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December 12, 2023

Aaron Van Neubarth
SID #7475187
Snake River Correctional Institution
777 Stanton Blvd
Ontario, OR 97914

Re: Petition for Public Records Disclosure Order
Oregon Department of Corrections
DOJ File No.: 291200-GA0181-23

Dear Mr. Neubarth:

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) a copy of a letter initially sent by you in December 2022 to the Snake River Correctional Institution Health Services Department (HSD) that is stamped or otherwise demonstrates when it was initially received; (b) copies of all progress notes and medical chart reviews relating to that letter and other correspondence sent by you to HSD in 2023; and (c) a list of the names of the health services personnel who processed the various correspondence you sent to HSD in 2022 and 2023. 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).

We discussed your petition with Michelle Dodson, ODOC Records Officer. Regarding the letter you seek, she explained that ODOC did not maintain a copy of your letter. As detailed in your petition, you sent the letter to HSD on several occasions, but according to Ms. Dodson, in each instance the original letter was returned to you and ODOC did not retain a copy. We have no reason to question Ms. Dodson's representation, and because we cannot order ODOC to disclose a record that does not exist, we must respectfully deny the first part of your petition.

Regarding your request for all progress notes and medical chart reviews relating to the various correspondence you sent to HSD in 2023, Ms. Dodson informed us that HSD staffed have conferred with you several times about your medical records and have offered to provide you with a complete copy. For reasons that are not clear, you have refused to receive a copy of the records. Under the circumstances we must deny this part of your petition because ODOC has not denied your request for these records.[1] *See* ORS 192.411(1) (in general, the Attorney General may order disclosure only when a records request has been denied).

As for the list of names you seek, Ms. Dodson informed us that ODOC does not possess such a list. And citing the longstanding position of this office that the Public Records Law does not require agencies to create new public records in response to a request, ODOC does not believe it is required to prepare such a list for you. Again, we must deny the remainder of your petition because we cannot order ODOC to disclose a record that does not exist, and ODOC is correct that the Public Records Law does not require it prepare such a list. *See Attorney General's Public Records and Meetings Manual* at 7 (2019) (citation omitted).

For the foregoing reasons, we must respectfully deny your petition.

Sincerely,

Lisa M. Udland

Lisa M. Udland
Deputy Attorney General

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

[1] If it is the case that you simply want ODOC to explain which entries in your medical records are related to your correspondence, we lack the authority to order ODOC to provide you with such an explanation. As we have long concluded, the Public Records Law does not require agencies "to disclose the reasoning behind their actions; answer questions about their records; [or] analyze their records * * *." *Attorney General's Public Records and Meetings Manual* at 7 (2019) (citations omitted).