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October 6, 2014

Martin A. Johnson
SID: 5410056
Oregon State Penitentiary
2605 State Street NE
Salem OR 97310

Re: Petition for Fee Waiver Order
Oregon Department of Corrections
DOJ File No. 291011-GA0090-14

Dear Mr. Johnson,

This letter is the Attorney General's order on your petition for fee waiver under the Oregon Public Records Law, ORS 192.410 *et seq*. Your petition, which we received on September 29, 2014, requests the Attorney General to order the Oregon Department of Corrections (ODOC) to waive the fees associated with various requests you have made of ODOC officials for copies of records. Your petition also asks that the Attorney General investigate the cost estimates provided by ODOC for your records requests. Your petition encloses various materials, including a copy of your initial records request, dated July 27, 2014. A copy of that request is enclosed. For the reasons that follow, we respectfully deny your petition.

Fee Waiver Order

ORS 192.440(4) allows public bodies to furnish copies "* * * without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction is in the public interest because making the record available primarily benefits the general public." A person who believes that a state agency has unreasonably denied a fee waiver or reduction may petition the Attorney General to review the agency's decision. ORS 192.440(5). You have petitioned the Attorney General under this provision.

In reviewing your records request to ODOC, we see no request for a fee waiver. We have also spoken with Michelle Dodson, Executive Assistant to the Superintendent at the Oregon State Penitentiary, regarding your petition. Ms. Dodson told us that the Superintendent's office

received no written request from you for waiver of ODOC's fees in relation to your requests for the records. Accordingly, ODOC has not unreasonably denied a request for fee waiver in this instance. We therefore deny your petition for fee waiver as premature. ORS 192.440(4), (5).

Request for Review of Agency Fee Estimate

The Public Records Law does not grant authority to the Attorney General to review fees charged by a state agency or to determine whether or not those fees in fact represent the agency's actual cost of making the records available. Public Records Order, August 4, 2000, *Mayes* (denying for lack of jurisdiction petition that requested Attorney General inquire into the fee charged for records).[1] Thus, to the extent that your petition further requests that the Attorney General review the fee estimates provided you by ODOC in response to your records request we must respectfully deny your petition.

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

cc via email only:
Michelle Dodson, DOC
Anika Nelson, DOC
Jeff Premo, DOC

[1] We have indicated that our "authority to enforce the inspection provisions of the public records law may require [us] 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[.]" ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2011) at 17. In this case, Ms. Dodson explains that the fee amounts quoted you reflect the different levels of staffing and expertise required to search for the documents you have requested. We see no reason to think otherwise under the circumstances.