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January 22, 2015

Arnold R. Huskey, SID #6674480
Oregon State Correctional Institution
3405 Deer Park Drive SE
Salem OR 97310

Re: Petition for Public Records Disclosure Order
Oregon Department of Corrections
DOJ File No. 291011-GA0002-15

Dear Mr. Huskey:

This letter is the Attorney General's order on your petition for public records disclosure under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received January 15, 2015, takes issue with the fee amount established by ODOC in response to your request for the following records:

1. "Any and all documents and/or communications * * * from the Board of Parole and Post-Prison Supervision pursuant to ORS 144.120(6)" to ODOC and/or your inmate file "that occurred between October 1, 1992, and October 31, 2014."
2. "Any and all communications" between the Board of Parole and Post-Prison Supervision and ODOC "that occurred between the dates of January 1st 1991, and October 31st, 2014."
3. "Any and all Six-Month Review(s), Face Sheet(s), or any other document(s) that refer to, or is connected with, or purports to represent, or describe, or constitute a

periodic review" of you, by ODOC or any other agencies "that occurred between October 1, 1984 and October 31, 2000."

The Oregon Public Records Law confers a right to access any public record of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. The law requires generally that the custodian of public records furnish proper and reasonable opportunities for inspection and/or copying of the record in the office of the custodian. ORS 192.430. Any person denied the right to inspect or to receive a copy of 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).

ORS 192.430 authorizes public bodies to adopt reasonable rules necessary for protecting public records and preventing interference with the regular discharge of duties of the custodian. The Public Records Law also permits public bodies to establish and recover fees reasonably calculated to reimburse them for their actual cost in making public records available, including the time spent by agency staff in locating and reviewing the requested records in order to delete exempt material. *See* ORS 192.440(3); *see also* Public Records Order, April 7, 1989 (Martin). ODOC has established a presumptive fee schedule by rule. OAR 291-037-0020(3)[1].

While there is no provision in the Public Records Law that authorizes a person to petition the Attorney General to review an agency's fees established under ORS 192.440(4), the Attorney General's authority to enforce the inspection provisions of the Public Records Law may require the Attorney General to evaluate an agency's fees where the amount of the fee in comparison to the nature of the request suggests that the true purpose of the fee is to constructively deny the request, rather than to recoup the agency's actual costs. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETING MANUAL ("MANUAL"), pp. 16-17 (2014).

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[1] OAR 291-037-0020(3) states, in pertinent part:

> Except as specifically provided for by statute, the designated staff member will advise the person requesting a public record, within a reasonable amount of time, whether the record(s) may be disclosed and the cost of inspection and/or duplication. If the record(s) requested contains information exempt for disclosure, the designated staff member will furnish a copy with the exempt material blanked out:
>
> (a) The cost of duplication will be based upon actual cost, including staff time to locate, review and copy the record(s), all material and first class postage, where applicable:
>
> (A) Unless circumstances warrant a different conclusion, it may be presumed that, if the request is for a specific releasable document, the cost of the duplication is 50 cents a page;
>
> (B) Unless circumstances warrant a different conclusion, it may be presumed that, if the request requires record review and a determination of whether the record can or should be released, the actual cost of such review, determination and duplication is $1.25 a page;

In this case, ODOC states that it will provide you materials on receipt of payment in the amount of $161.95, reflecting two hours of staff time to locate and review documents responsive to your requests, plus copying costs. Your petition makes three alternative arguments: first, you essentially argue that the charge for staff time is improper; second you argue that the fee should be waived; and third, you argue that you should be permitted to inspect the records rather than pay for copies.

As noted above, the Attorney General has limited authority with respect to your argument that the fee is improperly calculated because it includes staff time as well as copying costs. Only if it appears that the true purpose of the fee is to impede the request, rather that recoup actual costs, is our authority implicated. You contend that ODOC's fee is inconsistent with ODOC rules governing the cost of public records requests. If we agreed with your contention, that inconsistency might well constitute some evidence that the purpose of the fee estimate was to impede access, rather than recoup costs. But we do not agree that the fee is inconsistent with ODOC's rules. As you note, OAR 291-037-0020(3)(A) sets out a *presumptive* cost of $.50 per page for duplication. But that presumptive fee applies "[u]nless circumstances warrant a different conclusion." In this instance, ODOC informs us that its presumptive cost does not recoup ODOC's actual costs for searching, locating, and reviewing the records for application of statutory disclosure exemptions. Thus, ODOC concluded that the presumptive fee established by rule is not applicable to your request. Under the circumstances, we cannot conclude that the amount of ODOC's fees for processing your records request in comparison to the nature of your request suggests that the true purpose of ODOC's estimated fees was to constructively deny your request, rather than to recoup the agency's actual costs.

Your petition also seeks a partial fee reduction or waiver. A public body may waive or reduce fees if the records custodian determines that the waiver or reduction of fees "is in the public interest because making the record available primarily benefits the general public." ORS 192.440(5). A waiver or reduction in fees is "in the public interest" when the "greatest utility" of furnishing the record is to "the community or society as a whole." *In Defense of Animals v. OHSU*, 199 Or App 160, 189, 112 P3d 336 (2005). *See also* MANUAL, at 20-21. Disclosure to you of the records you seek appears to benefit only you, and your petition does not identify any benefit to the general public. Thus, we cannot conclude that ODOC's denial of your request for a reduction or waiver of fees is unreasonable in this instance.

Finally, you argue that you should be allowed to personally examine the records, rather than paying to have them copied. Ms. Gushard advised you, in her January 7, 2015 letter, that ODOC policy does not allow inmates to inspect original records and that the policy is necessary to protect the records and to prevent interference with the regular discharge of the agency's duties. ODOC has determined that, for a fee, it will provide copies of records to ODOC inmates in response to requests made under the Public Records Law, in lieu of allowing inspection of original records. As you acknowledge in your petition, we have previously concluded on a number of occasions that ODOC's decision to furnish copies to ODOC inmates in lieu of allowing inspection of original documents is valid. *See* Public Records Order, July 19, 1982 (*Baucom*); Public Records Order, October 30, 2001 (*Romair*); and Public Records Order, March

14, 2002 (*Williams*). Your petition fails to provide any information that would cause us to reconsider and depart from the long-settled principles and conclusions drawn in those orders.

For the reasons explained above, we respectfully deny your petition.

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

cc via email only:
Tonya Gushard, DOC
Jeff Premo, DOC