DAVE FROHNMAYER
ATTORNEY GENERAL
STATE OF OREGON

JAMES E. MOUNTAIN, JR.
DEPUTY ATTORNEY GENERAL



DEPARTMENT OF JUSTICE
Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400

November 28, 1990

Steven L. Fox
Box # 12498
3405 Deer Park Drive, SE
Salem, OR 97310

Re: **Petition For Public Records Disclosure Order; Oregon Department of Corrections and Oregon State Penitentiary Records**

Dear Mr. Fox:

This letter is the Attorney General's order on your most recent petitions for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. The first of your two petitions, which we received on November 21, 1990, asks the Attorney General to order the Oregon Department of Corrections (ODOC) to make available to you copies of the following records:

> "1.) Any and all signed receipts from purchased for items bought at OSP during the month of 1-01-89 through 1-30-89;
>
> "2.) The singed (sic) copy of inmate's commissary slip he sigend (sic) after and befor (sic) he received his purchased items."

Your second petition, which we also received on November 21, 1990, asks the Attorney General to order the Oregon State Penitentiary (OSP) to make available to you copies of the following records:

> "1.) . . . [documents that] revail (sic) the officer's name who [took] me from OSP to OSCI on 1-09-89 . . .;
>
> "2.) . . . 1988-89 commissary list with prices;

> "3.) . . . list or step-by-step instrunsion (sic) on what happens to a prison (sic) when he's removed from two-Bar to one Bar . . . what happens to the person (sic) propty (sic), where it goes, who picks it up . . . all they have to do is get a (sic) (officer (Pikel) to wright (sic) a memo of what happens to his propty (sic) when he's taken down to one-Bar;
>
> "4.) . . . [documents that disclose] who worked the night Steven Fox was moved from the 2 Bar two (sic) one Bar."

For the reasons that follow, we deny your petitions as premature in part and moot in part.

Items 1 and 2 in your current petitions appear to be the same as items contained in your previous petition we received on October 25, 1990. OSP officials inform us that they provided you with a copy of a canteen receipt dated January 3, 1989, the only document they could find within the scope of these requests. We also have spoken with officials at the Oregon State Correctional Institute (OSCI). They inform us that you received OSP's response dated November 13, 1990, together with enclosed documents, on November 19, 1990. ODOC informs us further that neither Mr. Russell nor any other ODOC employee at the Central Office maintain such records. Accordingly, we deny this petition as moot.

The second petition also requests the same items sought in a previous petition which we received on October 25, 1990. Again, OSP informs us that they have responded to your previous request for public records by letter dated November 13, 1990, and provided you with copies of all documents that satisfied your request. To the extent that you ask the Attorney General to order OSP or ODOC to answer interrogatories or create memoranda providing you with specific information, we must deny that request. The Public Records Law does not impose on public bodies the duty to create public records. See Letter of Advice, dated June 1, 1987, to Jim Kenney, Supervisor,

Urban-Renewal Section, Department of Revenue, (Op-6126). One item in your second petition, item 2, does not appear to have been previously requested by you from OSP. OSP officials inform us, however, that they again will treat your petition for this item as a proper written request for public records, and that they will provide you with a copy of this item in a timely manner. Accordingly, we deny your second petition as moot in part and premature in part.

Sincerely,

James E. Mountain Jr

for PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

PLA:JJVV:RDW:bjs/2880G
c: Manfred Maass, Superintendent
Oregon State Penitentiary
2605 State Street
Salem, OR 97310

Jerry Russell, Central Trust Officer
Oregon Department of Corrections
2575 Center St., NE
Salem, OR 97310