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June 8, 1990

Frank A. Madrid
Box 52799
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2605 State Street
Salem, OR 97310

Re: **Petition For Public Records Disclosure Order; Risk Management Division Records**

Dear Mr. Madrid:

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 June 5, 1990, asks the Attorney General to direct the Risk Management Division (division) to make available for inspection and/or copying the following records:

> "[T]he corrections report prepared by the Oregon State Department of Corrections in response to inquiries of the [Inmate Claims Unit] relating to Risk Management Claim No. L37113."

For the reasons stated below, we respectfully deny your petition.

The Risk Management Division denied your request under ORS 192.501(1), the Public Records Law exemption for public records pertaining to litigation.[1] That statute conditionally exempts from disclosure:

> "Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been

concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation[.]" (Emphasis added.)

The exemption applies "unless the public interest requires disclosure in the particular instance." Id.

One indication that litigation is reasonably likely to occur is that a person has filed a notice of tort claim against the state. Public Records Order, January 12, 1990 (Bischoff). Here, on October 18, 1989, you filed a notice of tort claim. In response to that notice, and at the division's request, the Department of Corrections (department) prepared the report you seek. We conclude that the report was prepared by a public body for litigation that is reasonably likely to occur. The record, therefore, falls within the exemption.

As already noted, the litigation records exemption is conditional. Accordingly, we must determine whether the "public interest requires disclosure in the particular instance." It appears that you wish to view the report in order to attempt to show inconsistencies between that report and internal reports prepared by the department on the incident in question. Although that desire shows a private interest, it does not qualify as a public interest weighty enough to override the exemption. Cf. Attorney General's Public Records and Meetings Manual 8 (1989) (under fee waiver statute, "public interest" not satisfied by private party's desire to use records to aid his defense against criminal prosecution, or by allegation that agency has treated individual oppressively). Moreover, the availability of ordinary tools of discovery, see ORS 192.501(1), tends to negate any need to use the Public Records Law to gain access to the report. We conclude, therefore, that the report is exempt from disclosure under ORS 192.501(1). On that basis, we deny your petition.

Sincerely,

PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

PLA:JJVV:RDW:cfs/1809G
c: Inmate Claims Unit, Risk Management Division
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