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August 25, 1993

James E. Jenkins, SID #9680703
Eastern Oregon Correctional Institution
2500 Westgate
Pendleton, OR 97804

Re: **Petition for Public Records Disclosure Order: Oregon Department of Corrections, and Eastern Oregon Correctional Institution Records**

Dear Mr. Jenkins:

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,[1/] which we received on August 19, 1993, asks the Attorney General to direct the Eastern Oregon Correctional Institution (EOCI) to make available to you for inspection EOCI's central institution file records pertaining to you.

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

The Public Records Law confers a right to access any public record 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 record in the office of the custodian. ORS 192.430. To that end, the Public Records Law authorizes 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. Id. Any person denied the right to inspect or to receive a copy of any

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[1/] Although your letter to the Attorney General does not request any specific action from this office, we have liberally construed your letter as a petition for disclosure of public records.

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).

Pursuant to the Public Records Law, the Oregon Department of Corrections has adopted administrative rules, OAR 291-37-015(2) and 291-37-020(1) and (2), which provide in pertinent part:

> OAR 291-37-015
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> * * * * *
>
> (2) The request must be in writing, addressed to the Department's functional unit manager where the record(s) is located * * * .
>
> OAR 291-37-020
>
> (1) The functional unit manager will designate one (1) or more employee to review record(s) for release.
>
> (2) Upon direction from the functional unit manager, the designated staff member(s) will review the record(s) as necessary and will determine whether the record(s) are exempt from disclosure * * * .

Your petition states that you requested access to your central institution file in writing from your correctional counselor, Georgianne Emery, and that Ms. Emery denied your request to inspect the records.

We have spoken with Ms. Emery concerning your petition. She informs us that when you requested to review EOCI's entire central institution file pertaining to you she directed you to make your request in writing to the custodian of the records, Nina Toronto, Chief Records Officer for EOCI. We understand from Ms. Toronto that she has been directed by the EOCI's functional unit manager, Superintendent George Baldwin, to act as his designee pursuant to ODOC's rules on release of public records for purposes of receiving and responding to requests for records maintained in the central institution file. Ms. Toronto advises us that she has not received any written request from you for inspection or copying of records maintained by EOCI in the central institution file.

Because you have not made a proper written request for public records from the custodian of the records at EOCI, in this case, Ms. Toronto, EOCI has not denied a request for disclosure of public records. Under these circumstances, we have no authority to order ODOC or EOCI to provide copies of the requested records to you. ORS 192.450(1). Therefore, we must deny your petition as premature.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to
the Attorney General

ESH:AV:JVV:jvv/bjs/JGG078B5

c: George Baldwin, Superintendent
Nina Toronto, Chief Records Clerk
Georgianne Emery, Correctional Counselor
Eastern Oregon Correctional Institution