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April 1, 1993

Robert King, SID #6186823
Oregon State Penitentiary
2605 State Street
Salem, OR 97310

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

Dear Mr. King:

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 March 30, 1993, asks the Attorney General to order the Oregon Department of Corrections (ODOC) to make available to you a copy of the following records:

> [A] transcript of the prison disciplinary hearing, conducted on June 8, 1992, in agency number 06-92-022.

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

The Public Records Law confers a right to access any public records 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 records in the office of the custodian. ORS 192.430. However, the Public Records Law does not require public bodies to *create* public records. See Letter of Advice dated June 1, 1987, to Jim Kenney, Supervisor, Urban-Renewal Section, Department of Revenue (OP-6126).

You state in your petition that you were denied a copy of the transcript of the prison disciplinary hearing referenced in your petition by Fred Maass, Superintendent of the Oregon State Penitentiary (OSP), and by Philip Olson, an OSP investigator. Attached to your petition is an ODOC Inmate Communication form containing your inquiry to Investigator Olson concerning the transcript, and Investigator Olson's response that the OSP

hearings section would not type a transcript of the disciplinary proceeding because transcripts are prepared only when an inmate is appealing the case to the Oregon Court of Appeals. Consistent with that response, we are informed by OSP Hearings Secretary Connie Gesner that OSP has not transcribed the audio tape hearing record in disciplinary case number 06-92-022 as there was no appeal.[1/]

This office cannot order the disclosure of records that do not exist. Because ODOC does not have a transcript of the prison disciplinary case referenced in your petition, we deny your petition. ORS 192.450(1).

Sincerely,

Elizabeth S. Harchenko

Elizabeth S. Harchenko
Special Counsel to
the Attorney General

JVV:AV:jvv/bjs/JGG063BE
c: Fred Maass, Superintendent
Oregon State Penitentiary
2605 State Street
Salem, OR 97310

[1/] Ms. Gesner informs us that you may request a copy of the audio tape recording of the hearing, pursuant to ODOC's administrative rule on Release of Public Records, OAR 291-37-005 to 291-37-025.