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March 15, 2021

Martin Allen Johnson
SID #5410056
2500 Westgate Ave
Pendleton, OR 97801

Re: Petition for Public Records Disclosure Order
Oregon Department of Corrections
DOJ File No.: 291011-GA0024-21

Dear Mr. Johnson:

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 (DOC) to disclose a copy of the disciplinary write up and final order on your cell mate relating to a recent assault. For the following reasons, we respectfully deny 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).

In response to your petition, we contacted Michelle Dodson, DOC Records Officer. She explained that DOC denied your request for these records under ORS 192.355(5), which exempts from disclosure:

> Information or records of the Department of Corrections * * * to the extent that disclosure thereof 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.

Ms. Dodson explained DOC's longstanding position that disclosing disciplinary information about an adult in custody (AIC) to another AIC could present significant risks to AIC safety, undermine DOC's rehabilitative efforts, and compromise institutional security.

Regarding the disclosure of AIC misconduct reports to other AICs, we have concluded that such disclosures "will generally result in significant impediments to DOC's performance of its statutory functions." Public Records Order, Sep 15, 2009, Woodroffe. And given DOC's statutory responsibility to exercise custody over AICs in a safe and secure manner, we have observed that DOC 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." *Id*. In this instance, after discussing your request with Ms. Dodson and reviewing the responsive records, we are satisfied that disclosure to you "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." ORS 192.355(5).

Next, we assess whether "the public interest in confidentiality clearly outweighs the public interest in disclosure." *Id*. In making this determination, we have observed that in most instances the public interest in confidentiality will clearly outweigh the public interest in disclosure "[i]f disclosure would threaten or impair Corrections' ability to preserve internal order and discipline in its correctional facilities, to maintain facility security against escape or unauthorized entry, or to protect the public's safety * * * " *Attorney General's Public Records and Meeting Manual* at 107 (2019) (*Manual*).

Your petition explains that you need these records to file a police report and for purposes of private litigation. It is not clear to us how the nondisclosure of these records will impair your ability to file a police report, and your interest in private litigation does not qualify as a public interest. *See Manual* at 33 (public interest typically does not depend on the requester's private interests) and 53 (tools of discovery generally negate the need to use the Public Records Law to access records for purpose of pursuing private litigation) (citations omitted). Your petition does not identify a public interest in disclosure that would outweigh the public interest in confidentiality and because we cannot discern one, we find that the public interest in keeping the records confidential prevails. As a result, we conclude that DOC was permitted to withhold the records from you under ORS 192.355(5) and respectfully deny your petition.

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

FMB:pjn/
c via e-mail only: Michelle Dodson (DOC)