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December 10, 2020

Adam Gregg
SID #19275034
South Fork Forest Camp
48300 Wilson River Hwy
Tillamook, OR 97141

Re: Petition for Public Records Disclosure Order
Oregon Department of Corrections
DOJ File No.: 291011-GA0117-20

Dear Mr. Gregg:

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 a list of the names of all Adults in Custody (AICs) who are over the age of 60 as well as all AICs who meet criteria for being medically vulnerable to the Coronavirus (COVID-19). For the reasons that follow, 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).

Your petition explains that you requested these names in connection with the criteria established by the Governor for AICs to be eligible for early release due to the COVID-19 pandemic. ODOC denied your request, asserting that the requested information is exempt from disclosure under ORS 192.355(2) and 192.355(5).

We contacted Michelle Dodson, ODOC Records Officer, regarding your petition. She explained that ODOC no longer considers the names of AICs who are over 60 to be exempt

under the Public Records Law and indicated that ODOC will be in touch with you soon regarding that portion of your request. We therefore dismiss that aspect of your petition as moot.

Regarding your request for the names of all AICs who have been identified as medically vulnerable, Ms. Dodson explained ODOC's position that this information is exempt from disclosure under ORS 192.355(5), which applies to:

> 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.

According to Ms. Dodson, she discussed your request with ODOC's Chief of Security, Mike Yoder, and ODOC's Health Services Administrator, Joe Bugher. They explained that disclosing the names of AICs who are identified as being medically vulnerable would put those AICs at higher risk and jeopardize their personal safety. They noted that medically vulnerable AICs present a risk for extortion at the hands of other AICs because they are generally perceived as being less capable of defending themselves from physical assaults. They are also targeted because they are more likely to be taking medications that can be used or trafficked by other AICs. Finally, because of the risks to medically vulnerable AICs described above, Mr. Bugher explained that disclosing this information may deter other AICs from seeking necessary health care out of concerns of being classified as medically vulnerable. This, he argues, could impede ODOC's ability to identify and treat AICs with significant health issues. It would also negatively impact ODOC's ability to carry out the Governor's direction to identify AICs who are medically vulnerable and thereby potentially eligible for early release.

We generally accept ODOC's explanations and conclude that disclosing the identities of medically vulnerable AICs would "interfere with the rehabilitation of a person in custody" and "substantially prejudice or prevent the carrying out of the functions of the department." In turn, we must now assess whether "the public interest in confidentiality clearly outweighs the public interest in disclosure." ORS 192.355(5). We have consistently found that if disclosure would interfere with the rehabilitation of an AIC or threaten or impair ODOC's ability to preserve internal order and discipline in its facilities, the public interest in confidentiality will, in most circumstances, clearly outweigh the public interest in disclosure. *See, e.g., Attorney General's Public Records and Meetings Manual* at 107 (2019); Public Records Order, Jul 28, 2015, Donohue (*citing* Public Records Order, Jan 26, 1993, Patten).

The public interest in disclosure that you have identified is the public's "absolute right to know the names of all AICs who are going to be released before their current release date." In this instance, we conclude that the public interest in keeping the identities of medically vulnerable inmates confidential clearly outweighs the public interest you have articulated. First, insofar as you believe this information will inform the public about AIC early release dates, we have previously concluded that the public interest in keeping AIC projected release dates confidential from other AICs, such as yourself, prevails absent any proffered public interest in

disclosure. *See* Public Records Order, Apr 11, 2008, Dusenberry (the fact that ODOC makes some AIC release information publicly available does not overcome the public interest in keeping this information confidential with respect to other AICs, at least where AICs are likely to misuse the information). You have not proffered a public interest in disclosure in this instance that would cause us to depart from our prior conclusion.

More importantly, we find that disclosing this information will not meaningfully inform the public about which AICs will be released before their current release date. Whether an AIC is medically vulnerable is just one of seven commutation criteria established by the Governor.[1] It follows that some number, and perhaps a substantial number, of medically vulnerable AICs will not be eligible for early release. And because it would not be possible to discern who is eligible for early release simply from a list of medically vulnerable AICs, disclosing such a list would not reveal which AICs will have their sentences commuted, or when. Finally, although we perceive that the COVID-19 pandemic has elevated public interest in the numbers and locations of medically vulnerable AICs in ODOC's institutions, we do not perceive any broad or heightened public interest in the actual identities of those AICs.

Weighing the risks of disclosure against the public interest you have identified, we conclude that the public interest in keeping the identities of medically vulnerable inmates confidential clearly outweighs the public interest in disclosure. We therefore find that ODOC properly relied on ORS 192.355(5)[2] to deny your request and we respectfully deny your petition.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:nog/
c via email only: Michelle Dodson (ODOC)

[1] AICs eligible for review for early release on the basis of medical vulnerability must meet the following criteria:

1. Be particularly vulnerable to COVID-19, as identified by ODOC medical staff;
2. Not be serving a sentence for a person crime;
3. Have served at least 50% of their sentence;
4. Have a record of good conduct for the last 12 months;
5. Have a suitable housing plan prior to the date set for their early release;
6. Have their out of custody health care needs assessed and adequately addressed prior to the date set for their early release; and
7. Not present an unacceptable safety, security, or compliance risk to the community.

[2] ODOC also asserted that this information is exempt under ORS 192.355(2), which addresses unreasonable invasions of privacy. Because we conclude ODOC was permitted to withhold these records under ORS 192.355(5), we need not address ODOC's alternative claims.