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July 1, 1993

FILE COPY

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 June 28, 1993, 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 OSP's central institution file records pertaining to you.

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

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 291-37-020(3)(b) and (7), which provide in pertinent part:

> (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 originally requested access to your central institution file from your correctional counselor, Joseph Hernandez, and that Mr. Hernandez denied your request to inspect the records in writing.

We have spoken with Mr. Hernandez concerning your petition. He informs us that when you requested to review OSP's entire central institution file pertaining to you, he directed you to make your request in writing to the custodian of the records, Tamara Blair, Chief Records Officer for OSP. We understand from Ms. Blair that she responded to your written 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.

In a previous public records order directed to ODOC's predecessor agency, the former Corrections Division, we concluded that the right to inspect public records under the Public Records Law was satisfied by the Division's furnishing copies of the requested records at a cost of 50 cents per page. Public Records Order, July 19, 1982 (Baucom). At that time, the Corrections Division had provided by rule that the manner in which it made records available for inspection was by providing copies at a cost of 50 cents per page. The division had determined that the

cost of the alternative to making copies, which would require a responsible employee of the division to supervise the actual inspection and to return the records to the files, would be at least as great as the cost of furnishing copies, and that greater administrative inconvenience would result. Based upon the division's representations, and the fact that the division could charge for its costs in making the records available, we determined that we could not say that the division's policy of providing copies in lieu of making the records available was unreasonable. Baucom at 2.

We have since reaffirmed in a more recent Public Records Order our conclusion that the right to inspect is satisfied by the furnishing of copies of requested records upon payment to ODOC of its costs in making the records available. Public Records Order, dated July 21, 1992 (Kell).

Because OSP has informed you that you may obtain copies of the requested records as provided by ODOC rule at a cost of 50 cents per page, OSP has not denied a request for disclosure of public records. Under these circumstances, we have no authority to order ODOC or OSP to provide copies of the requested records to you. ORS 192.450(1). Therefore, we must deny your petition as premature.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to
the Attorney General

ESH:AV:JVV:jvv/bjs/JGG071B2

c: Fred Maass, Superintendent
Tamara Blair, Chief Records Clerk
Joseph Hernandez, Correctional Counselor
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.