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May 19, 2025

VIA E-MAIL ONLY: jonathanblanco88@gmail.com

Jonathan Blanco
17155 SW Carlson St
Sherwood, Oregon 97140

Re: Petition for Public Records Disclosure Order
Oregon Department of Corrections
DOJ File No.: 291200-GA0078-25

Dear Mr. Blanco:

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 May 12, 2025, asks the Attorney General to review the Oregon Department of Corrections (ODOC) response to your request for certain records related to Adult in Custody (AIC) assaults against ODOC staff. 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 stems from a March 10, 2025, request to ODOC for five categories of records. In response to request 1 (seeking statistical data about AIC assaults on employees), ODOC offered to search for records upon prepayment of an $84.75 fee, and ODOC denied your request for a fee waiver. In response to request 2 (seeking names and SID numbers of AICs diagnosed with serious mental illness), ODOC indicated that it could not provide protected health information without a court order. In response to request 3 (seeking certain statistical information about worker's compensation claims), ODOC sought clarification regarding the scope of your request and related fees. Finally, in response to requests 4 and 5, ODOC indicated that it had no responsive documents.

Your petition asks the Attorney General to assess a $200 fine against ODOC for failing to comply with statutory deadlines. Your petition also argues that ODOC is "obligated by ORS 195.508" to disclose protected health information of AICs to you. Your petition further questions ODOC's contention that it does not have records responsive to requests 4 and 5. Finally, your petition asks the Attorney General to order a waiver of fees based on the public interest.

In response to your petition, we contacted Michelle Dodson, ODOC Records Officer. She informed us that ODOC has responded to your records request within the period prescribed by Oregon Public Records Law, and she provided us with the written correspondence between you and ODOC. That correspondence also indicates that ODOC considered your request for a fee waiver under ORS 192.324(5) and found it insufficient to satisfy the public interest test.

Concerning your request for the names of AICs diagnosed with serious mental illness, Ms. Dodson indicated that ODOC believes those records constitute protected health information made confidential by ORS 179.495 and ORS 179.505. Although ORS 179.508 contains exceptions that permit ODOC to disclose protected health information in limited circumstances, Ms. Dodson explained ODOC's position that none of those exceptions apply to your records request. In response to your requests 4 and 5 (seeking statistical information about employees receiving worker's compensation due to AIC assaults), Ms. Dodson indicated that ODOC does not maintain statistical information responsive to your request, and she suggested that you check with SAIF.

We begin by considering your request for a fine against ODOC. Your petition states that you "made [your] public records request on March 13, 2025, and [your] request was not processed until April 20, 2025." If a public body cannot complete a records response within fifteen business days of receipt, the body must provide the requester with a reasonable estimated completion date. ORS 192.329(5)(b). On March 31, 2025, within fifteen business days of receiving your request, ODOC sent you a written response indicating that it was still processing your request and providing an estimated completion date of April 18, 2025. On April 18, 2025, ODOC provided you with its response. For these reasons, we find that ODOC has responded as required by statute, and we decline to assess a fine against ODOC.

We turn now to your request for a fee waiver. Agencies "may furnish copies without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public." ORS 192.324(4)–(5). The furnishing of public records primarily benefits the general public when its greatest utility is to the community or society as a whole. *See In Defense of Animals*, 199 Or App 160, 189 (2005). And regardless of how interested the public may be in a particular matter, if the requester fails to demonstrate the ability to meaningfully disseminate the requested information, disclosure will not primarily benefit the general public. *See Attorney General's Public Records and Meetings Manual* at 19 (2024). In your petition and related correspondence, you indicate that you have the ability to disseminate the requested information because you intend to create "a bill this legislative session." You have not provided a bill number, legislative concept, or any details surrounding this legislation. You have not indicated that you have a legislator or legislative committee to sponsor your proposed bill. The measure introduction deadline for the 2025 regular session of the Oregon State Legislature was

February 25, 2025, and you sent your records request to ODOC on March 10, 2025. For these reasons, we find that your petition does not demonstrate any ability to meaningfully disseminate the requested information to the general public. Therefore, we respectfully deny your petition for a public interest fee waiver.

We now consider your assertion that ODOC is required to disclose protected AIC health information to you. Oregon law prohibits ODOC from disclosing records containing an AIC's "individually identifiable health information," which includes any information related to the "past, present or future physical or mental health or condition of an individual." ORS 179.505(1)(c). We find that a diagnosis of a serious mental illness constitutes protected "individually identifiable health information" and is therefore confidential and expressly exempt from public records disclosure under ORS 192.355(9)(a). Although ORS 179.508(1) permits ODOC, in its discretion, to disclose protected health information under certain limited circumstances, none of these exceptions appear to apply to your request.[1] And ODOC may not exercise its discretionary authority under ORS 179.508(1) unless disclosure is necessary to promote the limited purposes listed in that subsection. Under the circumstances, we have no reason to second-guess ODOC's statutorily entrusted determination that disclosure to you is not necessary to advance those limited purposes. We therefore respectfully deny your request for disclosure of protected AIC health information.

Finally, we address your belief that ODOC has records responsive to categories 4 and 5 of your records requests, which sought statistical data about workers compensation claims related to AICs diagnosed with a serious mental illness. Your petition states that ODOC "has provided similar information to the public recently" in connection with a legislative presentation. Ms. Dodson indicated that the data you reference was not responsive to your request because it was not specific to AICs diagnosed with serious mental illness,[2] and she reiterated ODOC's position that it does not maintain records responsive to requests 3 and 4. Because we cannot order ODOC to disclose records that do not exist, we must respectfully deny your petition.

Sincerely,

for
LISA M. UDLAND
Deputy Attorney General

DEP/pjn
c via email only: Michelle Dodson, Records Officer, Oregon Department of Corrections

[1] ORS 197.508(1) states that ODOC "may disclose" protected information "necessary" for:

(a) The provision of health care to the AIC;
(b) The health and safety of the AIC or other AICs;
(c) The health and safety of the officers or employees of or others at the Department of Corrections institution where the AIC is incarcerated;
(d) The health and safety of the AIC or officers or other persons responsible for transporting or transferring adults in custody from one setting to another;
(e) Law enforcement purposes on the premises of the correctional institution; or
(f) The administration and maintenance of the safety, security, and good order of the correctional institution.

[2] Ms. Dodson also indicated that ODOC would provide this data to you if you make a records request for it.