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April 27, 2012

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

Re: Petition for Public Records Disclosure Order
Department of Corrections Records
DOJ File No. 291011-GA0033-12

Dear Mr. Stokes:

This letter 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 April 10, 2012, asks the Attorney General to direct the Oregon Department of Corrections (ODOC) to produce a copy of the following record:

1. Investigation Report submitted by Captain S. Boston on or about 3/08/12 for Hearing TRCI 1203-0062-N 25 as summarized on the record 3/12/12 by J. Deacon.

Your petition states that you requested inspection of that report and that your request was denied by Vicky Reynolds, Executive Assistant to the Superintendent. We have confirmed that your request was denied on March 28, 2012.

For the following reasons, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions. *See* ORS 192.420. If a public record contains both 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). If a public body denies a request for public records, the requester may

petition the Attorney General to determine whether the agency's denial comports with the Public Records Law. ORS 192.450.

Among the exemptions to disclosure under the Public Records law is ORS 192.502(5), which exempts from disclosure

> Information or records of the Department of Corrections, including the State Board of Parole and Post-Prison Supervision, 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.

Your request was denied by ODOC on the basis of this exemption.

After receiving your petition, we discussed your request with TRCI Assistant Superintendent of Security Jeri Taylor and Superintendent Steven Franke. Ms. Taylor explained why ODOC believes that the record you seek is exempt from disclosure to you under ORS 192.502(5). Specifically, Ms. Taylor stated that disclosure to an inmate of the type of document you requested would present significant risks to inmate safety, could compromise institutional security and operations, and would be inconsistent with ODOC's rehabilitative objections.

After further discussion, Mr. Franke stated that, notwithstanding the above concerns, ODOC is willing to make a redacted copy of the memo in question available to you. Mr. Franke explained that disclosure of the redacted information would substantially prejudice ODOC's ability to carry out its statutory duties to maintain internal security, order and discipline, and its ability to protect the safety and security of the inmates and staff.

Ms. Taylor and Mr. Premo's explanations satisfy us that disclosure of this type of record to an inmate will generally result in significant impediments to ODOC's performance of its statutory functions. We are persuaded that, in this case, providing you with an unredacted copy of the requested report would "substantially prejudice" a number of ODOC's functions and interfere with ODOC's custodial duties within the meaning of ORS 192.502(5). The legislature has charged ODOC with the responsibility to exercise custody over convicted felons sentenced to a term of imprisonment until they are subject to lawful release, by safely confining them in one of the state's correctional institutions. *See* ORS 423.020(1). ODOC has a legitimate and substantial interest in minimizing opportunities for inmates to obtain information that could jeopardize the safety and security of inmates and staff, and threaten the orderly operation and management of Oregon's prisons.

The remaining question is whether "the public interest in confidentiality clearly outweighs the public interest in disclosure." ORS 192.502(5). In the context of this exemption, we have previously concluded that when disclosure of records would threaten or impair the Department's ability to preserve internal order and discipline in its correctional facilities, the

public interest in confidentiality will, in most circumstances, clearly outweigh the public interest in disclosure. *See* Public Records Order, September 15, 2009, Woodroffe.

You have not cited a public interest in disclosure that would outweigh the public interest in confidentiality, and we cannot perceive one. In the absence of an overriding public interest in disclosure, the public interest in keeping these records confidential clearly prevails. As a result, we conclude that ODOC properly relied on ORS 192.502(5) to deny your original request, and may properly provide you with a redacted copy of the report.

Accordingly, your petition is respectfully denied.

Sincerely,

KEITH S. DUBANEVICH
Associate Attorney General

MHW:smg/3363303-v1
c: Steven Franke, Superintendent
Jeri Taylor, Assistant Superintendent of Security
Vicki Reynolds, Executive Assistant