THEODORE R. KULONGOSKI
ATTORNEY GENERAL

THOMAS A. BALMER
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400
TDD: (503) 378-5938

January 27, 1994

Barry James Duvigneaud, SID #6823117
Oregon State Penitentiary
2605 State St., N.E.
Salem, OR 97310

Re: **Petition for Public Records Disclosure Order: Oregon Department of Corrections, and Oregon State Penitentiary Records**

Dear Mr. Duvigneaud:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on January 26, 1994, asks the Attorney General to direct the Oregon Corrections Division[1/], and specifically, the Oregon State Penitentiary (OSP), to make available to you for inspection and copying OSP's central institution file records pertaining to you.

For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to access any public record of a public body in Oregon, subject to certain exemptions and limitations. See ORS 192.420. The law requires generally that the custodian of public records furnish proper and reasonable opportunities for inspection and/or copying of the record in the office of the custodian. ORS 192.430. Any person denied the right to inspect or to receive a copy of any public record of a state agency may petition the Attorney General to review the public record to determine if it may be withheld from public inspection. ORS 192.450(1). Under these provisions, an agency may be said to have "denied" a request to inspect or to receive a copy of a public record only if it receives a proper request for public records. Public Records Order, July 7, 1989 (Baker).

ORS 192.430 authorizes state agencies to adopt reasonable rules and regulations necessary for protecting the records and preventing interference with the regular discharge of duties of the custodian. ORS 192.430. Moreover, the Public Records Law permits public bodies to establish and recover fees reasonably calculated to reimburse them for their actual cost in making public records available, including the time spent by agency staff in locating and reviewing the requested records in order to delete exempt material. See ORS 192.440(3); See also, Public Records Order, April 7, 1989 (Martin).

Pursuant to these statutes, the Oregon Department of Corrections (ODOC) has adopted administrative rules, OAR 291-37-015(2), and OAR 291-37-020(3)(b) and (7), which provide in pertinent part:

> (2) The request [for public records] must be in writing * * * .
>
> * * * * *
>
> (3)(b) * * * [n]o inspection and/or duplication of record(s) is authorized until payment has been received.
>
> * * * * *
>
> (7) Proper and reasonable opportunity for inspection and/or duplication of record(s) will be provided, consistent with security requirements at each Department facility and functional unit and as circumstances warrant.

Your petition states that you have requested to inspect OSP's central institution file pertaining to you, but that you were informed that you could not do so. However, your petition fails to identify to whom you directed your request, whether your request was in writing, and who informed you that you could not personally inspect the file. *See* ORS 192.470 (prescribing information required for petition for disclosure of public records).

We have spoken with Carol Caris, Assistant Records Officer at OSP concerning your petition. She informs us that the only request OSP received from you to inspect its central file records pertaining to you, and to obtain copies of portions of that file, dates back to June 1993. At that time, OSP Chief Records Officer Tamara Blair responded to your request for records by informing you that she would not permit you to review the original file records, but that copies of the requested records would be made available to you at a cost of 50 cents per page.

As you may recall, you filed a nearly identical petition for disclosure of public records with the Attorney General with respect to your previous records request, also in June 1993. We responded by issuing a public records disclosure order denying your petition, concluding that under the circumstances of your request the right to inspect public records under the Public Records Law was satisfied by OSP's furnishing copies of the records to you at a cost of 50 cents per page. Public Records Order, dated July 1, 1993 (Duvigneaud), at 2-3.

For the reasons explained to you in our prior order, a copy of which is enclosed, we have no authority under these circumstances to order ODOC or OSP to make available to you for inspection its central institution file records. Your right to "inspect" the records is satisfied by OSP making copies available to you at a cost of 50 cents per page. *Id.* Because OSP has informed you that it will make copies of the records available to you at a cost of 50 cents per page, we deny your current petition as moot.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to
the Attorney General

ESH:AV:JVV:jvv/bjs/JGG08C67
Enclosure
c: Fred Maass, Superintendent
Tamara Blair, Support Services Manager
Oregon State Penitentiary

[1/] The Oregon Legislature elevated the former Corrections Division of the Department of Human Resources (DHR) to Department status, independent of DHR, in 1987. 1987 Or Laws ch 320, § 1.