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June 16, 2014

SENT VIA REGULAR U.S. MAIL

Martin Allen Johnson
SID #5410056
Oregon State Penitentiary
Death Row Cell #3
2605 State Street
Salem, Oregon 97310

Re: Petition for Public Records Order
State of Oregon, Department of Corrections
DOJ File No. 291011-GA0067-14

Dear Mr. Johnson,

This letter is the Attorney General's order in response to three petitions in which you ask our office to direct the Oregon Department of Corrections (ODOC) to provide various records to you.

Your first petition asserts that ODOC is required to provide you with an estimate of the cost of responding to a large, multi-faceted request that you submitted; ODOC instead determined that the cost would vastly exceed your ability to pay the cost of its fees through your inmate trust account and informed you of that fact. It also argues that ODOC was required to determine and list the responsive records in its possession. Your first petition argues in the alternative that we should order ODOC to waive the cost of responding to the request.

Your second petition makes a number of arguments, some of which concern fees and some of which relate to whether particular information is subject to redaction. We address only

the fee issues, as it would be premature to assess whether information is subject to disclosure or not, given that you have not paid the fees associated with the request. Once again, you argue that ODOC was required to determine what records in its possession are responsive to your request in order to generate a fee estimate. You also take issue with ODOC's per-page fee, arguing that it should be lower.

Your third petition again takes issue with the per-page fee assessed by ODOC. It then proceeds to argue that ODOC redacted certain information that should have been provided to you without redaction.

We respectfully deny your petitions.

With respect to your first petition, we conclude that ODOC responded reasonably to your broad request when, rather than generating a specific estimate, it merely noted that the request would easily exceed your ability to pay for records through your inmate trust account. ODOC rules require inmates to pay for public records through their inmate trust accounts. OAR 291-037-0020(3)(c) ("An inmate must submit a signed Inmate Account Withdrawal Form (CD 28D) along with his/her request for records.") Even generating an estimate of the work required to respond to a request such as yours will take some effort. ODOC was in a position to definitively conclude that you lacked the funds to pay the costs of this request. We do not think the law required it to continue to devote its resources to generating a more specific estimate that you would be unable to pay. We also disagree with your argument that ODOC was required to identify and list responsive documents as part of generating a fee estimate. In fact, the longstanding view of our office is that fee estimates can permissibly include the cost of locating and compiling records. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2011) (MANUAL) at 15 ("'Actual cost' may include a charge for the time spent by the public body's staff in locating the requested records"); see also ORS 192.440(4)(a) (permitting fees to cover the cost of "compiling * * * public records.")

We also conclude that ODOC was not required to waive its fees. ORS 192.440(5) permits fee waivers and reductions "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." From the information you have provided to us, we cannot see how the general public would be the primary beneficiary of your request. To the contrary, your request seems primarily intended to benefit you individually. We consequently deny your petition insofar as you are seeking a fee waiver.

We turn to your second petition. Our prior conclusion that ODOC's fees can properly include the cost of locating and compiling responsive records disposes with your argument that ODOC was required to determine what records are responsive to your request prior to generating its estimate. The remaining fee issue is your contention that the per-page amount you were quoted was not proper. In general, our office does not have authority to assess the reasonableness of a public body's public records fees. MANUAL at 16. We perceive no statutory basis for our office to second-guess the per-page fee quoted to you by ODOC in this case.

We turn to your third petition. Once again, you ask our office to review the per-page fee assessed by ODOC; for the reasons just expressed, we decline to do that. Your third petition also asserts that ODOC should have provided certain information to you without redaction. ODOC explains that its rules governing inmate possession of property would not permit you to possess the documents in unredacted form. However, ODOC states that it is willing to make arrangements to provide the information to someone who is not incarcerated, on your behalf. Our authority under the Oregon Public Records Laws does not allow us to override ODOC's rules governing inmate possession of property. Because ODOC is willing to provide the unredacted records to an unincarcerated person, however, we deny this aspect of your third petition as moot.

For the foregoing reasons, your petitions are respectfully denied.

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

cc via email only:
Jeff Premo, DOC/OSP
Anita Nelson, DOC