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DEPARTMENT OF JUSTICE

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March 25, 2025

Joseph Reyes
SID # 19519205
Snake River Correctional Institution
777 Stanton Blvd.
Ontario, OR 97914-0595

Re: Petition for Public Records Disclosure Order
Oregon Department of Corrections
DOJ File No.: 291200-GA0029-25

Dear Mr. Reyes:

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, which we received March 18, 2025, asks the Attorney General to order the Oregon Department of Corrections (ODOC) to disclose records related to the seizure of contraband from you. 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).

Your petition indicates that you requested ODOC produce records concerning materials seized by ODOC that tested positive for methamphetamine. Your request to ODOC states that you need these records to support your claim that ODOC is violating your due process rights. Your petition explains that these records were used against you at an ODOC disciplinary hearing, which has concluded. Therefore, you argue, the records should now be released.

In response to your petition, we contacted Melissa Nofziger, ODOC's Legal Affairs Administrator. She informed us that the records you seek were gathered as part of a criminal investigation. Ms. Nofziger explained that the investigation is ongoing, and ODOC seeks to protect the integrity of the investigation until any criminal process is concluded. Therefore, ODOC's position is that the materials are currently exempt under ORS 192.345(3) (the criminal investigatory exemption).

When evaluating the application of ORS 192.345(3), the Court of Appeals has explained that "investigations connected with pending or contemplated proceedings will ordinarily remain secret because disclosure would likely interfere with enforcement proceedings." *Jensen v. Schiffman,* 24 Or App 11, 16 (1976) (internal quotations omitted). We have long followed the court's guidance in public records orders examining the application of ORS 192.345(3). *See, e.g.,* Public Records Order, Feb 26, 2019, Hasenstein (strong public interest in delaying disclosure until conclusion of criminal proceedings outweighs public interest in immediate disclosure); Public Records Order, Jul 8, 2016, Iboshi (investigatory information in pending criminal cases is exempt because the public has a strong interest in protecting the integrity of investigations and prosecutions); and Public Records Order, Jan 28, 2016, O'Brien (once criminal proceedings are concluded, investigatory information remains exempt only if disclosure would result in particular harm).

Because a criminal investigation is ongoing, we conclude that ODOC is permitted to withhold those materials under ORS 192.345(3) unless the public interest requires disclosure in this instance. Your petition does not explain why the public interest requires disclosure in this case; rather, you indicate that you are seeking these materials because of alleged violations of your rights. As we are not aware of any heightened interest in this investigation that would require us to depart from the ordinary rule that such materials remain exempt until the conclusion of criminal proceedings, we conclude that the public interest does not require disclosure in this instance.

For the foregoing reasons, we conclude that ODOC has sustained its burden and was permitted to withhold the records from you under ORS 192.345(3).[1] We therefore respectfully deny your petition.

Sincerely,

Lisa M. Udland

LISA M. UDLAND
Deputy Attorney General

DEP/pjn
c via email only: Melissa Nofziger, Legal Affairs Administrator, Oregon Department of Corrections

[1] This order only addresses your right to obtain these records under the Public Records Law. It does not address what rights you may have to access them under rules of civil or criminal discovery insofar as they may be relevant to private litigation.