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Telephone: (503) 378-4400

December 16, 1987

Steven H. Boyd
2605 State Street
OSP #47825
Salem, Oregon 97310

Re: Request for Public Records Disclosure Order

Dear Mr. Boyd:

This letter responds to your December 7, 1987 petition to the Attorney General for a public records disclosure order. We received your petition on December 9, 1987. Specifically, you ask the Attorney General to order the State of Oregon Corrections Department to provide you with copies of results of your medical test for AIDS antibodies. For the reasons set forth below, we deny your petition.

You base your petition for public records disclosure on provisions of the Public Records Law (ORS 192.410 to 192.505) and provisions of law relating to disclosure of medical records maintained by the Department of Corrections (ORS 179.495 to 179.507). We base our response to your petition on those laws, facts alleged in your petition, and facts reported to us by the Corrections Department. We find that your petition presents issues of prison administration authority over inmate property rather than public records disclosure issues.

Apparently, the issue in this case is whether you have a right to possess copies of a particular public record within the institution. The Corrections Department asserts that it has provided you, and is willing to provide you, with an opportunity to view your lab test record. See Stivahtis v. Juras, 13 Or App 519, 511 P2d 421 (1973) (construing prior

public records laws as allowing a public welfare recipient to inspect an agency file on the recipient, although file was otherwise exempt from public disclosure requirements). We are also informed that the Corrections Department is willing to furnish you, a prison inmate, with a copy of the record if measures can be taken to insure that you or others do not possess copies of the record within the penal institution. The department however refuses to furnish you with a copy of that test record, for your possession within the institution, because your physical possession of the record within the pentitentiary would endanger prison security in the following respects:

1. Display of documentation of negative test results to other inmates could encourage sex-related and drug-related activities that violate institution rules;

2. Publication of such documentation could result in identification of infected inmates by the general population of the institution and thus expose those inmates to substantial safety hazards; and

3. Publication of documentation by infected inmates would allow them to coerce other inmates and staff with threats to spread disease.

On these facts, we conclude that by affording you an opportunity to inspect your lab test record itself, the Corrections Department has complied with the Public Records Law. The Public Records Law grants members of the public a right to "proper and reasonable opportunities for inspection and examination" of public records that are not otherwise exempt from the disclosure requirements of the law. We find that, under the particular facts of your request for public records disclosure, the Corrections Department has afforded you a reasonable opportunity to inspect and examine the record of your lab test for AIDS antibodies, even though the division has refused to provide you with a copy for your possession within the institution where you presently reside. See ORS 192.502(4), former ORS 192.500(2)(d), (exempting Corrections Department information or records from disclosure if disclosure clearly would prejudice substantially the department's performance of its functions.)

You also base your petition for a disclosure order on statutes, outside the Public Records Law, that relate to

inspection of inmate medical records. Specifically, you rely on ORS 179.505. Assuming, without deciding, that your AIDS test record is within the scope of ORS 179.505 as a 'written account concerning medical treatment as a patient' (ORS 179.505(2)), we nevertheless conclude that your reliance on ORS 179.505 is misplaced.

ORS 179.505(7) does provide that:

> "The copy of a written account . . . [concerning the medical treatment of a patient under the jurisdiction of the Corrections Department] . . ., upon written request of the patient . . . shall be released to the patient . . . within a reasonable time not to exceed five working days. The patient . . . shall have the right to immediate inspection of any written accounts."

However, the Corrections Department is in compliance with 179.505(7) if, as the department asserts, it is willing to allow you to inspect your lab test record and to "release" a copy to you without allowing you to possess the documentation within the penitentiary where your possession would endanger prison safety and security. In short, neither the Public Records Law nor ORS 179.505 confers upon an inmate an unfettered right to possess confidential medical records within a penal institution.

Your petition respectfully is denied.

Very truly yours,

James E. Mountain Jr

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

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