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July 15, 2015

SENT VIA EMAIL ONLY
walsh@europe.com

Lynn S. Walsh
209 SW Oak Street Suite 400
Portland OR 97204

Re: Petition for Public Records Disclosure Order
Oregon Department of Corrections
DOJ File No. 291011- GA0106-15

Dear Ms. Walsh:

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 8, 2015, asks the Attorney General to order the Oregon Department of Corrections (ODOC) to provide you with a copy of the ODOC "video of the assault on Robert Saccheri that took place at Oregon State Correctional Institution [OSCI] on December 24, 2014." 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).

On April 22, 2015, you requested the video, along with other records, from ODOC.[1] You indicated that you are a lawyer who represents Mr. Saccheri in claims he may have against

[1] At this time, you seek the Attorney General's review only of ODOC's denial of your request for the video.

ODOC and/or its employees and that Mr. Saccheri had previously served a tort claim notice. Your request did not offer any specific reason for seeking the video. On June 25, 2015, Jennifer Carsner, Legal Information Officer at Columbia River Correctional Institution, denied your request, relying on ORS 192.502(5), which exempts from mandatory public records disclosure specified ODOC records.

You now ask the Attorney General to order ODOC to provide you with the video. You do not raise any particular arguments why ODOC's reliance on ORS 192.502(5) was not correct. Accordingly, we understand your petition to generally challenge ODOC's reliance on ORS 192.502(5).

We have spoken with Ms. Carsner regarding your petition. Ms. Carsner informs us that the requested video comes from a fixed camera at OSCI. We also spoke with Brian Belleque, Westside Institutions Administrator for ODOC, regarding the footage. Mr. Belleque explains that fixed cameras necessarily leave certain "blind spots" in ODOC's camera coverage of its institutions. Mr. Belleque also notes that the 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, in turn, 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 those explanations by ODOC security personnel and turn to ORS 192.502(5). That provision 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 to us 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.

We must now 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); *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.[2] 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.

Accordingly, ODOC properly relied on ORS 192.502(5) to deny your request to disclose the video under the Public Records Law. We respectfully deny your petition.

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

LEK:tmt/6645758
cc via email only:
Jennifer Carsner, DOC
Guy Hall, OSCI
Brian Belleque, ODOC

[2] We understand that you "represent Robert Saccheri regarding any claims he may have against [ODOC] and/or its employees." However, the "[p]ublic interest means the value to the public at large, not to a particular person at a particular time." MANUAL at 30. Even if we infer that you seek the requested records for litigation, that is an interest of Mr. Saccheri, not the public at large. Though 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.