DAVE FROHNMAYER
ATTORNEY GENERAL
ATE OF OREGON

JAMES E. MOUNTAIN, JR.
DEPUTY ATTORNEY GENERAL



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

December 6, 1990

Thomas Mann
Managing Editor
North Santiam Newspapers, Inc.
399 S. Water
P.O. Box 35
Silverton, OR 97381

Re: Petition for Public Records Disclosure Order: Board of Parole and Post-Prison Supervision Records

Dear Mr. Mann:

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 November 27, 1990,[1] asks the Attorney General to direct the Oregon State Board of Parole and Post-Prison Supervision (board) to make available for inspection all psychological examinations and evaluations of Duane E. Samples within the past two years. For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. See ORS 192.420. The records you wish to inspect fall within an exemption to the general rule of public accessibility to government records.

ORS 192.502(4) exempts from disclosure:

> "Information or records of the Department of Corrections, including the State Board of Parole and Post-Prison Supervision, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the department or substantially prejudice or prevent the carrying out of the functions of the department, if the public interest in confidentiality clearly outweighs the public interest in disclosure."

In Turner v. Reed, 22 Or App 177, 538 P2d 373 (1975), the Oregon Court of Appeals held that all such psychiatric and psychological reports in the board's files are exempt from disclosure under former ORS 142.500(2)(d) (now ORS 192.502(4)) as a matter of law. The court found that the disclosure of such reports would substantially prejudice the performance of board functions. The court concluded that the public's interest and need for candor in these reports clearly outweigh the public's interest in having access to the information to monitor and evaluate the board's decisions.

Under the Turner v. Reed holding, the exemption applies to this category of documents, regardless of the specific contents of each document. The court so held because, unlike many exemptions in Public Records Law that require analysis of whether "the public interest requires disclosure in the particular instance," former ORS 192.500(1) (emphasis added) (now ORS 192.501), former ORS 192.500(2)(d) was not so conditioned. Turner v. Reed, supra, 22 Or App at 186-89. Because that statute is unchanged, Turner v. Reed controls here unless inconsistent with subsequent law.

It could be argued that Guard Publishing Co. v. Lane County School Dist., 310 Or 32, 791 P2d 854 (1990), requires an individualized, case-by-case analysis of the exemption. There, the court held that a public body may not adopt a blanket policy of nondisclosure of specified information without an individualized showing of justification for an exemption. 310 Or at 40. That case, however, arose under ORS 192.502(2), which requires an analysis whether "the public interest by clear and convincing evidence requires disclosure in the particular instance." (Emphasis added.) Guard Publishing, therefore, is not necessarily inconsistent with the blanket approach adopted under a different exemption in Turner v. Reed.

Nonetheless, we have reviewed the reports in question, to determine whether their contents reveal a public interest in disclosure not considered by the court in Turner v. Reed. Specifically, because of the horrific nature of Mr. Samples' crimes, we have carefully considered whether public disclosure of those reports is necessary to protect the public. Given the already extensive publicity about Mr. Samples' background and impending release, we find nothing in those reports the public disclosure of which is required for public safety.

We are sensitive to the strength of the public interest in knowing the opinions of mental health professionals on the psychological condition of Mr. Samples. That knowledge could aid the public in assessing for themselves whether Mr. Samples is dangerous, and thus to evaluate the board's release decision. Turner v. Reed, however, compels us to conclude that the countervailing public interest in nondisclosure -- preservation of the board's ability to receive candid psychological reports from qualified mental health professionals[2] -- outweighs the public interest in disclosure. That interest is particularly high here, where the board's decision involves a notorious inmate and complex psychological issues.[3]

For these reasons, we respectfully deny your petition to compel disclosure.

Sincerely,

PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

PLA:JGR:RDW:bjs/3158G

c: Vern Faatz, Chairman
Board of Parole and Post-Prison Supervision
2575 Center St., NE
Salem, OR 97310

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[1] We appreciate your courtesy in allowing us to exceed the statutory 7-day deadline for issuing this order.

[2] Potential interference with an inmate's rehabilitation may also justify nondisclosure under ORS 192.502(4). We have insufficient information, however, to evaluate the weight of this factor in this instance, and accordingly do not rely on it.

[3] Because of our conclusion, we do not address the potential application of ORS 192.496(1) and (3).