ELLEN F. ROSENBLUM
ATTORNEY GENERAL

FREDERICK M. BOSS
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

Justice Building
1162 Court Street NE
Salem, Oregon 97301-4096
Telephone: (503) 378-4400

December 11, 2014

Martin Allen Johnson
SID # 5410056
Oregon State Penitentiary
2605 State Street NE
Salem OR 97310

Re: Petition for Public Records Disclosure Order
Oregon Department of Corrections
DOJ File No. 291011-GA0119-14

Dear Mr. Johnson,

This letter is the Attorney General's order in response to your petition asking that we order the Oregon Department of Corrections (ODOC) to waive its fees for certain information you requested under the Oregon Public Records Law, ORS 192.410 to 192.505. You had requested that ODOC provide you with certain information about individuals currently and formerly sentenced to death in Oregon. ODOC estimated that compiling the information you requested would entail two hours of work by a research analyst, and established a fee in the amount of $94.26. You had requested that ODOC waive its fees "[i]n order to get [your] ORS 192 request simple and fast." In your petition you assert that the fee quoted by ODOC is not reflective of its actual costs but is instead intended to effectively deny you access to the information you seek. In the alternative you ask that we order ODOC to waive its fee.

ORS 192.440(4) authorizes public bodies to establish fees for public records that are reasonably calculated to recover the agency's actual cost of responding to the request. ORS 192.440(5) provides that public bodies may waive or substantially reduce those fees if "the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public." ORS 192.440(6) provides that a person who believes their request for a waiver or reduction was unreasonably denied may seek review of that decision. In the case of a state agency such as ODOC, that review is sought by petition to the Attorney General. Regarding the amount of the fee estimate, we have stated that "[t]he Attorney General's authority to enforce the inspection provisions of the public records law may require the

Attorney General 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, rather than to recoup the agency's actual costs."

Succinctly, the fee quoted to you by ODOC does not suggest to us that its purpose is anything other than recovering ODOC's costs. And neither your request for a fee waiver nor your petition explains why your request meets the public interest standard of ORS 192.440(5). From the information available to us we cannot conclude that disclosing the requested information to you would "primarily benefit[] the general public." Your petition is respectfully denied.

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

cc via email only:
Jeff Premo, DOC