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December 3, 2014

SENT VIA EMAIL ONLY

Pamela Eller
76650 Blue Mountain School Road
Cottage Grove OR 97424
Pamelaeller11@gmail.com

Re: Petition for Public Records Disclosure Order
Oregon Department of Corrections Records
DOJ File No. 291011-GA0108-14

Dear Ms. Eller,

This letter is the Attorney General's order on your petition for public records disclosure order under the Oregon Public Records Law, ORS 192.410 et seq. Your current petition[1], which we received on November 19, 2014, effectively asks the Attorney General to review ODOC's fee estimate contained in its October 10, 2014 response to your September 9, 2014 records request of that agency, and to order ODOC to waive or reduce its fees for processing your request and making copies of records available to you.[2] For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to access any public record of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. The law requires generally that the custodian of public records furnish proper and reasonable opportunities for inspection and/or copying of the record in the office of the custodian. ORS 192.430. Any person denied the right to inspect or to receive a copy of any public record of a state agency may petition the Attorney General to review the public record to determine if it may be withheld from public inspection. ORS 192.450(1).

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[1] We denied your previous petition as to the records identified in your current petition by order dated October 15, 2014, for the reason that it was premature.

[2] We note that your current petition does not claim that you have previously requested of ODOC and been denied a fee waiver for the records you have requested. Accordingly, we must respectfully deny your petition as premature to the extent it asks us to order ODOC to waive its fees. We further note that ORS 192.440(5) authorizes fee waivers only where "the waiver or reduction of fees is in the public interest because making the record available *primarily benefits the general public.*"

ORS 192.430 authorizes public bodies to adopt reasonable rules necessary for protecting public records and preventing interference with the regular discharge of duties of the custodian. The Public Records Law also permits public bodies to establish and recover fees reasonably calculated to reimburse them for their actual cost in making public records available, including the time spent by agency staff in locating and reviewing the requested records in order to delete exempt material. *See* ORS 192.440(3); *see also* Public Records Order, April 7, 1989, Martin. ODOC has established a presumptive fee schedule by rule. OAR 291-037-0020(3).[3]

While there is no provision in the Public Records Law that authorizes a person to petition the Attorney General to review an agency's fees established under ORS 192.440(4), the 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. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETING MANUAL at 16-17 (2011).

Your current petition states that ODOC has constructively denied your request for copies of its records because you believe that the agency's fee estimate provided you is excessive and does not reflect ODOC's actual costs for processing your request and making copies of its records available to you. In support of your assertion, you argue that ODOC's fee estimate is based on a false representation made to you by Ms. Wendy Smith, Professional Services Administrator with ODOC's Health Services Administration, in response to your request. Specifically you dispute that ODOC will be required to devote substantial staff time in order to locate, compile, review and possibly redact exempt material from the records, and to make nonexempt records available to you. Your petition states your belief that the records you have requested are all maintained in ODOC's mental health files pertaining to Vincent Padgett and contain no exempt material. As a result, you contend that ODOC cannot be required to devote staff time to locate, compile, review and otherwise process the records.

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[3] OAR 291-037-0020(3) states, in pertinent part:

> Except as specifically provided for by statute, the designated staff member will advise the person requesting a public record, within a reasonable amount of time, whether the record(s) may be disclosed and the cost of inspection and/or duplication. If the record(s) requested contains information exempt for disclosure, the designated staff member will furnish a copy with the exempt material blanked out:
>
> (a) The cost of duplication will be based upon actual cost, including staff time to locate, review and copy the record(s), all material and first class postage, where applicable:
>
> (A) Unless circumstances warrant a different conclusion, it may be presumed that, if the request is for a specific releasable document, the cost of the duplication is 50 cents a page;
>
> (B) Unless circumstances warrant a different conclusion, it may be presumed that, if the request requires record review and a determination of whether the record can or should be released, the actual cost of such review, determination and duplication is $1.25 a page;

We have spoken with Ms. Smith regarding your current petition. She informs us that ODOC previously provided you with copies of its medical/mental health file records pertaining to Mr. Padgett on March 31, 2014. Ms. Smith further advised us that, contrary to your belief, except for new chart entries created on or after March 31, 2014, the remaining records that you have requested from ODOC—to the extent that they may exist—are not maintained in the agency's medical/mental health file pertaining to Mr. Padgett.

Ms. Smith also explained to us that ODOC does maintain certain records within the scope of your request. Again, however, these are maintained outside of the agency's medical/mental health file records pertaining to Mr. Padgett. Sleep logs, meal logs, SCO and SW logs are examples of such records. Ms. Smith explained that these records are maintained by institution staff at the Oregon State Penitentiary. Moreover, Ms. Smith notes that these logs contain information regarding multiple inmates other than Mr. Padgett and may contain exempt material. Staff will therefore need to review the records and possibly redact exempt material from the records before providing copies of the redacted records to you. In addition, Ms. Smith advised us that ODOC officials are uncertain if ODOC has other records within the scope of your request. To determine if ODOC has additional records, Ms. Smith explained that ODOC will need to devote substantial staff time to seek, locate, and retrieve any remaining records. And if records are located, ODOC will have to devote further staff time to review the records for possible exempt material, to redact any exempt material, and to provide to you copies of nonexempt records. Ms. Smith explained to us that, for all of the above reasons, ODOC's estimate that its fees for the processing of your records request will likely exceed $500 was made in good faith and designed to recover the agency's actual costs.[4] Ms. Smith further explained that the presumptive cost for obtaining documents that are maintained by ODOC as medical/mental health file records is fifty cents per page, as was previously explained to you.

Under these circumstances, and given the nature of your records request, we cannot conclude that the amount of ODOC's estimated fees suggests that the true purpose of those fees was to constructively deny your request, rather than to recoup ODOC's actual costs. As a result, we must respectfully deny your petition.

Sincerely,

STEVEN A. WOLF
Chief Counsel

cc via email only:
Wendy Smith, DOC
Jeff Premo, DOC

[4] We note that the presumptive fees quoted to you by Ms. Smith in her October 10, 2014 response faithfully reflects ODOC's presumptive per page fee schedule adopted by the agency by rule in OAR 291-037-0020(3).