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November 20, 1998

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 Records

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 petition, which we received on November 13, 1998, asks the Attorney General to direct the Oregon Department of Corrections (ODOC) to make available to you for inspection at the Snake River Correctional Institution (SRCI) a report entitled "Control of Pornography in Department of Corrections Facilities."

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

The Public Records Law confers a right to access any public record 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 and/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 public inspection. ORS 192.450(1).

ORS 192.430 authorizes state agencies to adopt reasonable rules and regulations necessary for protecting the records and preventing interference with the regular discharge of duties of the custodian. Moreover, 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, including the time spent by agency staff in locating and reviewing the requested records in order to delete exempt material. *See* ORS 192.440(3); *see also* Public Records Order, April 7, 1989 (Martin).

Pursuant to these statutes, the Oregon Department of Corrections (ODOC) has adopted administrative rules, OAR 291-037-0005(3) and OAR 291-037-0020(3)(a)(A), (b) and (7), which provide in pertinent part:

> (3) Policy: It is the policy of the Department of Corrections that public records will be available to all persons, consistent with all laws governing the disclosure of such records and consistent with the need to protect such records, to prevent interference with the regular discharge of duties and to recover fees reasonably calculated to reimburse the Department for its actual cost in making such records available.

OAR 291-037-0005(3).

> (3)(a) The cost of duplication will be based on actual cost, including staff time to locate, review and copy the record(s), all material and first class postage, where applicable:
>
> (A) Unless circumstances warrant a different conclusion, it may be presumed that, if the request is for a specific releasable document, the cost of the duplication is 50 cents per page [.]
>
> * * * * *
>
> (b) * * * [N]o inspection and/or duplication of record(s) is authorized until payment has been received;
>
> * * * * *
>
> (7) Proper and reasonable opportunity for inspection and/or duplication will be provided, consistent with security requirements at each Department facility and functional unit and as circumstances warrant.

OAR 291-037-0020(3)(a)(A), (b) and (7).

Your petition states that you were told by persons at SRCI that you would need to contact Dave Schumacher, ODOC's Rules Coordinator, to obtain a copy of the report you are seeking. Your petition further states that upon contacting Mr. Schumacher's office, you were informed that the report was available for inspection in his office in Salem, and that while ODOC would not transfer the documents to the inmate law library

at SRCI for your inspection, ODOC was willing to make a copy of the report available to you upon your prepayment to ODOC of its fees for making a copy of the report available.

We have spoken with Teresa Hicks, the institution rules coordinator at SRCI, regarding your petition. Ms. Hicks informs us that the report you seek is not maintained at SRCI, but is maintained by ODOC in its central administration offices located in Salem, specifically, in the office of ODOC's Rules Coordinator, Mr. Schumacher.

The Public Records Law does not require public bodies to ship records from the office in which they are maintained to another location for the convenience of the person requesting the records. *See* ORS 192.430(1). ODOC may lawfully choose to keep the report in question in its central administrative offices in Salem to prevent interference with the regular discharge of duties of the agency. *See* Public Records Order, August 13, 1996, Tuttle. Therefore, we conclude that ODOC has not denied your records request merely because ODOC refuses to make the report available to you at the SRCI inmate law library. *See* 192.450(1).

As noted above, an agency may charge a fee to reimburse it for its actual cost in making records available, including its photocopy costs and the time spent by agency personnel. *See* ORS 192.440(3). Because ODOC has informed you that it will make a copy of the report available to you upon prepayment of the fees established in the agency's administrative rules, ODOC has not denied your request for the report. *See* ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1997), at 11-12.

Absent a denial of a records request by a state agency, the Attorney General has no authority to order the agency to disclose the record to you. *See* ORS 192.450(1). Accordingly, we respectfully deny your petition as premature.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

AGS0001038

c: Dave Schumacher, Rules/Compliance Coordinator
Oregon Department of Corrections
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Salem, OR 97310-0470