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September 10, 2020

David R. Durham
SID #3327475
3405 Deer Park Drive S.E.
Salem, OR 97310

Re: Petition for Public Records Disclosure Order
Oregon Department of Corrections
DOJ File No.: 291011-GA0088-20

Dear Mr. Durham:

This letter is the Attorney General's response to your petition for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition asks the Attorney General to order the Oregon Department of Corrections (ODOC) to disclose copies of any "Form CD28 Request for Withdrawal of Funds" (the "CD28s") signed by you between March and July 2020. Your petition also asks us to order ODOC to verify that its Special Investigation Unit (SIU) has received three thumb drive storage devices that were confiscated from you. For the reasons discussed below, we respectfully dismiss your petition.

The Public Records Law confers the right to inspect public records in Oregon, unless such records are exempt under ORS 192.338, 192.345, or 192.355. ORS 192.314(1). The law is a disclosure law and exemptions from disclosure must be express. Any person denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld. ORS 192.411(1). The agency carries the burden to sustain its actions. ORS 192.411(1).

We contacted Ms. Michelle Dodson, ODOC Records Officer, regarding your petition. She indicated that ODOC has processed your request for the CD28s and that they were mailed to you on September 4, 2020. Because ODOC has completed its response to this part of your request, we dismiss this aspect of your petition as moot.

Regarding your request for information about the confiscated thumb drives, Ms. Dodson acknowledged that SIU has received multiple inquiries from you about the status of the devices. However, she explained, ODOC has no record of receiving a written request from you for records relating to those devices. We have no reason to second-guess her representation. We

also note that your petition does not ask us to order the disclosure of any particular records relating to the confiscated devices, but rather asks us to order ODOC to provide verification that SIU received them. Under the circumstances, we must dismiss this aspect of your petition because ODOC did not deny a request for public records. *See* ORS 192.324 (an agency's obligation to respond is triggered by receipt of a written request); and ORS 192.411(1) (in general, the Attorney General may order disclosure only when a records request has been denied). And we have no authority under the Public Records Law to order state agencies to respond to questions or requests for information. *See id.; see also Attorney General's Public Records and Meeting Manual* at 7 (2019) (the Public Records Law does not require agencies to create new public records, disclose the reasoning behind their actions, answer questions about their records, or analyze their records). You may, of course, submit a new request to ODOC for any additional records you may seek.

For the reasons discussed above, we respectfully dismiss your petition.

Sincerely,



FREDERICK M. BOSS
Deputy Attorney General

FMB:pjn/DM10430636
c via email only: Michelle Dodson, ODOC