JOHN R. KROGER
ATTORNEY GENERAL

MARY H. WILLIAMS
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97301-4096
Telephone: (503) 378-4400

December 7, 2010

Martin Allen Johnson, SID #5410056
Oregon State Penitentiary
2605 State Street
Salem, OR 97310

Re: Public Records Disclosure and Fee Waiver or Reduction Orders
Oregon Department of Corrections Records

Dear Mr. Johnson:

This is the Attorney General's order on your petition for review of the denial by the Oregon Department of Corrections (ODOC) of your request for inspection of original records, a fee waiver or reduction, and disclosure of records in electronic form under the Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on November 24, 2010, states that you do not wish to pay the required fees until you have first inspected the records.[1] For the reasons that follow, we respectfully deny your petition.

1. Inspection of Original Records

The Public Records Law confers the right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. The custodian of any public records must provide "proper and reasonable opportunities for inspection and examination of the records in the office of the custodian" during usual business hours to persons seeking access to public records. ORS 192.430(1). However, the custodian of records "may adopt reasonable rules necessary for the protection of the records and to prevent interference with the regular discharge of duties of the custodian." ORS 192.430(2).

Pursuant to ORS 192.430, ODOC has promulgated an administrative rule providing that "[p]roper and reasonable opportunity for inspection and/or duplication of record(s) will be

[1] Your public records petition includes a subpoena addressed to the counsel for the United States Bank, a letter from a staff member of US Bank, and a notice of motions pending over 60/90 days regarding your post-conviction case. These documents do not appear related to your petition, and we do not consider them in this matter.

provided, consistent with security requirements at each Department facility and functional unit and as the circumstances warrant." OAR 291-37-0020(7). 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.

In your petition, you state that want us to order ODOC to allow inspection of original documents or make available "these type of documents" in the inmate library for inmates to check out. We have previously concluded 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 (copy enclosed for your convenience); *see also* Public Records Order, October 30, 2001, Romair. Accordingly, we respectfully decline to order ODOC to allow inspection of original records.

2. Fee Waiver or Reduction

The law authorizes a public body to establish fees "reasonably calculated to reimburse the public body" for its actual cost in making records available. ORS 192.440(4)(a). A public body may require prepayment of estimated fees before acting on a request. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2010) (MANUAL) at I.D.6.b, http://www.doj.state.or.us/public_records/manual/public_records.shtml#d.

ORS 192.440(5) authorizes a public body to waive or reduce fees if it "primarily benefits the general public." However, even if a public body determines that waiving fees is in the public interest, "the decision to waive or reduce fees is discretionary with the public body, although it must act reasonably." MANUAL at I.D.6.b.(2)(c). Under ORS 192.440(6), "[a] person who believes that there has been an unreasonable denial of a fee waiver or fee reduction may petition the Attorney General * * * in the same manner as a person petitions when inspection of a public record is denied[.]"

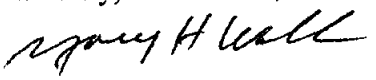
In your petition, you claim that ODOC has denied your request for a fee waiver or reduction. In one of your communications to ODOC, you stated, without explanation, that you wanted the documents for free or for only $0.10 per page instead of ODOC's rate of $0.50 per page. To the extent that you are asking us to order ODOC to grant you a fee waiver or reduction, we respectfully deny your petition on the basis that you have made no showing that would satisfy the public interest standard applicable to fee waiver requests. *See* MANUAL at I.D.6.b.(2)(b).

In your petition, you also claim that the rate of $0.50 per page is "unreasonable" because other agencies only charge $0.25 per page. The Public Records Law does not authorize a person to petition the Attorney General to review the fees established by a state agency. MANUAL at I.D.6.b.(1). Although "[t]he 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," Manual at I.D.6.b.(1), ODOC's per-page rate does not appear to be of that nature. We understand that the cost is calculated to include the cost of staff time as well as materials. Accordingly, we respectfully deny your petition that we order ODOC to grant you a fee waiver or reduction.

3. Disclosure of Public Records in Electronic Form

Your petition states that you have requested ODOC to provide you a copy of the records in electronic format because it is a cheaper alternative. According to Ray Brixey, the Statewide Business Services Manager of the Fiscal Services Section and the designated custodian of records, the difference between the cost of a hard copy of the documents and that of an electronic copy is minimal, given the time it would take the staff to locate the documents, scan them, and burn them into a computer disk. Further, if you elected to pay ODOC's estimated fees for an electronic copy of the records, you would have to designate a third party outside of prison to receive the records in this format because under ODOC's rules governing possession and use of inmate personal property and facility procedures, you are not authorized to possess or access these records in electronic format on computer disk while you are incarcerated at the Oregon State Penitentiary.[2] ODOC is willing to provide you a copy of the records in electronic format subject to the conditions discussed above. Because your request has not been denied in this regard, we must respectfully deny your petition as to this issue as well.

Sincerely,



MARY H. WILLIAMS
Deputy Attorney General

JUSTICE-#2390799-v1.DOC
Enclosure
c: Jeff Premo, ODOC

[2] *See* OAR 291-117-0008(2) (defining as "contraband" "[a]ny article or thing which an inmate is prohibited by statute, rule or order from obtaining, possessing, creating, or which the inmate is not specifically authorized to obtain or possess or which the inmate alters without authorization"); and OAR 291-117-0080 (no specific authorization to obtain or possess computer disks containing electronic records established in rule).