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August 12, 2021

SENT VIA E-MAIL ONLY: ghartley@mpdlaw.com

Grant Hartley
630 SW 5th Ave, Suite 500
Portland, OR 97204

Re: Petition for Public Records Disclosure Order
Oregon Department of Corrections
DOJ File No.: 291200-GA0122-21

Dear Mr. Hartley:

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 the recordings of all telephone calls made and received by a particular Adult in Custody (AIC) from February 2021 to the present. For the reasons discussed below, 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 recordings on July 29, 2021. ODOC denied your request on August 4, 2021, claiming the records are exempt from disclosure under ORS 192.355(5). That provision expressly exempts:

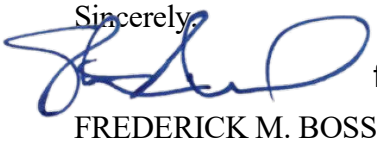
> Information or records of the Department of Corrections * * * to the extent that disclosure would interfere with the rehabilitation of a person in custody of the department or substantially prejudice or prevent the carrying out of the functions of the department, if the public interest in confidentiality clearly outweighs the public interest in disclosure.

We contacted Michelle Dodson, ODOC's Records Officer, regarding your petition. She explained ODOC's position that the recordings are exempt under ORS 192.355(5) because their disclosure would interfere with the rehabilitation of persons in custody and substantially prejudice or prevent ODOC from carrying out its functions. In support of its position, ODOC cites our prior analysis in Public Records Order, Jan 6, 2020, Contreras ("PRO Contreras").

In PRO Contreras, we concluded that ODOC was permitted to withhold the recorded telephone conversations of an AIC under ORS 192.355(5) because disclosure could stigmatize callers and thereby discourage contact between AICs and relatives or friends. In that instance, we took notice of numerous studies that positively correlated personal contact between AICs and relatives or friends with improved inmate behavior and recidivism rates. *See also* OAR 291-130-0005(3) (ODOC "telephone services are a positive means to strengthen ties and increase the likelihood of success upon release."). We found that disclosing the recorded calls would have a chilling effect upon such personal contact, which could substantially prejudice the carrying out of ODOC's functions, such as rehabilitating AICs and reducing recidivism. We also concluded that because there is significant public interest in rehabilitating AICs and reducing recidivism, the public interest in keeping the recordings confidential clearly outweighed the public interest in disclosure in that instance. PRO Contreras at 2-3; *see also* Public Records Order, Feb 17, 2017, Crombie (ODOC was permitted to withhold visitor logs under ORS 192.355(5) because disclosure would stigmatize visitors and thereby discourage visitation).

Your petition does not identify a public interest in the disclosure of these recordings that would outweigh the public interest in confidentiality that we recognized in PRO Contreras. Your petition explains that you need these recordings as evidence to be used in a criminal matter, but the public interest in disclosure typically does not depend upon the requester's private interests in the requested materials. *See Attorney General's Public Records and Meetings Manual* at 33 (citations omitted) ("*Manual*"). Moreover, we have long recognized that the tools of criminal and civil discovery generally negate the need to use the Public Records Law to access records for purposes of other legal proceedings. *See Manual* at 53 (citations omitted). Under the circumstances, we find that the public interest in keeping the AIC's recorded calls confidential prevails. As a result, we conclude that ODOC was permitted to withhold the recordings from you under ORS 192.355(5) and we respectfully deny your petition.

Sincerely,



for

FREDERICK M. BOSS
Deputy Attorney General

FMB:pjn
c via e-mail only: Michelle Dodson, ODOC