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RECEIVED
JUL 10 1989
ATTORNEY GENERAL
SALEM, OREGON

July 7, 1989

John L. DeZell
Attorney at Law
5188 Rogue Valley Hwy.
Central Point, OR 97502

Re: **Petition For Public Records Disclosure Order; Oregon Department Of Corrections Records**

Dear Mr. DeZell:

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 30, 1989, asks the Attorney General to direct the Oregon Department of Corrections (ODOC) to make available for inspection and, if requested, copies of the following records:

> "Prison, supersiting criteria; written information to locate correctional facilities within the State of Oregon, specifically within Jackson County."

You state that you asked to inspect and copy these records on June 30, 1989, at the Oregon Department of Corrections, Dome Building, 2575 Center Street, N.E., Salem, Oregon 97310. You further state that the request was denied by Robey Eldridge, ODOC Communications Manager. For the reasons stated below, we deny the petition.

The Public Records Law requires a custodian of public records, unless otherwise expressly provided by statute, to furnish proper and reasonable opportunities for inspection and examination of records in the office of the custodian. Subject

to ORS 192.480, which does not apply here, 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" the right to inspect or receive a copy of a public record only if the record is in the custody of the public official to whom the request is presented.

Moreover, ORS 192.430 provides that the custodian of records may make 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 the Department of Corrections has adopted 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."

We have spoken with Mr. Eldridge, as well as with Lynn Dennis and Evelyn Meeks of ODOC, who witnessed your request. They informed us that you did not present your request for documents in writing and that you were unwilling to identify specific documents that you wanted. Mr. Eldridge understood you to be requesting Department of Corrections documents relating to the siting of prisons. Mr. Eldridge provided you with the only document within his custody that fits that description, OAR 291-90-005 through OAR 291-90-015. He did not refuse to supply you with any other document related to your request, because he was unaware of any document within his custody that satisfies your request.

Mr. Eldridge has informed us that the Department of Corrections has entered into an interagency agreement with the Oregon Department of Transportation (ODOT) pursuant to which ODOT shall provide administrative assistance concerning the procedures for siting the prisons. Therefore, most records concerning prison siting are in the custody of the Department of Transportation.

For these reasons, we conclude that the Department of Corrections has not denied your request for disclosure of public records under the Public Records Law and, moreover, that you failed to comply with the Department of Corrections' administrative rule governing requests for public records. Therefore, we deny your petition. You are, however, free to renew your request in writing to Mr. Eldridge by providing him more specific information to assist him in finding records that satisfy your inquiry.

Very truly yours,

James E. Mountain Jr.

JAMES E. MOUNTAIN, JR.
Deputy Attorney General

JEM:RDW:RWM:cfs/7540G
cc: Robey Eldridge, Communications Manager
Department of Corrections
2575 Center Street, N.E.
Salem, OR 97310