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October 26, 1993

Connie Wright
Council Representative
Oregon AFSCME, Council 75
721 3rd St., Suite 302
Pendleton, OR 97801

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

Dear Ms. Wright:

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 19, 1993, asks the Attorney General to direct Eastern Oregon Correctional Institution to make available for inspection the "Institutional SAIF File of Mark Britton."[1]

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

The Attorney General may order a state agency to disclose records only where the agency has first denied a request for public records inspection. 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 inspection request may in some circumstances constitute a denial, here there has been no denial.

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[1] We understand from your petition and the attached correspondence that you are acting on behalf of Mr. Britton in this matter.

Ron Kellmer, Safety and Sanitation Officer at Eastern Oregon Correctional Institution has informed us that he initially declined to allow Mr. Britton to inspect this file because he was uncertain what portions of the records Mr. Britton was allowed to examine. When he received your letter of September 29, 1993, Mr. Kellmer asked Assistant Attorney General Steve Krohn for advice regarding his public records inspection obligations. He was informed that in order for Mr. Krohn to provide such advice, Mr. Krohn would first need to review the inspection request and the file.[2] On October 13, 1993, Mr. Britton again requested to see the SAIF file and Mr. Kellmer declined to allow Mr. Britton to see it until after completion of the file review by Mr. Krohn. Kellmer explained this to Mr. Britton in a memo he wrote to Mr. Britton on October 13, 1993, and promised to notify Mr. Britton of the institution's decision on his records request after receiving Mr. Krohn's review.

The review of the file and Mr. Britton's request to inspect it is being undertaken by Mr. Krohn and should be completed within the next 10 days. Mr. Kellmer will be informed of his public records inspection obligations with regard to Mr. Britton's request when the review is completed. Because Eastern Oregon Correctional Institution has not denied the records inspection request, your petition is premature. For this reason, the petition is denied.

Sincerely,

ELIZABETH S. HARCHENKO
Special Counsel to the Attorney General

ESH:AV:jpl/JAA00E9D.W51
cc: Frank Hall
G. H. Baldwin
Ron Kellmer
Steve Krohn

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[2] Providing legal advice to state agencies is a regular part of the responsibilities of assistant attorneys general. See ORS 180.060(7). Agencies do not violate the Public Records Law when they delay responding to a request in order to obtain needed legal advice. *Attorney General's Public Records and Meetings Manual* (1989) at 9.