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June 22, 1993

Steven E. Rosenbaum
Attorney at Law
Metropolitan Public Defender
Multnomah County Section
630 S.W. Fifth
Portland, OR 97204-1405

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

Dear Mr. Rosenbaum:

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 17, 1993, asks the Attorney General to direct the Oregon Department of Corrections (ODOC) to make available to you copies of the following records:

> * * * [I]nformation on individuals charged both administratively and criminally for escape from correctional facilities. The information we require for a three-year period is the following:
>
> 1. Number of incidents at Department of Corrections correctional facilities that led to either administrative discipline or criminal charges for escape;
>
> 2. Number of incidents referred to county district attorneys for filing of criminal charges;
>
> 3. A breakdown by race of the individuals alleged to be involved in incidents, and the number of individuals whose incidents are forwarded to a district attorney for criminal prosecution; and
>
> 4. Number of incidents in which there is an administrative discipline imposed on an inmate.

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

The Attorney General may order a state agency to disclose records only where the agency first has denied a request for public records. ORS 192.450 (1). A public body does not deny a request merely because it fails to comply with a deadline the requestor seeks to impose. Public Records Order, October 6, 1992 (Neal). Although an unreasonable delay in responding to a records request may in some circumstances constitute a denial, here there has been no denial. In your petition, you state that as of the date of the petition you had received no reply from ODOC to your letter dated May 17, 1993, requesting information. We have spoken with Rusty Rice, ODOC Deputy Executive Assistant to Assistant Director for Institutions Denis Dowd. Mr. Rice informs us that due to the nature and broad scope of your request, other staff workload pressures, and the need to consult with legal counsel in this office, he has been unable to prepare ODOC's response to your request for the Director until this week.

Mr. Rice informs us that ODOC Director Frank Hall has advised you by letter that ODOC will make available copies of non-exempt portions of its records from which you may obtain much of the information you have requested, upon prepayment of ODOC's estimated actual costs which it will incur in locating and making the records available. He has also advised that Director Hall will be furnishing you with that estimate by letter by the end of this week.

Because ODOC has not denied your request for public records, your petition is premature and is, therefore, denied.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to
the Attorney General

ESH:JVV:AV:bjs/JGG07064
c: Frank A. Hall, Director
Oregon Department of Corrections
2575 Center St. NE
Salem, OR 97310-0470

Rusty Rice, Deputy Executive Assistant
to Assistant Director for Institutions
2575 Center St. NE
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