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November 8, 2012

William Birhanzl, SID #6410207
Eastern Oregon Correctional Institution (EOCI)
2500 Westgate
Pendleton, OR 97801

Re: Petition for Public Records Disclosure Order
Oregon Department of Corrections Records
DOJ File No: 291011-GA0079-12

Dear Mr. Birhanzl,

This letter is the Attorney General's order in response to your petition seeking an order directing the Oregon Department of Corrections (ODOC) to disclose certain records to you under Oregon's Public Records Law, ORS 192.410 to 192.505. Specifically, you ask our office to order ODOC to provide you with "certified copies" of "Attached Evidence 1, Attached Evidence 2, Attached Evidence 3, Attached Evidence 4, Attached Evidence 5, and Attached Evidence 6" (referring to attachments to a misconduct report). You also appear to ask that ODOC be ordered to provide this information at no charge. Your correspondence indicates that Attached Evidence 1 was provided to you in redacted form, and the other documents were not provided to you at all. For the reasons that follow, your petition is respectfully denied.

Oregon's Public Records Law, ORS 192.410 to 192.505, confers on "[e]very person * * * a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.501 to 192.505." ORS 192.420(1). In general, public records must be disclosed on request. Exemptions must be express in statute, and they are construed narrowly, meaning that "if there is a plausible construction of a statute favoring disclosure of public records, that is the construction that prevails." *Colby v. Gunson*, 224 Or App 666, 676 (2008). The public is entitled to inspect nonexempt public records as promptly as the public body reasonably can make them available. ATTORNEY GENERAL'S PUBLIC RECORDS & MEETINGS MANUAL (2010) (MANUAL) at 11. In general, public bodies are permitted to recover from requesters the reasonable cost of providing nonexempt public records. ORS 192.440(4) and (5). If a requester feels that a state agency's response is inconsistent with the requirements of the

Public Records Law, the requester generally may petition the Attorney General for an order directing that agency to comply with the law. ORS 192.450.

We begin with your request for certified copies. "The Public Records Law does not require a custodian of a public record to furnish a *certified* copy of [a] record on demand." MANUAL at 12, fn. 40. We consequently deny your petition insofar as it asks us to order ODOC to provide a certified copy.

We proceed next to your request that we order ODOC to provide the requested materials "free of charge." You base your request on an ODOC administrative rule, OAR 291-105-0021(2)(b) or, in the alternative, on the discretionary waiver provision of OAR 291-037-0015(6).

The former rule applies in disciplinary proceedings and is not based on the Oregon Public Records law. We do not perceive any authority for the Attorney General to enforce that rule through a public records petition under ORS 192.450(1), even if we were persuaded that a rule directing ODOC to provide misconduct reports necessarily compelled ODOC to provide unredacted attachments to those reports free of charge.

We therefore turn to OAR 291-037-0015(6), which provides that "Fees for inspection and/or duplication of record(s) related to litigation may be waived upon advice of legal counsel." Unlike the rule just mentioned, this rule implements the Oregon Public Records law. In particular, ORS 192.440(5) provides that "The custodian of any public record may furnish copies without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public." Nothing in your petition or the supporting documentation suggests that providing the records to you would "primarily benefit[] the general public." From all appearances, you seek the materials for your own benefit. We consequently deny your petition insofar as it is seeking records free of charge.

Finally, we consider your request that we order ODOC to provide you with an unredacted copy of Attached Evidence 1 and copies of Attached Evidence 2-6. With respect to Attached Evidence 2-6, ODOC states that it is willing provide you with copies of those materials if you submitted a form authorizing ODOC to debit your inmate trust account accordingly. Because ODOC is willing to provide those materials to you on receipt of payment, and given that we have denied your petition insofar as you sought an order directing ODOC to fulfill your request at no charge, we respectfully deny your petition with regard to Attached Evidence 2-6.

With regard to Attached Evidence 1, ODOC's position is that the inmate names and SID numbers redacted by ODOC are exempt from disclosure under ORS 192.502(5). That statute exempts from disclosure "Information or records of the Department of Corrections * * * 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." ODOC officials explain that the context reveals that these inmates have been assigned thumb drives. In the opinion of ODOC's security officials, identifying inmates who have been assigned thumb drives

would create security risks, safety risks to those inmates, and correspondingly could create risks to staff. We are not in a position to second guess ODOC's assessment that disclosing this information would prejudice its ability to carry out its functions, and we perceive no particular public interest in the disclosure of this information. We consequently deny your petition insofar as it effectively seeks to learn the identities of other inmates who have been assigned thumb drives.

For the foregoing reasons, your petition is respectfully denied.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

MHW:bwl/3765698-v1
Cc: Andrea Neistadt
Randy Geer
Ron Miles
Rick Coursey, Superintendent