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December 14, 2012

Martin Allen Johnson, OSP #5410056
Death Row Cell #3
2605 State Street
Salem, OR 97310

Re: Petition for Public Records Disclosure Order
Portland Police Bureau (PPB) and Oregon Department of Corrections Records
DOJ File No. 291011-GA0093-12

Dear Mr. Johnson,

This letter is the Attorney General's order in response to your petition seeking an order under the Oregon Public Records Law, ORS 192.410 to192.505. Specifically you ask us to review one response by the Portland Police Bureau (PPB) and another response by the Oregon Department of Corrections (ODOC) to requests that you made of those public bodies.

We deny your petition with respect to PPB because our office lacks jurisdiction to consider your petition. ORS 192.450 gives the Attorney General authority to consider petitions from persons whose requests for records have been denied by state agencies. ORS 192.460 provides that, when a request is denied by a public body that is not a state agency, petitions should instead be filed with the District Attorney in the county where the public body is located.

We turn to your petition with respect to ODOC. Your petition essentially asks us to require ODOC to waive or reduce its fees for public records you requested.[1] You also suggest

[1] Your petition also appears to allege that ODOC may have provided you with incomplete documentation in response to one of your questions. However, from your petition and the supporting documentation you provided, we cannot discern that ODOC has given you any response other than to inform you of the costs of fulfilling your requests and, in some cases, informing you that you lack funds to pay for the records you have requested. If you believe that you have paid for certain categories of records that you requested and received an incomplete response, we require additional information to consider such a petition. *See* ORS 192.470 (explaining the information that a petition must contain). Your petition also requests an index. We cannot see from the information you submitted that you ever requested such an index. We cannot consider a petition with respect to records that were never requested from ODOC. We note that nothing in the Public Records Law requires public bodies to create records that do not exist in response to a request.

that you should be permitted to inspect, rather than pay for copies of, records that you requested. We respectfully deny both aspects of your petition.

With respect to your request that ODOC waive or reduce its fees, we note that the law allows such waivers and reductions if "waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public." ORS 192.440(5). From your petition, we readily conclude that you, and not the public, would primarily benefit from the fulfillment of your request. We therefore deny your petition insofar as you are asking that we order ODOC to reduce or waive its fees.

We turn now to your request that we order ODOC to permit you to inspect the records in lieu of receiving copies. Our office has repeatedly expressed the view that ODOC's policy of requiring inmates to accept copies of records in lieu of inspecting the underlying records is permissible in light of the likely analogous costs to requesters and the disruption that permitting such inspections would cause. *See* ORS 192.430(2); Public Records Order, July 19, 1982, Baucom (copy enclosed). To the extent your petition suggests that someone who is not incarcerated would like to inspect the records in question, we have no authority to review that person's concerns in your petition

For the foregoing reasons, your petition is respectfully denied in its entirety.

Sincerely,

FREDERICK M. BOSS
Chief Counsel, Civil Enforcement Division

MHW:nog/Justice #3830111
Enclosure
c w/enc: Jeff Premo, Superintendent, Oregon State Penitentiary
Dick Hawks, ODOC, General Services Division