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ATTORNEY GENERAL

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DEPARTMENT OF JUSTICE
Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400

February 28, 1992

Paul D. Ferderber, President/Chief Steward
AFSCME Local 3361-4
Santiam Correctional Institution
4005 Aumsville Highway, SE
Salem, OR 97310

Re: Public Records Disclosure Order Request; Oregon Department of Corrections and Oregon Executive Department Records

Dear Mr. Ferderber:

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 February 24, 1992, asks the Attorney General to direct the Oregon Department of Corrections (ODOC) and the Executive Department to make available for inspection and to produce copies of the following documents pertaining to Santiam Correctional Institution's last promotional Sergeant selection announced on January 17, 1992:

1. An accurate and complete list of the names of all persons who were interviewed, as well as contact telephone numbers and/or addresses.

2. An accurate and complete list of the names of all persons who requested to be laterally transferred into the SCI positions from other facilities, as well as contact telephone numbers and/or addresses.

3. Copies of each of these individual's (as mentioned in #1 and #2) PD 100s (Applications) as used for the purpose of these interviews ...OR... A complete and accurate recording of the information listed in the Education and Work History sections of these forms.

4. A copy of the eligibility list used when sending out the approximately 81 letters announcing the upcoming interviews for the vacant Sergeant "Position."

5. The written Policy pertaining to interviews for Promotion at SCI, as approved by the Director of Corrections and signed by the SCI Superintendent.

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

The Public Records Law generally requires a custodian of public records to furnish proper and reasonable opportunities for inspection and/or copying of public records in the office of the custodian. 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 empowers state agencies to adopt reasonable rules and regulations necessary for the protection of the records and to prevent interference with the regular discharge of duties of the custodian. Pursuant to this statute, ODOC has adopted an administrative rule, OAR 291-37-015(2), which provides in pertinent part:

> The request must be in writing, addressed to the Department's functional unit manager where the record(s) is located, and must specify the record(s) from which information is requested, if known. Where applicable, the request must be accompanied by a signed release of information. If the record(s) is not in the location where the request is received, the request will be forwarded to the functional unit manager in the location where the record is situated.

Your petition states that you asked to inspect and/or copy the records on January 27, 1992, and again on February 11, 1992, at the Santiam Correctional Institution (SCI), and that your request was denied by SCI Superintendent John Grill, and by Assistant Superintendent Tony Santos. As indicated in Superintendent Grill's memorandum to you dated February 10, 1992, a copy of which is attached to your petition, the requested records are not maintained at SCI, but are instead maintained by ODOC's Personnel Section, or by the Executive Department. With respect to those records maintained by

ODOC for purposes of ODOC's rule, the "functional unit manager" is the Supervisor of the Personnel Services Section of ODOC's Employee Services Division, Arnold Quigley. Because your records request did not comply with ODOC's rule, ODOC has not denied a proper request for disclosure of records.

Additionally, we note that Superintendent Grill informed you in his February 10, 1992 memorandum that, consistent with ODOC's rule, he has forwarded your request to the ODOC Personnel Section, and that Dianna Long, the ODOC Personnel Officer assigned to SCI, is actively working to gather the requested records and review it for disclosure in accordance with the Public Records Law, and ODOC and Executive Department rules. A public body has not denied a request for disclosure of public records merely because it fails to comply with a deadline the requestor seeks to impose. Public Records Order, May 9, 1989 (Heibernick).

With respect to those records maintained by the Executive Department, your petition fails to indicate that you have made any request of Executive Department personnel for records. Because the Executive Department has not denied a request for public records, we have no authority under the Public Records Law to order it to provide you with copies of the requested records. ORS 192.450(1).

Under these circumstances, there is no agency denial of a request for public records. Therefore, we deny your petition as premature.

Sincerely,

PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

PA:bjs/JGG0257E
c: Arnold Quigley, Supervisor,
Personnel Services Section;
Dianna Long, Personnel Officer;
Employee Services Division,
Oregon Department of Corrections

John Grill, Superintendent;
Tony Santos, Assistant Superintendent;
Santiam Correctional Institution

Michael Zimmerman, Council Representative
Oregon AFSCME Council 75