ELLEN F. ROSENBLUM
ATTORNEY GENERAL

LISA M. UDLAND
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

Justice Building
1162 Court Street NE
Salem, Oregon 97301-4096
Telephone: (503) 378-6002

October 4, 2022

Andrew L. Tignor
SID #10612992
777 Stanton Blvd
Ontario, OR 97914

Re: Petition for Public Records Disclosure Order
Oregon Department of Corrections
DOJ File No.: 291200-GA0083-22

Dear Mr. Tignor:

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 the recordings of all telephone calls made or received by your deceased son while he was an Adult in Custody (AIC). For the reasons discussed below, we respectfully deny your petition in part and dismiss it in part.

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 DOC denied your request for the recorded calls, claiming they are exempt from disclosure under ORS 192.355(5). That provision conditionally 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, DOC's Records Officer, regarding your petition. She provided us with a copy of your records request, which shows that your request was limited to any recorded calls between your son and daughter. She explained DOC's position that those

records are exempt under ORS 192.355(5) because their disclosure could interfere with AIC rehabilitation and substantially prejudice or prevent DOC from carrying out its functions.

In support of DOC's position, Ms. Dodson cited our prior analysis in Public Records Order, Aug 12, 2021, Hartley ("PRO Hartley"); and Public Records Order, Jan 6, 2020, Contreras ("PRO Contreras"). In those orders, we concluded that DOC was permitted to withhold the recorded telephone conversations of AICs with third persons under ORS 192.355(5) because disclosure could stigmatize callers and thereby discourage contact between AICs and relatives or friends. *See* PRO Hartley at 2-3, and PRO Contreras at 2-3. We took notice of numerous studies that positively correlated personal contact between AICs and relatives or friends with improved inmate behavior and recidivism rates. *Id.*; *see also* OAR 291-130-0005(3) (DOC "telephone services are a positive means to strengthen ties and increase the likelihood of success upon release."). We found that disclosing the recorded calls between AICs and third persons would have a chilling effect upon such personal contact, which could substantially prejudice the carrying out of DOC'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 those cases. *Id.*; *see also* Public Records Order, Feb 17, 2017, Crombie (AIC visitor logs exempt because disclosure could stigmatize visitors and thereby discourage visitation).

Your petition does not identify a public interest in the disclosure of the calls between your son and daughter that would outweigh the public interests in confidentiality identified in our prior orders. We therefore find that the public interest in maintaining the confidentiality of those calls prevails in this instance and DOC was permitted to withhold them from you under ORS 192.355(5). Insofar as your petition seeks an order compelling DOC to disclose your son's recorded calls with any other people, including yourself, we must dismiss that aspect of your petition as premature. DOC has not denied a request for such records because your initial request did not seek recorded calls beyond those between your son and daughter. And because DOC has not denied a request for those additional recordings, we presently lack the authority to order their disclosure. *See* ORS 192.411(1) (in general, the Attorney General may order disclosure only when a records request has been denied). You may, of course, submit a new request for any additional recordings.

For the foregoing reasons, we respectfully deny your petition in part and dismiss it in part.

Sincerely,



for

Lisa M. Udland
Deputy Attorney General

ACF:pjn
c via e-mail only: Michelle Dodson, DOC