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July 22, 1994

Robert Doyle Murphy, SID #4167482
Oregon State Penitentiary
2605 State Street
Salem, OR 97310

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

Dear Mr. Murphy:

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 July 11, 1994,[1/] asks the Attorney General to direct the Oregon Department of Corrections (ODOC) to provide you with certified copies of any written communications, memoranda or correspondence concerning Robert Doyle Murphy that Ron Ward produced between March 4, 1993 and March 4, 1994, to any state or federal agency in the United States or received between those same dates from any person or any state or federal agency in the United States. 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).

Your petition states that you made several requests of Ron Ward, ODOC's Special Needs/Release Counselor, for public records and that Mr. Ward responded by advising you that you needed to make your request for records to the Oregon State Penitentiary (OSP) Records Office. Your petition also states that you made an additional request for records to ODOC, to which you received a response informing you that the only records on file were letters to ODOC Director Frank Hall and former ODOC Director Fred Pearce.

We have spoken with Mr. Ward regarding your petition. He informs us that he both received and created records within the scope of your petition in the course of his investigation and planning for your parole release. These records included your letters to Mr. Ward requesting copies of the records, his responses to you, and several records Mr. Ward forwarded to the Parole Board. Mr. Ward has retrieved from the Parole Board copies of those records he had previously forwarded to the Board. Those records consist of: (1) a handwritten memorandum from Parole Board Chair Lee Coleman to Ron Ward (no date); (2) an Oregon Corrections Division, Release Services, parole analysis report, dated March 1, 1977; (3) a memorandum from Rex Newton, Consultant, to Ron Ward, dated January 6, 1994; (4) a memorandum from Ron Ward to Lee Coleman (no date); and (5) correspondence received by Mr. Ward from one or more individual(s) in the community.

Mr. Ward advises that, notwithstanding that you did not make a proper request for the records in accordance with ODOC's administrative rules,[2/] ODOC will, in this instance, waive its rules and furnish to you at a cost of fifty cents per page certified copies of your letters requesting copies of the records and his responses, and items (1) through (4).[3/] Your petition as to these records is, therefore, moot.

With respect to item (5), ODOC claims that two separate statutory exemptions from disclosure apply. Those exemptions, set out at ORS 192.502(3) and (4), provide:

> (3) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and the public interest would suffer by the disclosure[.]
>
> (4) Information or records of the Department of Corrections, including the State Board of Parole and Post-Prison Supervision, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the department or substantially prejudice or prevent the carrying out of the functions of the department, if the public interest in confidentiality clearly outweighs the public interest in disclosure[.]

In analyzing the exemption codified at ORS 192.502(3), we have previously concluded that five separate tests must be met for the exemption to apply:

> 1. The exemption applies only to information which is submitted voluntarily when the informant is under no legal obligation, by statue, rule, contract, or otherwise, to provide the information[;]
>
> 2. The agency must be in a position to show that the information was of a nature which reasonably should be kept confidential[;]

3. The agency must show that it has obliged itself in *good faith* not to disclose the information[;]

4. Disclosure must cause harm to the public interest[; and]

5. The person must have, in fact, submitted the information in confidence.

Attorney General's Public Records and Meetings Manual ("Manual"), November 4, 1993, at 41 (emphasis in original).

After reviewing the correspondence with Mr. Ward, we are satisfied that each of the separate tests for application of the exemption are met in this instance. Mr. Ward advises us that the correspondence was submitted to him voluntarily in the course of his investigation and planning for your parole release. Citizens are under no statutory or other legal obligation to submit information to ODOC or to the Parole Board regarding parole planning or release. Information from the public is, however, essential to these agencies' parole planning and release functions. *See* ORS 144.185(1). Moreover, such information, when provided to the agencies in confidence, is by its very nature the type that ordinarily should be kept confidential. Thus, the first and second tests are satisfied.

Mr. Ward advises us that he received and accepted the correspondence in confidence. He informs us that he routinely receives information from the public in confidence regarding the planned parole release of ODOC inmates, and that he expressly advises individuals who provide information to ODOC for such purpose that it will remain confidential. Mr. Ward advises us that in this instance, the correspondent(s) requested that the information they provided be kept confidential, and that he assured them that it would remain so. We are satisfied that Mr. Ward's assurance of confidentiality in this instance was made in good faith. Accordingly, the third and fifth tests for application of the exemption have been met.

Finally, because of the impact that disclosure may have on a particular individual who provides information to ODOC or to the Parole Board, and because of the likelihood that disclosure of such information would discourage other members of the public from providing information regarding parole planning or release in confidence to the agencies, we are satisfied that the public interest would suffer by disclosure of such information when submitted to the agencies in confidence. Therefore, the fourth test is also met. Accordingly, we conclude that ORS 192.502(3) exempts the correspondence from disclosure.

For many of the same reasons, we also conclude that the correspondence is exempt from disclosure under ORS 192.502(4), because disclosure of such information would "substantially prejudice or prevent the carrying out of the functions" of ODOC and the Parole Board, and because "the public interest in confidentiality clearly outweighs the public interest in disclosure" of the information. *See Turner v. Reed*, 22 Or App 177, 538 P2d 373 (1975).

In addition to those records he forwarded to the Parole Board, Mr. Ward informs us that he assisted you in preparing a request for out-of-state parole supervision which he forwarded to ODOC's Interstate Compact office. He advises us that in your case the supervision transfer packet included the request form itself, a checklist form to assist ODOC corrections/release counselors in preparing the transfer packet, and the parole analysis report identified above as item (2). We have spoken with Laura DeVries, Manager of ODOC's Interstate Compact office, regarding the transfer request packet. She advises us that your request for out-of-state parole supervision was rejected by other compact states, and that, in accordance with standard ODOC procedure, her office forwarded the transfer packet to the OSP Records office. Mr. Ward informs us that a document reflecting the other state(s) denial of your transfer request would have been placed with the packet for filing in ODOC's institution working file pertaining to you. Tamara Blair, Support Services Manager at OSP, informs us that her staff have reviewed the institution working file maintained in her office, but have been unable to locate the records comprising the transfer packet. She advises us that these records must have been lost or destroyed en route to her office for filing. Because the transfer packet records, other than the parole analysis report, no longer exist, ODOC cannot make these records available to you.

For the reasons discussed above, we deny your petition, in part because it is moot, in part because some of the records no longer exist, and because the remainder of the requested records are exempt from disclosure under ORS 192.502(3) and (4).

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

ESH:JVV:AV:bjs/JGG0A027
c: Nickolas Armenakis, Acting Superintendent;
Tamara Blair, Support Services Manager;
Ron Ward, Special Needs/
Release Counselor, Health Services;
Oregon State Penitentiary

Lou Lewandowski, Executive Assistant
Institutions Branch
Oregon Department of Corrections

[1/] We acknowledge and appreciate your courtesy in extending the time within which we otherwise would have had to issue this order.