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June 27, 2024

Jesse Lawhorn
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Oregon State Correctional Institution
3405 Deer Park Drive SE
Salem, Oregon 97310

Re: Petition for Public Records Disclosure Order
Oregon Department of Corrections
DOJ File No.: 291200-GA0063-24

Dear Mr. Lawhorn:

This letter is the Attorney General's response to your petition for the disclosure of records 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 copy of the Prison Rape Elimination Act (PREA)[1] designator of a specific Adult in Custody (AIC) and all "staff entries" associated with that designator. 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).

In response to your petition, we contacted Michelle Dodson, ODOC Records Officer. She explained ODOC's position that the requested records were exempt from disclosure under ORS 192.355(5) because disclosure would jeopardize the personal safety and security of

[1] PREA sets federal standards for correctional facilities to detect, prevent, and respond to all allegations of sexual assault and sexual harassment. *See* 34 USC 303.

individual AICs, and would interfere with ODOC's ability to keep AICs safe within the institutions. She also expressed ODOC's position that the public interest in disclosure in this instance is clearly outweighed by the public's interest in preserving ODOC's ability to rehabilitate and protect AICs.

In addition, Ms. Dodson explained that ODOC denied your request for the records under ORS 192.355(5) for the reasons discussed in two orders issued by this office last year. *See* Public Records Order, Aug 14, 2023, Restorff; Public Records Order, Oct 19, 2023, Walsh.

In both orders, we concluded that ODOC was permitted to withhold PREA investigation reports because, under the circumstances, disclosure likely would "interfere with the rehabilitation of a person in custody of the department or substantially prejudice ODOC from carrying out the functions of the department." ORS 192.355(5). We recognized that "given DOC's statutory responsibility to exercise custody over AICs in a safe and secure manner," ODOC has "a legitimate and substantial interest in minimizing opportunities for inmates to obtain information that could jeopardize the safety and security of inmates and staff, and threaten the orderly operation and management of Oregon's prisons." *Id.,* quoting Public Records Order, Sep 15, 2009, Woodroffe (internal quotations omitted). In the Restorff order in particular, we found that disclosing PREA investigation reports to an AIC could place certain AICs at greater risk of harm, thereby stifling ODOC's efforts to rehabilitate and protect those persons in its custody. *Id*. We also concluded that disclosure could have a chilling effect upon the willingness of AICs to come forward with allegations of sexual assault and to fully cooperate in investigations that advance the safety and care of persons in the custody. *Id.* And because the petitioners in those cases had not identified a public interest in the reports that would overcome the strong public interest in preserving ODOC's ability to rehabilitate AICs, and to protect AICs and staff, we concluded that ODOC was permitted to withhold the reports under ORS 192.355(5). *Id.*

In addition to the rationale discussed in those two orders, Ms. Dodson added that, with respect to the particular type of records requested in this case, PREA designators and records reflecting that designation exist only for a subset of AICs who are designated as "aggressive" and/or "vulnerable" after an assessment. In light of that, the mere fact that records of this designation exist at all can be used by certain AICs to jeopardize the safety and security of other AICs and staff, thereby preventing ODOC from carrying out the ends described above. And because of this, redacting certain records reflecting a PREA designator—to the extent any exist—is not possible without effectively revealing the existence of a PREA designator.

We therefore begin our analysis by considering ODOC's claim that the requested records are exempt 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*.

As in the orders described above, we find that disclosure of the requested records could place certain AICs at greater risk of harm by other AICs, thereby stifling ODOC's efforts to rehabilitate and protect those persons in its custody. As described above, this is because PREA designators, and the records evincing those designators, can be used by AICs to place other AICs at a greater risk of physical assault, sexual abuse and harassment, extortion, and other threats that impede ODOC's ability to carry out the functions of the agency. Furthermore, disclosure of the requested records could have a chilling effect upon the willingness of AICs to fully cooperate in investigations, assessments, or evaluations for purposes of PREA that are imperative to the safety and care of persons in the custody of ODOC. This is because ODOC's ability to accurately assess AICs for a PREA designator relies to some extent on the disclosure of accurate information to ODOC that is not shared with the public or other AICs for the reasons described above. We therefore conclude that disclosure would "interfere with the rehabilitation of a person in custody of the department or substantially prejudice ODOC from carrying out the functions of the department." ORS 192.355(5).

Next, we assess whether "the public interest in confidentiality clearly outweighs the public interest in disclosure" in this instance. *Id*. 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) ("Manual"). After reviewing the requested records, we conclude that disclosure would threaten or impair the interests identified above. We understand that you seek these records for private litigation, but your petition does not identify a public interest that would be advanced by the disclosure of this material. As we have long observed, the "availability of ordinary tools of discovery would generally negate any need for an individual to use the Public Records Law to gain access to records for purposes of pursuing private litigation." *Manual* at 53 (citation omitted). Because your petition does not identify any public interest in the requested records that would overcome the strong public interest in preserving ODOC's ability to rehabilitate and protect AICs, we conclude that ODOC was permitted to withhold the records under ORS 192.355(5).

For the foregoing reasons, we conclude that the requested records are exempt from disclosure under ORS 192.355(5) and therefore respectfully deny your petition.

Sincerely,

Lisa M. Udland

LISA M. UDLAND
Deputy Attorney General

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c via e-mail only: Michelle Dodson, Records Officer, Oregon Department of Corrections