person acting on your behalf. Your request to OPDS specifically seeks copies of the records at issue. Because OPDS has not denied any request to inspect the records, we cannot order OPDS to permit inspection. See ORS 192.450 (permitting petitions by those whose requests have been denied). We also note that, given the nature of the work encompassed by OPDS's fee estimate, it is not likely that fulfilling a request to inspect the records would be significantly cheaper than fulfilling a request to copy them, as the work of reviewing and possibly removing exempt information would still need to be done.

With respect to item 4, we have no authority to order OPDS to create a condensation of significant facts. ORS 192.423, the statute pertaining to such condensations, simply provides an alternative mechanism for public bodies that would otherwise be required to disclose attorney-client privileged materials under the provisions of ORS 192.502(9)(b). The circumstances that trigger ORS 192.502(9)(b) are not present here. Your petition is therefore denied in this respect as well.

We turn finally to your request that we order OPDS to waive its fees in connection with your request. ORS 192.440(5) provides that "[t]he custodian of any public record may furnish copies without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public." Neither your request to OPDS nor your petition to our office provides any basis to think that the public would be the primary beneficiary of fulfilling your request. To the contrary, it appears that you intend to use the records you seek for your personal benefit. Since it does not appear that fulfilling your request would "primarily benefit[] the general public" we cannot order OPDS to waive its fees. Your petition is respectfully denied in this regard as well.

For the foregoing reasons, we respectfully deny your petition in its entirety.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

MHW:nog/Justice #3909711
c: Paul Levy, OPDS