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July 27, 2015

Bradley Donohue
SID# 11857830
Snake River Correctional Institution
777 Stanton Blvd
Ontario OR 97914

Re: Petition for Public Records Disclosure Order
Oregon Department of Corrections
DOJ File No. 291011-GA0114-15

Dear Mr. Donohue:

This letter is the Attorney General's order on your petition for public records disclosure under the Oregon Public Records Law, ORS 192.410 *et seq.* Your petition, which we received on July 21, 2015, asks the Attorney General to order the Oregon Department of Corrections (ODOC) to provide you with a copy of "the video evidence (CD) from my 11/22/13 chow hall altercation" at Snake River Correctional Institution (SRCI). For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect or copy any public record of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420; ORS 192.430. Any person denied the right to inspect or copy 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). The Public Records Law is primarily a disclosure law, not a confidentiality law. The public body has the burden of demonstrating that withholding a requested public record from inspection is permitted by the Public Records Law. ORS 192.450(1).

Your petition indicates that ODOC previously provided electronic files of the video in question to your attorney at your request, but that the files were unreadable. According to your petition, you again requested the video on June 1, 2015, and July 13, 2015. You now ask the Attorney General to order ODOC to provide you with the video. You do not make specific arguments as to why ODOC's reliance on ORS 192.502(5) was not correct. But you contend

that "it makes no sense that I was already given this evidence [and] now I'm being denied." Based on that, we understand your petition to challenge ODOC's reliance on ORS 192.502(5) in withholding the video from you in light of its prior delivery of the video files to your attorney.

We have spoken with Rosemary Ramirez, Supervising Executive Assistant to the Superintendent at SRCI, regarding your petition. Ms. Ramirez indicates that the video footage that you have requested originated from fixed security cameras at SRCI. Ms. Ramirez explains that staff at SRCI initially provided your attorney with electronic files of the video footage in question because they were not familiar with ODOC's long-standing policy not to disclose fixed-camera video footage for safety and security reasons. We also discussed the footage with Brian Belleque, ODOC's Westside Institutions Administrator, who has over 30 years of experience dealing with matters of ODOC security. According to Mr. Belleque, fixed cameras leave "blind spots" in ODOC's camera coverage of its institutions. Mr. Belleque notes that a release of fixed-camera video footage would enable inmates and members of the public to study the field of view covered by the camera, which would allow inmates to identify the "blind spots" in ODOC's video surveillance and to avoid the view of security cameras. That would prevent ODOC staff from detecting unauthorized activity that compromises the safety and security of ODOC institutions, such as inmate assaults and trafficking of contraband.

We accept the explanations by ODOC security personnel and turn to ORS 192.502(5), which exempts from disclosure under the Public Records Law:

> "Information or records of the Department of Corrections * * * to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the department or 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."

Based on the information provided by ODOC, we conclude that disclosure would "substantially prejudice or prevent ODOC from the carrying out of the functions of the department." ORS 192.502(5). The legislature requires that ODOC exercise custody over convicted felons sentenced to a term of imprisonment until subject to lawful release and to provide security for persons confined in ODOC institutions. *See* ORS 423.020(1). The legislature also requires ODOC's Director to "[p]rovide for the safety of all prisoners in the custody of the department." ORS 423.074(5)(d). ODOC thus has a legitimate and substantial interest in the supervision and safety of all persons in ODOC custody. Video surveillance in ODOC institutions serves a vital role in ODOC's ability to supervise those in ODOC custody and to maintain the safety of all persons in ODOC custody. If the video were released, it could ultimately be used to allow inmates to avoid surveillance, thus prejudicing ODOC's ability to carry out its functions of providing supervision for and safety of those in its custody.[1]

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[1] Although ODOC provided video files of the footage at your request to your attorney, under the circumstances we cannot conclude that mere delivery of those files disclosed the footage in question. ODOC's security concerns, and its invocation of ORS 192.502(5), relate to the information in the video—the footage—not the files themselves. As

In turn, we must assess whether "the public interest in confidentiality clearly outweighs the public interest in disclosure." ORS 192.502(5). As we have concluded previously, "if disclosure would interfere with the rehabilitation of a person in the department's custody, the public interest in confidentiality will, in most circumstances, clearly outweigh the public interest in disclosure." OREGON ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 88 (2014) (MANUAL); *see also* Public Records Order, January 26, 1993 (*Patten*). Here, you do not cite a public interest in disclosure that may outweigh the public interest in confidentiality, nor do we perceive one. In the absence of any apparent public interest in disclosure, the public interest in the supervision and safety of persons incarcerated in ODOC custody must prevail. [2]

Accordingly, ODOC properly relied on ORS 192.502(5) to deny your request to disclose the video under the Public Records Law. *See* Public Records Order, July 15, 2015 (*Walsh*) (concluding that ODOC was within it authority to withhold fixed-camera security video footage from disclosure pursuant to ORS 192.502(5)). We respectfully deny your petition.

Sincerely,

STEVEN A. WOLF
Chief Counsel

LEK:tmt/6673521
cc via email only:
Jill Curtis, ODOC
Jeff Premo, ODOC

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your petition indicates, the files were not readable and thus inaccessible. Because the footage was not accessible, it remains undisclosed. We discern no basis to question ODOC's invocation of ORS 192.502(5) in this instance.

[2] The "[p]ublic interest means the value to the public at large, not to a particular person at a particular time." MANUAL at 30. We understand that you are represented by an attorney. Even if we were to infer that you are seeking the requested records for litigation, that is your own personal interest, not the interest of the public at large. Although there is an interest in giving parties to litigation access to potentially relevant evidence, we believe that interest is well served by discovery rules and will not generally compel disclosure of information under the public records law.