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May 21, 2024

VIA E-MAIL ONLY: steven@sherlagdemuniz.com

Steven Sherlag
820 NW 12th Ave, Ste 106
Portland, OR 97209

Re: Petition for Public Records Disclosure Order
Oregon Department of Corrections
DOJ File No.: 291200-GA0051-24

Dear Mr. Sherlag:

This letter is the Attorney General's response to your petition, on behalf of the estate of a deceased adult in custody (AIC), 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 the deceased AIC's visitor and telephone logs. For the reasons discussed below, 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 contacted Michelle Dodson, ODOC's Records Officer, regarding your petition. She explained ODOC's position that the logs you seek are exempt from public disclosure under ORS 192.355(5), a provision that 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.

In support of ODOC's position, Ms. Dodson cited our analysis in several prior orders in which we concluded that ODOC was permitted to withhold visitor logs and the recorded telephone calls of AICs under ORS 192.355(5) because public disclosure could stigmatize visitors and callers and thereby discourage contact between AICs and relatives or friends. *See* Public Records Order, Feb 17, 2017, Crombie; Public Records Order, Public Records Order, Oct 4, 2022, Tignor; Aug 12, 2021, Hartley; and Public Records Order, Jan 6, 2020, Contreras. In those orders, 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) (ODOC "telephone services are a positive means to strengthen ties and increase the likelihood of success upon release."). We found that disclosing the visitor logs and recorded calls of AICs would have a chilling effect upon such personal contact, which could substantially prejudice ODOC from carrying out its 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 such records confidential clearly outweighed the public interest in disclosure in those cases. *Id.*

Although our prior orders did not specifically discuss telephone logs, we see no meaningful distinction between the telephone logs you seek, and the visitor logs or recorded calls analyzed in those orders. Publicly disclosing the telephone logs would, at a minimum, reveal the identity of outside callers and thereby result in the same potential for stigmatization. We therefore conclude that ORS 192.355(5) applies to the visitor and telephone logs you requested unless the public interests in confidentiality identified above do not clearly outweigh the public interest in disclosure in this instance.

Your petition does not identify any public interest in the disclosure of the logs, and we are not aware of any public interest that would be advanced by their disclosure. We understand that you may be seeking them for use in the administration of the AIC's estate, a private interest. But the public interest in disclosure typically does not depend upon the requester's private interests in the requested materials. *See* Attorney General's Public Records and Meetings Manual at 33 (citations omitted). Under the circumstances, we find that the public interest in keeping the logs confidential prevails and conclude that ODOC was permitted to withhold them under ORS 192.355(5). We therefore respectfully deny your petition.

Sincerely,

Lisa M. Udland

LISA M. UDLAND
Deputy Attorney General

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