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Telephone: (503) 378-4400

December 16, 1987

Adron Asher 47607
2605 State Street
Salem, Oregon 97310

Re: Request for Public Records Disclosure Order

Dear Mr. Asher:

This letter responds to your December 2, 1987 petition for a public records disclosure order. Specifically, you ask the Attorney General to order the Oregon State Penitentiary to make available for your inspection the full names and dates of birth of seven corrections officers at the penitentiary. For the following reasons, we respectfully deny your petition.

First, we note that apparently you have not followed the Corrections Division administrative rule (OAR 291-39-015(1)) which outlines the process a penitentiary inmate, such as you, should follow in making a public records disclosure request to penitentiary administrators. The Public Records Law requires that governmental bodies give interested persons a "proper and reasonable" opportunity to inspect public records that are not exempt from disclosure, but governmental bodies may establish "reasonable" rules to protect the records and to prevent interference with an agency's discharge of its duties. See ORS 192.430. Because you have not followed the penitentiary's rule regarding public record disclosure requests, your petition to the Attorney General can be denied on the ground that penitentiary officials have not yet officially denied your request for disclosure.

Second, even if your petition were not procedurally premature, it would be denied because the information you seek is exempt from public disclosure under the Public Records Law.

Two statutes authorize the Corrections Department to withhold the information that is the subject of your petition.

ORS 192.502(2), former ORS 192.500(2)(b), provides that information of a personal nature is exempt from public disclosure, if the public disclosure of such information " . . . would constitute an unreasonable invasion of privacy." This exemption does not apply if the public interest clearly and convincingly requires disclosure of the personal information in the particular instance. But under ORS 192.502(2), a person seeking disclosure of such information has the burden of establishing by clear and convincing evidence that public disclosure would not constitute an unreasonable invasion of privacy. We believe that, in this particular instance, the information you seek to inspect is personal privacy information, and that you have made no showing that the public interest requires disclosure.

We acknowledge that the Oregon Court of Appeals has ruled that names and addresses of substitute teachers are personal, but not sufficiently private, to warrant blanket exemption from public records disclosure requirements. However, in previously analyzing the personal privacy exemption and pertinent court decisions, we have distinguished personal information relating to law enforcement officers from personal information relating to other government employes. We recognized the special privacy concerns of law enforcement officers when we said:

> "A request for nondisclosure [of home addresses] . . . by employes in 'sensitive' positions such as law enforcement, so that simultaneous identification of the nature of the job and home address could lead to harrassment, should be honored." Attorney General's Public Records and Meetings Manual, at I-9 (1985).

In this particular instance, we conclude that disclosure of the full names of the corrections officers you list in your petition, as well as their birthdates, reasonably can be expected to specifically identify them for potential future harrassment by persons with whom they come into contact in a law enforcement capacity. In short, the information you seek to inspect is sufficiently personal and private to qualify for exemption under ORS 192.502(2), and we have not been shown that the balance of the public interests strongly tips in favor of disclosure.

Moreover, this appears to be a case in which the Corrections Department might clearly show that disclosure of the Corrections Department information you seek would interfere with rehabilitation of a person in custody or substantially prejudice the Corrections Department's performance of its functions. In that event, the information you seek would be exempt from disclosure under ORS 192.502(4), former ORS 192.500(2)(d).

Respectfully submitted,

JAMES E. MOUNTAIN, JR.
Special Counsel to the
Attorney General

JEM:cm
cc: Michael J. Francke, Director, Department of Corrections
Scott McAlister, Assistant Attorney General
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