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September 30, 1993

Donald Franks, SID #7221032
Oregon State Penitentiary
2605 State St.
Salem, OR 97310-0505

Re: **Petition for Public Records Disclosure Order:**
Oregon State Penitentiary Records

Dear Mr. Franks:

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 September 29, 1993, asks the Attorney General to direct the Oregon State Penitentiary (OSP), to make available to you copies of the following records:

1. Cassette recordings of prison disciplinary hearings conducted in relation to agency case number 02-93-092 (Hearings Officer Goldade) initiated on or about February 11, 1993, and concluded on or about February 19, 1993; and

2. Cassette recordings of prison disciplinary hearings conducted in relation to agency case number 02-93-164 (Hearings Officer Stigler) initiated on or about March 1, 1993, and concluded on or about June 6, 1993.

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 exceptions 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 other records in the office of the custodian. ORS 192.430.

ORS 192.430 authorizes state agencies to adopt reasonable rules and regulations necessary for protecting the records and preventing interference with the regular discharge of duties of the custodian. Moreover, the Public Records Law permits public bodies to establish and recover fees reasonably calculated to reimburse them for their actual costs in making public records available, including the time spent by agency staff in locating and reviewing the requested records in order to delete exempt material. *See* ORS 192.440(3); *see also* Public Records Order, April 7, 1989 (Martin).

Pursuant to these statutes, the Oregon Department of Corrections (ODOC) has adopted administrative rule OAR 291-37-020(3)(b), which provides in pertinent part:

> * * * [n]o inspection and/or duplication of record(s) is authorized until payment has been received.

Your petition states that you requested copies of the cassette recordings of prison disciplinary hearings from OSP Superintendent Fred Maass, but that as of the date of your petition you had not received any response to your request. We have spoken with Robert Wallace, Assistant Superintendent for General Services at OSP concerning your petition. Mr. Wallace informs us that he has recently responded to your request for copies of the requested hearings tapes via memorandum, denying your request for lack of sufficient funds in your inmate trust account to cover OSP's costs in making copies of the requested records available to you.

Because OSP lawfully may require that you prepay its costs that will be incurred in making copies of the requested tape records available to you, OSP has properly denied your request for copies of public records. Therefore, we must deny your petition.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to
the Attorney General

ESH:JVV:bja/JGG07DD0
c: Fred Maass, Superintendent
Robert Wallace, Assistant Superintendent
Lemuel Stigler, Hearings Officer
Oregon State Penitentiary