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July 21, 2010

Mr. Robert Woodroffe #5631215
777 Stanton Blvd.
Ontario, Oregon 97914

Re: Petition for Public Records Disclosure Order:
*Oregon State Police Records*

Dear Mr. Woodroffe:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on July 16, 2010, asks the Attorney General to direct the Department of State Police (OSP) to make available the following records:

1. Any misconduct reports from February 2009 on [another inmate] including written statements and any tapes of hearings.
2. All photos of [the other inmate] in Robert Woodroffe's bed without his consent.
3. All notes of Lt. Jones and Capt. Duran regarding the PREA matter on 2/13/09 involving [the other inmate] and Woodroffe.
4. UA results of [the other inmate] for February, 2009.
5. Tapes or transcripts of Woodroffe and [the other inmate] done by Det. K. Manely done in February about 2/17/09.
6. The complete file involving the PREA matter investigation of [the other inmate] and Robert Woodroffe and all computer notes.
7. Any report sent to the Marion County DA's Office.

8. All notes or names of any people questioned or involved in this matter.

For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. 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). However, the Attorney General may order a state agency to disclose records only when the agency has *denied* a request for the records. *See* ORS 192.450(1).

On July 19, 2010, we spoke with Janine Hackett, Records Specialist for OSP. Ms. Hackett informs us that the address to which you sent your request was for the OSP Salem Patrol Office, rather than the address for the OSP record custodian. Consequently, the OSP records custodian had neither received your request nor denied it. However, after reviewing your request, Ms. Hackett informs us that OSP is denying your request. We therefore treat your request as denied by OSP, and evaluate your petition on the merits.

All of the records you seek involve a February 13, 2009, incident involving you and another inmate at the Oregon State Penitentiary. You previously requested most of the records from the Oregon Department of Corrections (ODOC). ODOC denied your request on or about July 21, 2009, and on September 15, 2009 we denied your subsequent petition seeking an order requiring ODOC to disclose those records. *See* Public Records Order, September 15, 2009 (Woodruffe). In upholding ODOC's denial, we noted that ORS 192.502(5) exempts from disclosure:

> [i]nformation 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.

*Id.* In discussing your previous request with Jeff Premo, ODOC's Chief of Security, we learned that disclosure of the type of records you requested "would present significant risks to inmate safety, could compromise institutional security and operations, and would be inconsistent with ODOC's rehabilitative objectives." *Id.* We accepted Mr. Premo's explanation and stated:

> Although we cannot state with certainty that those concerns will be present in every case, we are persuaded that providing you with the documents responsive to your particular request would "substantially prejudice" a number of ODOC functions and interfere with ODOC's custodial duties within the meaning of ORS 192.502(5). The legislature

> has charged ODOC with the responsibility to exercise custody over convicted felons sentenced to a term of imprisonment until they are subject to lawful release, by safely confining them in one of the state's correctional institutions. *See* ORS 423.020(1). ODOC has a legitimate and substantial interest in minimizing opportunities for inmates to obtain information that could jeopardize the safety and security of inmates and staff, and threaten the orderly operation and management of Oregon's prisons.

*Id.* We further concluded that "when disclosure of records would threaten or impair the Department's ability to preserve internal order and discipline in its correctional facilities, the public interest in confidentiality will, in most circumstances, clearly outweigh the public interest in disclosure." *Id.* Because you did not cite an overriding public interest in disclosure that would outweigh the public interest in confidentiality, we denied your request. *Id.*

With the exception of Detective Manely's police report, all of the records you seek are ODOC records that were transferred to OSP as part of Detective Manely's investigation of the February 13, 2009 incident. ORS 192.502(10) exempts from disclosure:

> [p]ublic records or information * * * furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.

Under ORS 192.502(10), when the records are exempt in the hands of the "furnishing" public body, those records remain exempt in the hands of the "receiving" public body if the reasons for confidentiality remain applicable. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2008) (MANUAL) at 88.

We are aware of no reason to alter our prior conclusion that the ODOC records are exempt from disclosure under ORS 192.502(5). Therefore, to the extent your request reaches ODOC records transferred from ODOC to OSP and addressed in our prior Public Records Order, those records remain exempt under ORS 192.502(10). Accordingly, we deny your petition as to those records.

We turn to Detective Manely's police report, which is the remaining document responsive to your request. Detective Manely's report originated as the result of her criminal investigation into the alleged criminal incident on February 13, 2009. With regard to that report, ORS 192.501(3) conditionally exempts from disclosure:

> Investigatory information compiled for criminal law purposes. The record of an arrest or the report of a crime shall be disclosed unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party

or the victim. * * * For purposes of this subsection, the record of an arrest or the report of a crime includes, but is not limited to:

(a) The arrested person's name, age, residence, employment, marital status and similar biographical information;
(b) The offense with which the arrested person is charged;
(c) The conditions of release pursuant to ORS 135.230 to 135.290;
(d) The identity of and biographical information concerning both complaining party and victim;
(e) The identity of the investigating and arresting agency and the length of the investigation;
(f) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and
(g) such information as may be necessary to enlist public assistance in apprehending fugitives from justice.

(Emphasis added).

We note first that the Detective Manely's investigation report is not "[t]he record of an arrest or the report of a crime" that would fall within the carve-out to this exemption. There was no arrest in this matter, and the report does not report a crime, but instead reports the conclusions of a criminal investigation. Having established that the exception to the exemption is inapplicable, we proceed to evaluate whether the general provisions of ORS 192.502(3) justify OSP's refusal to disclose the police report to you.

We are aware that a final decision to decline prosecution of this matter has been made. The Oregon Court of Appeals has suggested that criminal investigatory materials generally cease to be exempt once prosecution has been declined, but explicitly rejected an argument that the exemption would *always* expire in such circumstances. *Jensen v. Schiffman,* 24 Or App 11, 16 (1976). The court identified a number of specific circumstances in which the exemption would usually continue to apply, and indicated that future cases could "illuminate additional purposes for secrecy" that might tip the public interest in favor of secrecy, rather than disclosure.

OSP has discussed the contents of Detective Manely's police report with ODOC. ODOC expresses the same concerns about her report that it did with the disclosure of its own records. Upon review of Detective Manely's report, we agree that disclosing Detective Manely's report to you at this time would present concerns identical to those presented by disclosing the ODOC materials. Detective Manely's report would fall within the scope of ORS 192.502(5) if it were an ODOC report.

Consequently, we believe that the concerns underlying ORS 192.502(5) establish a public interest that would be harmed by disclosing Detective Manely's police report to you at this time, notwithstanding that prosecution has been declined in the matter. We believe that public interest in confidentiality is sufficient to outweigh the general public

interest in disclosure of records. It appears that this public interest would cease to apply once you and the other inmate are released from custody.

You do not suggest, and we are not aware of, any particular countervailing public interest that would favor disclosing Detective Manely's report to you. You state in your request to OSP that you intend to use the documents to assist you in planned litigation against the other inmate and ODOC staff. That appears to be a private, rather than a public, interest. We therefore conclude that the public interests favoring nondisclosure are not overcome by any public interest favoring disclosure, and Detective Manely's report is exempt under ORS 192.502(3).

Accordingly, we respectfully deny your petition.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

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c: Janine Hackett, Records Specialist, OSP