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May 20, 1999

Franklin Furgerson, SID #7612937
Eastern Oregon Correctional Institution
2500 Westgate
Pendleton, OR 97801

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

Dear Mr. Furgerson:

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 May 13, 1999, requests the Attorney General to direct the Oregon Department of Corrections (ODOC) to make available to you copies of the following documents:

(1) The "notice of hearing" relating to disciplinary case #9903-J217.
(2) The disciplinary report relating to disciplinary case #9903-J217.
(3) The taped record of the disciplinary hearing for disciplinary case #9903-J217 (tape P5425A (300 to end) and tape P5425B (000 to 258)).
(4) Any documents, memorandums and special reports concerning the disciplinary hearing for disciplinary case #9903-J217.

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 law requires generally that the custodian of public records furnish proper and reasonable opportunities for inspection or copying of the record 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 disclosure. 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 the agency 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 protecting their records and preventing interference with the regular discharge of the duties of the custodian. Pursuant to this statute, ODOC has adopted administrative rule OAR 291-37-015(2), which provides that requests for records "must be in writing, addressed to the Department's functional unit manager where the record(s) is located."[1/]

Your petition states that you made several requests of Jean Hill, Superintendent of Eastern Oregon Correctional Institution (EOCI), for copies of the above-listed records but that your requests were denied by both Superintendent Hill and Peter Sturdevant, a hearings officer at EOCI. We have spoken with Mr. Sturdevant regarding your petition. Mr. Sturdevant informs us that upon review of his files, he was unable to locate any inmate communication or other request for copies of the records referenced in your petition. Mr. Sturdevant further states that he spoke with the staff in Superintendent's office and that they were unable to locate any records request from you in Superintendent Hill's files.

Absent a request for records and a denial of that request by the state agency, the Attorney General has no authority to order ODOC to make the records available to you. *See* ORS 192.450(1). Accordingly, we deny your petition as premature.[2/]

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

AGS02229
C: Jean Hill, Superintendent, Eastern Oregon Correctional Institution
Peter Sturdevant, Hearings Officer, Eastern Oregon Correctional Institution

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[1/] "Functional Unit Manager" is defined as "[a]ny person within the Department who reports to the Director, an assistant director or an administrator and has day-to-day responsibility for the delivery of services and coordination of programs." OAR 291-37-010(5). For records maintained at a correctional facility, the "functional unit manager" is the superintendent.

[2/] A request for records maintained at EOCI should be in writing and addressed to Superintendent Jean Hill. The Public Records Law permits public bodies to establish and recover fees reasonably calculated to reimburse them for their actual cost in making public records available. ORS 192.440(3); *see also* OAR 291-37-020(3)(b). A public body may also require prepayment of those costs. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1997) at 11.