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February 11, 1994

Cal Hackler
Council Representative
Oregon AFSCME Council 75
4660 Portland Rd. N.E.
Salem, OR 97305

Re: ***Petition for Public Records Disclosure Order: Department of Corrections Records***

Dear Mr. Hackler:

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 November 12, 1993,[1/] asks the Attorney General to direct the Department of Corrections to make available all investigatory material concerning allegations of sexual harassment by Paul Rogland toward Coleen McMullen. For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. See ORS 192.420. If a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material. Turner v. Reed, 22 Or App 177, 186 n 8, 538 P2d 373 (1975).

[1/] We appreciate your extending the time within which the law would have otherwise obligated us to respond.

ORS 192.501(13) conditionally exempts: "A personnel discipline action, or materials or documents supporting that action." Even the nature or level of any completed disciplinary action is conditionally exempted. See City of Portland v. Rice, 308 Or 118 (1989). The policy behind this exemption is to avoid ridicule for the employee. Id. 308 Or at 124 n 5.

The policy supporting this exemption applies in the present case even though the actual employer is not the Department of Corrections, but another public body (Chemeketa Community College). The exemption, on its face, is not limited to situations in which the state agency is the lawful employer, but applies to records of any "personnel discipline action." Further, the Department of Corrections only gains possession of such materials because it contracts with Chemeketa for the performance of educational services at various institutions.

We have been informed by Gayle Gassner at Chemeketa that disciplinary action has been taken against Paul Rogland. All of the investigatory materials that you seek are "materials or documents supporting that [disciplinary] action." These materials are exempt from disclosure under ORS 192.501(13) unless the public interest requires disclosure. You have not identified any such public interest. An interest in a personal matter does not qualify as a public interest requiring disclosure. Cf. Public Records Order, June 8, 1990, Madrid.

For these reasons we deny your petition to compel disclosure.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the Attorney General

c: Frank A. Hall, Director, Department of Corrections
Gayle Gassner, Chemeketa Community College

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