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

December 12, 2023

Clark Rust
SID #19892073
3920 East Ashwood Rd.
Madras, OR 97741

Re: Petition for Public Records Disclosure Order
Oregon Department of Corrections
DOJ File No.: 291200-GA0182-23

Dear Mr. Rust:

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 particular inmate transfer order pertaining to you. 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. First, she explained that ODOC has allowed you to inspect the transfer order and has also provided certain information contained in the order to you upon request. However, she explained, ODOC denied your request for a physical copy of the transfer order under ORS 192.355(5). That provision exempts ODOC information or records 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." *Id*. Specifically, she explained ODOC's position that transfer orders contain operational and scheduling information that, if publicly disclosed, could be used to thwart ODOC security measures, and thereby endanger both ODOC staff and persons in custody. She also explained that because of the unique format of these orders, ODOC has determined that the public disclosure of even expired or executed transfer orders poses a

substantial threat to the secure movement of inmates because they are susceptible to reproduction and alteration. Finally, she explained ODOC policy that such records are not considered authorized inmate property under ODOC rules, unless they qualify as authorized legal property. *See* OAR 291-117-0080 and OAR 291-117-0100. In this instance, she explained, because the transfer order you seek does not currently qualify as authorized legal property, you are not permitted to possess a physical copy of it while in ODOC custody.

After reviewing the transfer order at issue and discussing it with Ms. Dodson, we find that ODOC has adequately explained how disclosure could interfere with the rehabilitation of persons in custody and substantially prejudice or prevent ODOC from fulfilling its responsibilities. The legislature has charged ODOC with a number of varied functions and duties concerning persons committed to its jurisdiction. *See* ORS 423.020(1). At the very core of its statutory functions and duties is the responsibility to exercise custody over inmates both safely and securely. To that end, when it comes to the orderly transfer of inmates outside of ODOC facilities, we recognize that the public and ODOC have legitimate and substantial interests in maintaining confidentiality over the forms, procedures and operational details associated with such transfers.

Next, we assess whether "the public interest in confidentiality clearly outweighs the public interest in disclosure" in this instance. ORS 192.355(5). In making this determination, we have previously concluded that the public interest in confidentiality will, in most instances, clearly outweigh the public interest in disclosure "[i]f disclosure would threaten or impair Corrections' ability to preserve internal order and discipline in its correctional facilities, to maintain facility security against escape or unauthorized entry, or to protect the public's safety * * * ." *Attorney General's Public Records and Meeting Manual* at 107 (2019). On this record, we conclude that disclosing a physical copy of the transfer order to you could threaten or impair the interests identified above. And because your petition does not identify any public interest in a physical copy of the order that would overcome the strong public interest in maintaining the confidentiality of its contents and format, we conclude that ODOC was permitted to withhold it under ORS 192.355(5).[1] We therefore respectfully deny your petition.[2]

Sincerely,

Lisa M. Udland

Lisa M. Udland
Deputy Attorney General

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

[1] You argue that the transfer order cannot be exempt because you previously obtained a copy of a similar order in the course of civil litigation. However, such a disclosure would have been under the rules of civil discovery, whereas this order only addresses your ability to obtain a copy of the order under the Public Records Law.

[2] We also note that it does not appear you will be meaningfully prejudiced by this outcome because, under separate ODOC rules that are not subject to our review, we understand you are not currently allowed to possess a copy of the transfer order. Moreover, you have been able to inspect the transfer order and we presume you still have that ability.