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DEPARTMENT OF JUSTICE

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February 10, 2010

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

Re: Petition for Public Records Disclosure Order:
Oregon Office of Public Defense Services Records

Dear Mr. Johnson:

On February 2, 2010, we received a letter from you seeking an order compelling the Oregon Office of Public Defense Services ("OPDS") to disclose certain records to you under Oregon's Public Records Law, ORS 192.410 to 192.505. Specifically, you are seeking OPDS administrative records (including billing records, expense records and contracts), along with case file materials from your various appeals that were handled by OPDS attorneys.

Oregon's Public Records Law gives any person the right to inspect any public record of any public body in Oregon, subject to specific exemptions. ORS 192.420(1). A public body may charge fees that are reasonably calculated to reimburse the public body for its actual cost of making records available. ORS 192.440(4)(a). A public body may require prepayment of its estimated fee before proceeding to make records available. ATTORNEY GENERAL'S PUBLIC RECORDS & PUBLIC MEETINGS MANUAL (2008) at 15.

You acknowledge that OPDS has provided you with some administrative records, but state that you have received neither your appellate case files nor the bulk of the administrative records you requested.

With respect to the additional administrative records, OPDS states that it sent you a letter estimating that responding to your requests would cost $212.00, and that OPDS would provide you with the records following prepayment of that amount. Your petition to our office encloses that estimate from OPDS. Comparing your petition with the fee estimate sent to you by OPDS gives the impression that your petition is seeking a broader category of administrative records than OPDS addressed in its estimate. However, OPDS states that its estimate reaches all of the administrative records covered by your petition, up through the date of the estimate.

You have requested that OPDS provide you with these records on an ongoing basis. The Public Records Law does not require public bodies to respond to ongoing requests for records. MANUAL at A-1. We respectfully deny your petition insofar as it is based on your ongoing request that OPDS provide you with these records as they are available. We express no opinion regarding your suggestion that ethical principles require OPDS to comply with your ongoing request. Our authority under ORS 192.450 is to enforce the Public Records Law. That statute does not give us authority to enforce the obligation you are asserting, even assuming that you are correct.

We turn to the administrative records that were in existence at the time of your request. As noted above, the Public Records Law permits a public body to require prepayment of its estimated fees. You have received a fee estimate, but you have not paid it. You explain that you should not be required to pay because your relationship with OPDS ethically obliges OPDS to provide you with the records at no charge. Again, our authority is to apply the Public Records Law, and we express no opinion regarding your ethics argument. Under the Public Records Law, OPDS may charge a reasonable fee. Because you have declined to pay that fee, your request for an order under ORS 192.450 must be respectfully denied as to the administrative records you are seeking.

With respect to your case files, OPDS states that you have never requested any attorney files from OPDS. However, your petition is explicitly seeking the attorney files of the OPDS staff attorneys who worked on various appellate matters. For example, in the first numbered paragraph of your petition, you state that you are seeking "*OPDS attorney files* in my various criminal and civil cases" (emphasis added). Other numbered paragraphs appear to confirm that you want OPDS lawyer files:

- Numbered paragraphs 4-6 and 10, all relating solely to trial matters, seek "attorney billing and expense records."
- Numbered paragraph 7 of your petition, also relating solely to a trial matter, seeks "attorney and investigators billings records."
- Numbered paragraph 12, relating solely to a trial matter, seeks "PCR billing records."
- Numbered paragraph 14, relating solely to a trial matter, seeks "attorney billing records and/or contract with counsel."
- Numbered paragraph 13, relating to both trial and appellate matters seeks "trial court billing records" and also "all the *OPDS* * * * *attorney files, E-Mail, etc*" (emphasis added). In other words, this paragraph appears to request attorney files only from OPDS attorneys, and only seeks billing records from the trial level.
- Numbered paragraph 8 refers solely to appellate matters, and requests "any and all attorney files, and attorney billing records."

- Numbered paragraph 11 refers solely to an appellate matter and asks for "OPDS billing records, attorney files and E-Mail."

Requests in your petition pertaining to appellate matters consistently seek lawyer files, while requests pertaining to trial matters consistently seek only administrative records.

To the extent you are now requesting OPDS appellate attorney files, OPDS states that it is willing to provide them to you. OPDS may decide to charge a fee, as it is permitted to do under the Public Records Law, if OPDS concludes that such a fee is consistent with ethics rules. Because that issue is beyond the scope of our authority under ORS 192.450, we express no opinion on it. OPDS is willing to provide you with your attorney files, and the Public Records Law permits OPDS to charge a fee. Because OPDS has not denied any request for copies of OPDS attorney files, we must respectfully deny your petition in this respect as well.

For the reasons given above, we respectfully deny your petition in its entirety.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

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c: Lorrie Railey, OPDS