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SENT VIA E-MAIL ONLY

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Jill Curtis
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Dear Mr. Zaitz and Ms. Curtis:

This letter is the Attorney General's order in response to Mr. Zaitz's petition asking our office to order the Oregon Department of Corrections (ODOC) to disclose public records to you pursuant to the Oregon Public Records Law, ORS 192.410 to 192.505. Mr. Zaitz's petition stems from his request on October 28, 2013 to inspect various records pertaining to an escape attempt by inmate Michael Norwood from the Snake River Correctional Institution (SRCI). Following the petition, ODOC has informed our office that the following information has not been provided to Mr. Zaitz:

1. Two videos documenting inmate Norwood being strip searched. ODOC asserts that these are exempt from public disclose pursuant to the personal privacy exemption of ORS 192.502(2), and Mr. Zaitz does not ask us to order ODOC to disclose these videos.

2. Approximately ten hours of recordings of inmate Norwood's telephone conversations. ODOC has offered to review those recordings and make nonexempt portions available to Mr. Zaitz upon payment of ODOC's estimated costs of this review. Mr. Zaitz has advised that he does not require ODOC to conduct that review.
3. Information ODOC redacted from a one-page misconduct report describing the construction and positioning of the mannequin used in the escape attempt. ODOC has agreed to provide an unredacted copy of the misconduct report.
4. A photograph of a makeshift mannequin manufactured by inmate Norwood to facilitate his escape, and four photographs of a ladder inmate Norwood made. Upon further review, ODOC has agreed to provide these photographs to Mr. Zaitz.
5. Information ODOC redacted from a five-page Disciplinary Order and Finding of Fact. Upon further review, ODOC has agreed to provide Mr. Zaitz with an unredacted version of this document.
6. Two videos of surveillance footage from SRCI. ODOC has withheld those videos citing the exemption for certain ODOC records, ORS 192.502(5). ODOC cites concerns that the footage reveals the coverage of its security cameras and that disclosure could potentially enable inmates to take advantage of limitations of the cameras' viewing angles and substantially impair ODOC's ability to maintain security at SRCI. Mr. Zaitz asks that we order ODOC to provide these videos to him.
7. Information ODOC redacted from an eight-page Security Audit Review. ODOC again asserts ORS 192.502(5) to justify its determination that this material is exempt. ODOC argues that disclosure of the redacted information would significantly impair ODOC's ability to maintain security at SRCI. Mr. Zaitz asks that we order ODOC to provide a significantly less redacted version of the Security Audit Review.
8. Information ODOC redacted from a one-page Memorandum of Perimeter Security Concerns. ODOC again asserts ORS 192.502(5) to justify its redactions. The redacted information details specific security concerns of SRCI staff concerning a particular perimeter location. Mr. Zaitz asks that we order ODOC to provide an unredacted copy of this memorandum to him.
9. An ODOC Special Investigations Unit (SIU) file pertaining to inmate Norwood's escape attempt that is maintained in Salem (not at SRCI). ODOC has not yet informed Mr. Zaitz what of this information it is willing to provide to Mr. Zaitz and what information it believes is exempt from disclosure.

With respect to the first five items on this list, there is no remaining dispute between the parties and consequently nothing for us to order. For the reasons that follow, we respectfully deny Mr. Zaitz's petition with respect to the sixth, seventh and eighth items on this list, and grant his petition with regard to the ninth item on the list.

The Oregon Public Records provides that "[e]very person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.501 to 192.505." ORS 192.420(1). The law is a disclosure law, and exemptions from its public disclosure requirement must be express. Even express exemptions are construed narrowly to further the public purposes served by disclosure. The narrow construction rule means that "if there is a plausible construction of a statute favoring disclosure of public records, that is the construction that prevails." *Colby v. Gunson*, 224 Or App 666, 676 (2008). A public body that

asserts a statutory exemption from disclosure has the burden of demonstrating that the law permits the material in question to be withheld from public disclosure. ORS 192.450(1); ORS 192.490(1).

In this case, ODOC relies on ORS 192.502(5) to justify each of its decisions with respect to items six through eight. In relevant part, that provision exempts from disclosure "[i]nformation or records of the Department of Corrections * * * to the extent that disclosure would * * * substantially prejudice or prevent the carrying out of the functions of the department, if the public interest in confidentiality clearly outweighs the public interest in disclosure" (emphasis added). We have reviewed the documents withheld by ODOC, and ODOC has provided us with a description of the surveillance footage. Although our Public Records Orders generally strive to provide fairly specific explanations of our decisions, too much specificity in this case would risk effectively disclosing the information that ODOC has redacted or withheld, or at least disclosing the security issues that underlie those redactions. Consequently, we will explain our analysis in brief and general terms.

With regard to the sixth, seventh and eighth items on our list above, we conclude that ODOC has identified specific and concrete operational issues that we are satisfied would substantially impair ODOC's ability to safely operate SRCI. With respect to the surveillance footage, we are satisfied that disclosing that footage would necessarily reveal the field of view of the relevant security cameras. And we readily grasp how inmates could use that information effectively in order to evade, or attempt to evade, video surveillance. With respect to the eight-page Security Audit Review, the redacted material consists of ODOC staff's frank analysis of security issues at SRCI, and some recommendations regarding possible solutions. Again, we readily grasp how the information could be used by inmates attempting to take advantage of various issues identified in the reports. Similarly, the material redacted from the one-page Memorandum of Perimeter Security Concerns provides specific information that could easily be used to attempt to take advantage of a specific security issue identified in the document.

With regard to the ninth item, we grant Mr. Zaitz's petition and order ODOC to:

- Complete its review of the remaining materials;
- Provide Mr. Zaitz with materials that ODOC determines are not exempt from disclosure; and
- Explain to Mr. Zaitz, at least in general terms, what ODOC has withheld or redacted and the basis for ODOC's determinations that the withheld material is exempt from public disclosure.

To the extent Mr. Zaitz disagrees with any exemption determinations made by ODOC, he may petition our office to review those. We grant the petition in this regard because, given the length of time between Mr. Zaitz's request and the date of our order, we do not believe that ODOC has satisfied its obligation to make public records available as promptly as it reasonably can. *See* ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2011) at 11.

As specified above, Mr. Zaitz's petition is granted in part and denied in part. To the extent Mr. Zaitz's petition is granted, ORS 192.450(2) provides that, within seven days, ODOC

must either comply with our order or else announce its intention to institute court proceedings for injunctive or declaratory relief.

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

c: Mark Nooth, SRCI Superintendent