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April 23, 2010

Thomas L. Brown
SID # 2503613
2605 State Street
Salem, OR 97310

Re: Petition for Public Records Disclosure Order:
Board of Parole and Post-Prison Supervision Records

Dear Mr. Brown:

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 April 16, 2010, asks the Attorney General to order the Board of Parole and Post-Prison Supervision (Board) to provide a copy of the following records:

1. 6 page document dated 7-13-09
2. 3 page document dated 7-29-07
3. 3 page document dated 8-22-05
4. 2 page document dated 11-17-03
5. 2 page document dated 11-17-03
6. 2 page document dated 8-11-09.

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. The law requires generally that the custodian of public records furnish proper and reasonable opportunities for their inspection or copying 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 disclosure. ORS 192.450(1).

The documents you request consist of letters submitted to the Board by interested persons in connection with your recent "exit interview" before the Board. The Board denied your request for these letters on the grounds that they are exempt from disclosure under ORS 192.502(4), addressing confidential submissions, and ORS 192.502(5), addressing records of the Board and the Department of Corrections.

ORS 192.502(5) exempts:

> Information or records of the Department of Corrections, including the State Board of Parole and Post-Prison Supervision, to the extent that disclosure 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.

ORS 192.502(4) exempts:

> Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

The Board has incorporated these exemptions in its administrative rule, OAR 255-015-0010(1)(a), (b) and (c).[1]

The Board takes the position that disclosure of correspondence of the kind at issue would "substantially prejudice or prevent the carrying out of [its] functions" inasmuch as the information and observations offered by victims and others with special knowledge of an offender's crime and character are vital to the Board's assessment of an offender's rehabilitation, dangerousness, and ability to adapt to life in the community if released. The letters will frequently include disclosures of sensitive personal information in addition to or as part of the writer's candid observations regarding the offender's conduct or character. Disclosure of letters could expose the writers to the risk (or at least a rational fear of risk) of reprisal or to the dissemination of the personal information, and would discourage persons with similar knowledge

[1] OAR 255-010-0010 provides, in pertinent part:

> (1) The Board shall disclose its records to any person or agency unless:
> (a) Disclosure would interfere with the rehabilitation of the inmate/offender, and the public interest in confidentiality clearly outweighs the public interest in disclosure; or
> (b) Disclosure would substantially prejudice or prevent the carrying out of the functions of the Board or the Department of Corrections, and the public interest in confidentiality clearly outweighs the public interest in disclosure; or
> (c) The information was submitted to a public body in confidence, the information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and the public interest will suffer by disclosure of the information.

or insights from offering them to the Board in future proceedings. The Board states that disclosure of the records you have requested would directly implicate the Board's concerns.

The Court of Appeals has acknowledged the legitimacy of these considerations in the course of rejecting a prisoner's challenge to the confidentiality of information provided to the board by third persons in connection with his prison-term hearing:

> In order for the Board to carry out its mandated role, there may be a need for confidentiality regarding the information submitted to the Board. Otherwise, the Board may be deprived of information that is critical to its decision making process because of the possibility of reprisal by inmates against informants. OAR [255-010-0010] is an attempt to balance the interest that the Board has in such information with the interest that prisoners have in being released before the end of their prison sentences. * * *

Flowers v. Board of Parole, 124 Or App 331, 337, 862 P2d 1312 (1993), *rev den*, 318 Or 325 (1994).

We have reviewed the records at issue and conclude that the Board did not err in determining that disclosure of the records would substantially prejudice the carrying out of the Board's functions and that the public interest in confidentiality clearly outweighs the public interest in disclosure. Consequently, the records are exempt from disclosure under ORS 192.502(5). It is unnecessary for us to consider whether they are also exempt under ORS 192.502(4).

We respectfully deny your petition.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

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c: Aaron Felton, Board of Parole and Post-Prison Supervision
Jeremiah Stromberg, Board of Parole and Post-Prison Supervision