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November 14, 2023

Frank Osborne
SID #22559896
Two Rivers Correctional Institution
82911 Beach Access Rd
Umatilla, OR 97882

Re: Petition for Public Records Disclosure Order
Oregon Department of Corrections
DOJ File No.: 291200-GA0164-23

Dear Mr. Osborne:

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 or to permit you to inspect (1) specific security camera footage; (2) a particular disciplinary segregation unit (DSU) "white card" entry; (3) a certain order from release from the DSU; and (4) the camera number of the security camera that recorded the footage you requested. 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).

We contacted Michelle Dodson, ODOC Records Officer, regarding your petition. First, she explained that the security camera footage you seek is a subset of the footage that our office recently considered in response to another petition filed by you. *See* Public Records Order, Nov 8, 2023, Osborne. In that instance, we concluded the security footage was exempt from disclosure under ORS 192.355(5) (records the disclosure of which would "interfere with the rehabilitation of a person in custody * * * or substantially prejudice ODOC from carrying out the functions of the department") and ORS 192.345(23) ("records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures"). As your new petition does not provide any reason for us to reconsider our prior

determination, we continue to conclude that ODOC is permitted to withhold the footage from you under ORS 192.355(5) and ORS 192.345(23). We therefore deny the first part of your petition.

Next, Ms. Dodson indicated that ODOC has agreed to let you inspect the DSU "white card" entry you specified. Because ODOC has agreed to let you inspect that entry, we respectfully dismiss the second part of your petition as moot.

According to Ms. Dodson, ODOC does not have the DSU release order you requested because no order was prepared in that particular instance. As we have no reason to second-guess her representation, we dismiss the third part of your petition because we cannot order ODOC to disclose a record that does not exist.

Finally, Ms. Dodson expressed ODOC's position that your request for the camera number was a request for information and not a request for a public record. We agree. After reviewing your original request, we observe that it was not styled as a record request, nor was it submitted in accordance with ODOC's procedure for making public records requests. *See* ORS 192.329(1) (agency's obligation to respond to a public record request is triggered by receipt of a written request submitted in accordance with the agency's published procedure). We also note that your petition does not ask us to order the disclosure of any particular records relating to the security camera, but rather asks us to order ODOC to answer your question. Under the circumstances, we must dismiss the final part of your petition because ODOC did not deny a request for public records. *See* ORS 192.411(1) (in general, the Attorney General may order disclosure only when a records request has been denied). And we have no authority under the Public Records Law to order state agencies to respond to questions or requests for information. *See id., see also Attorney General's Public Records and Meetings Manual* at 7 (2019) (Public Records Law does not require agencies to create new public records, disclose the reasoning behind their actions, answer questions about their records, or analyze their records). You may, of course, submit a new request to ODOC for any additional records you may seek.

Sincerely,

Lisa M. Udland

LISA M. UDLAND
Deputy Attorney General

ACF:pjn
c via email only: Michelle Dodson, ODOC