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January 30, 1992

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DEPARTMENT OF JUSTICE
SALEM

Peter Alarid, SID #5196208
Oregon State Correctional Institution
3405 Deer Park Drive SE
Salem, Oregon 97310

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

Dear Mr. Alarid:

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 23, 1992, asks the Attorney General to direct the Oregon State Correctional Institution (OSCI) to make available to you copies of the following records:

> "Oregon State Correctional Institution (O.S.C.I.) audio recordings of the Disciplinary Competency (need of assistance) Hearing RE: Misconduct Report 4-127F, along with the audio recordings of the Disciplinary Hearing RE: Misconduct Report 4-127F. Said recordings took place on the dates of: 4-16-91 (9:47 a.m.), 8-1-91 (9:14 a.m.), 8-5-91 (1:32 p.m.), 8-6-91 (8:45 a.m.), 8-9-91 (8:30 a.m.), 8-12-91 (10:18 a.m.), 8-15-91 (8:30 a.m.)."

For the reasons that follow, we deny your petition as premature in part, and as moot.

You state in your petition that you have requested copies of these records, but that the Superintendent of OSCI has, as of the date of your

petition, refused to make the copies available to you. Superintendent Zenon informs us that he has recently responded to your request by memorandum dated January 27, 1992. That response, a copy of which is enclosed, informs you that OSCI will make available to you copies of the requested audio recordings, absent any portion which is exempt from disclosure under the Public Records Law, upon your prepayment of OSCI's estimated costs in responding to your request. We are informed that the stated cost of $48.96 reflects OSCI's estimate of staff time required to review the audio recordings for exempt material and the costs of duplication.

The Public Records Law confers a right to inspect and/or receive copies of any public records of a public body in Oregon, subject to certain exemptions and limitations. See ORS 192.420. ORS 192.502(4) exempts from disclosure:

> "Information or records of the Department of Corrections, including the State Board of Parole and Post-Prison Supervision, to the extent that disclosure 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 and the confidentiality clearly outweighs the public interest in disclosure."

Superintendent Zenon informs us that the requested audio recordings may include information from a confidential informant, the disclosure of which would substantially prejudice performance of department functions. No specific determination has been made by OSCI, however, with respect to what material, if any, may be exempt under ORS 192.502(4). Because OSCI has not denied a proper request for records, we have no authority to order OSCI to provide copies of those documents to you. See ORS 192.450(1).

In addition to certain exemptions to disclosure, the Public Records Law permits public bodies to establish and recover fees reasonably calculated to reimburse it for its 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(2); See, also, Public Records Order, April 7, 1989 Martin. Because Superintendent Zenon has informed you that OSCI will make available to you copies of the non-exempt portions of the audio recordings you have requested, upon prepayment of the department's estimated actual costs in compiling the records, we deny the remainder of your petition as moot.

Sincerely,

PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

PLA:cm
Enclosure
c: (w/enclosure)
Carl Zenon, Superintendent, OSCI