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DEPARTMENT OF JUSTICE

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January 18, 2011

Edward H. Stokes, #8474236
Two Rivers Correctional Institution
82911 Beach Access Road
Umatilla, OR 97882

Re: *Petition for Public Records Disclosure Order:*
Oregon Department of Corrections Records

Dear Mr. Stokes:

This 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 January 10, 2011, asks the Attorney General to order the Oregon Department of Corrections (ODOC) to disclose "a full printout of the 'AS 400' file of Edward H. Stokes # 8474236 from 10/31/2007 to the present date[.]"[1/]

For the following reasons, we respectfully deny your petition to order disclosure of the requested records.

Oregon's Public Records Law confers a right to inspect any public record 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. In this instance, ODOC has not denied your public records request.

According to your petition, you have been making this request since April of 2010, having made your latest request on December 30, 2010. In response to your petition, we contacted Ms. Reynolds and she provided us documentation pertaining to your records requests. Based on a conversation with Ms. Reynolds and a review of the documents that she provided to our office, it appears that you have been making variations of your current request since April 2010. However, you did not make the request at issue in your petition – a request for "a full printout of the 'AS 400' file of Edward H. Stokes # 8474236 from 10/31/2007 to the present date" – until December 30, 2010. Ms. Reynolds provided you with an estimate of the cost of

[1/] The AS 400 is the Oregon Department of Correction's computerized database system.

your request on January 14, 2010. A copy of the estimate is enclosed with this order for your convenience.

Public Records law permits public bodies to establish and recover fees "reasonably calculated to reimburse the public body for the public body's actual cost of making public records available[.]" ORS 192.440(4)(a). "Actual cost" may include a charge for the time spent in locating the requested records, reviewing the records in redacting material that is exempt from disclosure, supervising inspection of original documents in order to protect the records, copying records, certifying documents as true copies, or sending records by special methods such as express mail. *See* Public Records Order, May 19, 1993 (Smith).

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; *see also* Public Records Order, June 30, 2005 (Mills), Public Records Order, April 7, 1989 (Martin). Of course, if actual costs turn out to be less than the prepayment, the public body must refund the difference. MANUAL at I.D.6.b. DOC has promulgated an administrative rule providing that:

> Except as noted below, no inspection and/or duplication of record(s) is authorized until payment has been received;
> Payments must be received in the form of a money order, cashier's check, or personal check made payable to the Oregon Department of Corrections. An inmate must submit a signed Inmate Account Withdrawal Form (CD 28D) along with his/her request for records.

OAR 291-037-0020(3)(b),(c). Thus, ODOC can require prepayment of the estimated cost of your request before acting on your request.

Even though an agency may require prepayment before acting upon a request, the agency, nevertheless, must "furnish proper and reasonable opportunities" to access public records in its custody. ORS 192.430(1). We expect that, should you choose to pay the estimated costs of this request, ODOC will promptly proceed to make available to you the nonexempt records responsive to your request.

In sum, because ODOC has not denied your request, we have no authority to order ODOC to disclose the requested records. We thus deny your petition on that basis.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

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c: Sharon Blacketter, DOC
Steve Franke, DOC