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December 30, 1993

Anthony Bowers, SID #8044962
Oregon State Correctional Institution
3405 Deer Park Drive SE
Salem, OR 97801

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

Dear Mr. Bowers:

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 December 27, 1993, asks the Attorney General to direct the Oregon Department of Corrections (ODOC) to make available to you for inspection and copying ODOC's case file pertaining to you maintained at the Oregon State Correctional Institution (OSCI). For the reasons that follow, we respectfully deny your petition.

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 records in the office of the custodian. ORS 192.430. Any person denied the right to inspect or to receive a copy of any 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).

ORS 192.430 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. Moreover, the Public Records Law permits public bodies to establish and recover fees reasonably calculated to reimburse it for its actual cost 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 has adopted administrative rules, OAR 291-37-020(3)(b) and (7), which provide in pertinent part:

> (3)(b) * * * [n]o inspection and/or duplication of record(s) is authorized until payment has been received.
>
> * * * * *
>
> (7) Proper and reasonable opportunity for inspection and/or duplication of record(s) will be provided, consistent with security requirements at each Department facility and functional unit and as circumstances warrant.

Your petition states that you requested to inspect and copy documents from ODOC's case file pertaining to you on four separate occasions, but that your requests have been denied by Verla Rosevear, who is employed in OSCI's Records Department.

We have spoken with Ms. Rosevear, Chief Records Clerk at OSCI, concerning your petition. She has confirmed to us that you have made requests to inspect the file, and to obtain copies of certain documents contained in the file. Ms. Rosevear informs us that she responded to your most recent request by memorandum dated December 7, 1993. That response, a copy of which is enclosed, informs you that OSCI will make available to you copies of the records you have requested, upon your prepayment to ODOC of $1.50, reflecting ODOC's fee schedule of 50 cents per page for copies of public records. The memorandum also informs you that you may not access the original file.

In a previous public records order directed to ODOC's predecessor agency, the former Corrections Division, we concluded that the right to inspect public records under the Public Records Law was satisfied by the Division's furnishing copies of the requested records at a cost of 50 cents per page. Public Records Order, July 19, 1982 (Baucom). At that time, the Corrections Division had provided by rule that the manner in which it made records available for inspection was by providing copies at a cost of 50 cents per page. The division had determined that the cost of the alternative to making copies, which would require a responsible employee of the division to supervise the actual inspection and to return the records to the files, would be at least as great as the cost of furnishing copies, and that greater administrative inconvenience would result. Based upon the division's representations, and the fact that the division could charge for its costs in making the records available, we

determined that we could not say that the division's policy of providing copies in lieu of making the records available was unreasonable. Baucom, supra at 2.

We have since reaffirmed in a recent Public Records Order our conclusion that the right to inspect is satisfied by the furnishing of copies of requested records upon payment to ODOC of its costs in making the records available. Public Records Order, dated July 1, 1993 (Duvigneaud).

Because OSCI has informed you that you may obtain copies of file records upon prepayment of its costs in furnishing copies to you as provided by ODOC rule at a cost of 50 cents per page, OSCI has not denied a request for disclosure of public records. Under these circumstances, we have no authority to order ODOC or OSCI to make the original file available to you for your inspection, or 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/JGG08931
Enclosure
c: (w/o encl):
Carl Zenon, Superintendent;
Verla Rosevear, Chief Records Clerk;
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