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October 8, 1993

Philip McClure
SID # 5072942
2605 State Street
Salem, Oregon 97310-0505

Re: *Petition for Public Records Disclosure Order: Children's Services Division Records*

Dear Mr. McClure:

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 October 5, 1993, asks the Attorney General to direct the Children's Services Division to make available the following:

1. For what offense(s) is/are Joshua incarcerated?
2. What is the Juvenile Court case number?
3. What date was Joshua incarcerated in Lane County?
4. What date was Joshua transferred into the custody of MacLaren?
5. When is Joshua scheduled for release or parole?
6. Is Joshua receiving mail which you send him, and if not, why?
7. Summons, Petition, and Court Order related to Joshua's case.
8. Any report(s) submitted by Department of Youth Services & Skipworth Juvenile Home and MacLaren School pursuant to ORS 419.567.

For the reasons that follow, we respectfully deny requests nos. 2, 3, 4, 7 and 8 as premature, request no. 6 as outside the scope of the Public Records Law, and requests nos. 1 and 5 as moot.

A. Requests Nos. 2, 3, 4, 7 & 8 are Premature

The Attorney General may order a state agency to disclose records only where the agency has first denied a request for records. ORS 192.450(1). A comparison of the items

requested in your petition with your letters to CSD dated August 14, 1993, and September 15, 1993, demonstrates that your petition asks for different information than your August and September letters. Requests nos. 2, 3, 4, 7 and 8 in the petition have not been made to CSD nor has CSD denied those requests at this time. Therefore, we must deny requests nos. 2, 3, 4, 7 and 8 in your petition as premature.

B. Request No. 6 is Outside the Scope of the Public Records Law

The Public Records Law does not require a public body to create records to satisfy a public records request. *Attorney General's Public Records and Meetings Manual* 3 (1989). Your petition asks whether Joshua is receiving mail sent by you, and if not, why? There is no record in the file about Joshua's mail and CSD is not required to create a record for your benefit. To the extent that you seek records that CSD does not have, the Attorney General has no authority to order disclosure.

C. Requests Nos. 1 & 5 are Moot

ORS 419.567(5) provides that the "basis for the juvenile court's jurisdiction" over law violators and "that portion of the juvenile court order providing for legal disposition of the juvenile" is not confidential. CSD has agreed to provide you with a copy of the juvenile court's dispositional order describing the basis for the court's jurisdiction over Joshua and that portion of the juvenile court's order providing for legal disposition of Joshua. The information contained in the court order responds to your first and fifth requests about the basis for Joshua's incarceration and when he is scheduled for release. To the extent that request no. 5 asks about an early release or parole possibility, there is no information in the CSD file that would respond to your request, and CSD is not required to create a record that does not exist. Since CSD has agreed to provide you with a court order responsive to requests nos. 1 and 5 of your petition, we respectfully deny your requests as moot. To the extent that you seek records that CSD does not have, the Attorney General has no authority to order disclosure.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the Attorney General

ESH:jpl/JAA00E6C.W51