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January 19, 1999

Jonathan W. Petersen, SID #6925935
Snake River Correctional Institution
777 Stanton Boulevard
Ontario, OR 97914-0595

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

Dear Mr. Petersen:

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 latest petition, which we received on December 30, 1998,[1/] asks the Attorney General to direct the Oregon Department of Corrections (ODOC) to make available to you a copy of a report entitled "Control of Pornography in Department of Corrections Facilities."

For the reasons that follow, we respectfully deny your petition.

You state in your petition that your records request was denied for the sole reason "that I do not have the funds available with which to purchase the report." As discussed in our previous order to you dated November 20, 1998, a state agency may charge a fee to reimburse the agency for its actual cost in making records available, including its photocopy costs and the time spent by agency personnel. *See* ORS 192.440(3). ODOC has adopted rules requiring payment of its fees for making records available. OAR 291-037-0020. An agency does not deny a records request, nor does an agency deprive the requestor of "equal protection rights," by following its rule in requiring payment of its fees for making records available.

ORS 192.440(4) and (5) allow a waiver or reduction of fees and a process for petitioning from unreasonable denials of fee waivers or reductions in connection with requests for access to public records under the Public Records Law. Under the statute, a custodian of

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[1/] We appreciate your courtesy in extending the time within which the law would have otherwise obligated us to issue this order.

any public record may furnish copies without charge, or at a substantially reduced fee, if the custodian determines that the waiver or reduction in fees "is in the public interest because making the record available primarily benefits the general public." ORS 192.440(4).

In the Inmate Communication dated November 29, 1998, that you sent to Dave Schumacher, ODOC Rules Coordinator, you state that providing the records to you will save the state certain "litigation costs," apparently in avoiding possible claims or discovery requests. Without such litigation having been filed, any cost savings to the state are hypothetical at best. Moreover, the fee waiver provision of the Public Records Law has been consistently construed as requiring a finding that the public will benefit because the requestor will disseminate the information contained in the records to the general public. *See* ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1997) at 13-15. We have spoken with Dave Schumacher regarding your petition. Mr. Schumacher informs us that you lack not only the means, but the authority, to distribute documents to other inmates within an ODOC institution. Thus, you have failed to show that making the record available to you by waiving the fees will "primarily benefit the general public."

Accordingly, we respectfully deny your petition to order ODOC to make the records available to you without payment of its fees.

Sincerely,

STEPHANIE L. STRIFFLER
Special Counsel to the Attorney General

AGS01411

c: Dave Schumacher, Rules/Compliance Coordinator
Oregon Department of Corrections
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