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March 8, 2011

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

Re: Public Records Disclosure Order:
Oregon Archives Division

Dear Mr. Huskey:

This is the Attorney General's order on your petition for review of the Oregon Archives Division's denial of your request for public records under the Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on March 1, 2011, asks the Attorney General to order the Archives Division to disclose to you the Oregon State Police Report in Case #84-817215. For the reason that follows, we respectfully deny your petition.

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. Any person denied the right to inspect or to receive a copy of a public record may petition the Attorney General to review the record and determine if disclosure is required. ORS 192.450(1). However, the Attorney General does not have authority to order disclosure of public records unless the agency has first denied a request for those records.

We reviewed your petition and the correspondence you included with it: the three letters you sent the Archives Division and one letter the Archives Division sent you. The letter from the Archives Division could reasonably be construed as a denial of your request for disclosure of records. However, we also spoke with Mary Beth Herkert, the Director of the Archives Division. She told us that the Archives Division did not intend to deny your request and is still in the process of determining whether the records you requested contain confidential information.

ORS 192.502(9)(a) exempts from disclosure "[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon Law." This exemption incorporates into the Public Records Law other state statutes that make records confidential. If a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material. *Turner v. Reed*, 22 Or App 177, 186 n 8, 538 P2d 373 (1975). Further, under ORS 192.502(10), records that are exempt in the hands of the "furnishing" public body remain exempt in the hands of the "receiving" body for as long as the reasons for confidentiality applies.

Here, the Oregon State Police (OSP) is the furnishing public body of the records you requested. Thus, it is permissible for the Archives Division to consult with OSP to determine what public records exemptions might apply to the records you requested. ORS 192.502(10). Since early this year, the Archives Division has been coordinating with OSP to determine what confidential information, if any, your requested records contain. Once the Archives Division has completed this process, it will disclose any non-exempt records available, subject to the Oregon Department of Corrections (ODOC) rules and procedures that govern your possession of these records while you are incarcerated in an ODOC institution. To the extent that ODOC rules and procedures prevent you from possessing these records, alternatives—such as sending out the records to your attorney or to another person in the community on your behalf—may be available.

In sum, because the Archives Division has not denied your request, we have no authority to order the Archives Division to disclose the requested records. We, therefore, respectfully deny your petition as premature.

Sincerely,

Mary H Williams

MARY H. WILLIAMS
Deputy Attorney General

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c: Mary Beth Herkert, Archives Division