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March 14, 2023

VIA E-MAIL ONLY: crystalm388@gmail.com

Crystal Ann Major
18065 SE Lamper Ct.
Sandy, OR 97055

Re: Petition for Public Records Disclosure Order
Oregon Department of Corrections
DOJ File No.: 291200-GA0025-23

Dear Ms. Major:

This letter is the Attorney General's response to your March 9, 2023, e-mail to the Attorney General seeking assistance with a public records request for recorded conversations between you and your now deceased brother while he was in the custody of the Department of Corrections (DOC).

We previously considered the underlying records request in response to a petition filed by you on January 14, 2023. In that instance, you appealed DOC's claim that the recordings are exempt from disclosure. We dismissed that petition after DOC withdrew its claim that the records are exempt and agreed to process your request. *See* Public Records Order, Jan 26, 2023, Major. According to your recent request, DOC has now provided you with a fee estimate for the costs to process your request, but you do not believe that that you should have to pay those costs. We interpret your e-mail to be a new petition claiming that DOC has unreasonably denied your request for a fee waiver and asking the Attorney General to order DOC to waive its fee. *See* ORS 192.324(6) (any person who believes there has been an unreasonable denial fee waiver or reduction by a state agency may petition the Attorney General for review).

The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exemptions and limitations. ORS 192.314(1). Agencies may establish fees reasonably calculated to recover their actual costs for making public records available, but "may furnish copies without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public." ORS 192.324(4)–(5). The furnishing of public records primarily benefits the general public when its greatest utility is to the community or society as a whole. *See In Defense of Animals*, 199 Or App 160, 189 (2005). This is in contrast to situations where disclosure would primarily affect private interests or concerns. *See id*. at 188.

In response to your petition, we contacted Michelle Dodson, DOC's Records Officer. She explained DOC's position that you do not qualify for a public interest fee waiver because disclosing the requested records to you will not primarily benefit the general public. She explained that DOC is not aware of any interest among the general public in these records and that DOC was not able to identify any connection between the recordings and the only public interest identified in your fee waiver request; i.e., improving public awareness of gun violence and its impacts. She indicated that in multiple exchanges with you about your request, including your request for a fee waiver, you have consistently represented that you want these records for personal and family reasons. Finally, citing 192.355(5)[1] and our analysis of that statute in prior orders, Ms. Dodson explained DOC's position that the public interest in the confidentiality of these recordings clearly outweighs the public interest in disclosure insofar as disclosure to the general public may interfere with the rehabilitation of adults in custody or substantially prejudice or prevent the carrying out of DOC's functions. *See, e.g.,* Public Records Order, Oct 24, 2022, Tignor ("PRO Tignor"). In other words, she explained, DOC has agreed to disclose recordings to you that it believes are exempt from disclosure to the general public under ORS 192.355(5) only because you are a party to the recordings and because DOC understands that you intend to use them only for personal purposes. Under those conditions, she explained, disclosure to you will not primarily benefit the general public.

Under the circumstances, we cannot conclude that DOC unreasonably denied your request for a fee waiver or reduction. Our authority to compel DOC to waive or reduce its fee in this instance is conditioned upon a finding that disclosing the recordings to you will primarily benefit the general public. However, as Ms. Dodson observed, we have found that the public interest in the recorded conversations of adults in custody (AICs) generally weighs *against* their disclosure to the general public in most instances. *See, e.g.,* PRO Tignor (disclosing recorded calls between AICs and third persons would have a chilling effect upon personal contact, which could substantially prejudice the carrying out of DOC's functions, such as rehabilitating AICs and reducing recidivism). In this instance, we are unable to discern any nexus between the requested recordings and the generalized public interest that you identified in your fee waiver request. And your current petition does not identify any public interest in these recordings or explain why you believe that disclosure to you will primarily benefit the general public. Rather, the available record demonstrates to us that you seek these records primarily for personal reasons. Because such personal interests are not sufficient to trigger ORS 192.324's public interest fee waiver provisions, we respectfully deny your petition.

Sincerely,

Lisa M. Udland

Lisa M. Udland
Deputy Attorney General

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

[1] ORS 192.355(5) states, in relevant part, that DOC information or records is exempt from public disclosure "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."