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May 25, 1995

RECEIVED
MAY 26 1995
GENERAL COUNSEL
DEPT. OF JUSTICE
SALEM, OREGON

Philip W. McClure
SID #5072942
Oregon State Penitentiary
2605 State Street
Salem, OR 97310-0505

Re: ***Petition for Public Records Disclosure Order: Lane County Citizens Review Board records***

Dear Mr. McClure:

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 May 18, 1995, asks the Attorney General to direct the Lane County Citizen Review Board #4 to produce copies of the following:

1. Answers to questions submitted by participant parent Philip W. McClure via February 22, 1995 (re: February 28, 1995 Board review of Joshua Kevin McClure).

2. Written findings and recommendations from the February 28, 1995 Board Review - pursuant to ORS 419A.118.

3. Any additional allowable disclosure, pursuant to ORS 419A.112, from the February 28, 1995 Board Review.

For the reasons that follow, we respectfully deny your petition.

Your request that we direct the Citizen Review Board to answer questions you submitted to them must be denied because the Attorney General may only direct state agencies to permit inspection and copying of existing public records. ORS 192.450. The Attorney General may not direct any state agency to answer questions or to create a record which does not exist.

As to the written findings and recommendations from the February 28, 1995 Board Review, we are informed by Bradd Swank of the State Court Administrator's office that this record has not been provided to you because of an order signed by Judge William Barlow, Circuit Judge Pro Tem, in which he denied your petition for records relating to your son Joshua who was incarcerated in MacLaren School. The order found that releasing the records to you would interfere with the child's rehabilitation, and denied your petition on the basis that the records are exempt from disclosure under ORS 192.496(3).

The record you seek (described above in paragraph 3) incorporates the information which was denied to you in the prior proceeding, and thus is also exempt from disclosure under ORS 192.502(9), which provides that the following records are exempt from disclosure:

> Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations giving rise to the confidential or exempt nature of the public records or information remain applicable.

Because the record you seek is based upon and discusses confidential records which have been previously determined must not be provided to you, and the considerations giving rise to the confidential or exempt nature of the records appear to remain applicable, the record you seek is also exempt from disclosure.

We are informed that the notice you received that you could act as a participant in the Citizen Review Board proceeding for your son was sent in error, as it was inconsistent with the prior judicial finding concerning your contact with your son. The Lane County Citizen Review Board does not consider you to be a participant in the review, based on the prior judicial ruling. Citizen Review Board records are exempt from disclosure to all persons who are not participants. ORS 419A.100.

For all of the above reasons, your petition is denied.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

c: Bradd Swank
Management/Legal Analyst
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Nancy Miller, Administrator
Citizen Review Board
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