HARDY MYERS
ATTORNEY GENERAL

DAVID SCHUMAN
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97310-0506
Telephone: (503) 378-4400
TDD: (503) 378-5938

October 16, 1998

Kevin E. Lucey
Attorney at Law
299 SW Market
Suite 1600
Portland, OR 97201

Re: ***Public Records Disclosure Order; Oregon Department of Corrections Records***

Dear Mr. Lucey:

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 September 4, 1998,[1/] asks the Attorney General to direct the Oregon Department of Corrections (ODOC) to make available to you copies of the following records:

1. All reports concerning misconduct by Steven Robinson, SID# 11127591, while incarcerated;

2. All reports of past claims of misconduct and associated reports concerning Corporal Gary G. Adams, officer David P. Mitchell, officer Victor J. Pitner, and officer Larry D. Whittington;

3. All names of any EOCI or DOC employees related to Corporal Gary Adams by blood or marriage;

4. Names of all personnel involved with the investigation of this incident; and

---

[1/] We appreciate your professional courtesies in extending the time in which we would have otherwise been required to issue our order.

5. Any statements taken from Mr. Robinson and any recordings of statements made by Mr. Robinson.

For the following reasons, we respectfully deny your petition.

The Public Records Law confers a right to inspect 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 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).

The Public Records Law expressly authorizes a public body to establish fees "reasonably calculated to reimburse it for its actual cost in making such records available." ORS 192.440(3). "Actual cost" may include a charge for the time spent by the public body's staff in locating the requested records, reviewing the records in order to delete exempt material and copying the records. *See* Public Records Order, April 7, 1989, Martin. A public body may preliminarily estimate charges for responding to a records request and require prepayment of the estimated charges before acting on the request. *See* ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (MANUAL) 11-12 (1997).

We understand from Assistant Attorney General (AAG) Jef Van Valkenburgh, ODOC's general counsel contact attorney in this office, that since the filing of your petition ODOC officials have made available to you copies of the requested records, save and except the following records which ODOC asserts are exempt from disclosure under one or more statutory disclosure exemptions:

(1) Relative to item 1 in your petition, 12 pages of the hearing records in inmate Disciplinary Case No. F09-97-067 containing information specifying the identity of confidential informants, their verbatim statements and information concerning the informants' reliability or the truthfulness of their statements;

(2) Relative to item 2, two pages of medical records pertaining to ODOC inmate Gary Tripp; and

(3) Relative to item 3, the names of any ODOC employees related to former ODOC Corporal Gary G. Adams by blood or marriage.

We understand further from AAG Van Valkenburgh that ODOC officials have resolved with you the issue of its fees for making copies of its records available to you. *See* Letter to Kevin E. Lucey from AAG Jefry J. Van Valkenburgh, dated October 9, 1998. Accordingly, we deny your petition as moot regarding the fee issue, and as to the requested records and information, except for the records and information identified above that ODOC has withheld from

disclosure to you. As to such records and information, we address ODOC's claimed exemptions below.

Confidential Informant Information

ORS 192.502(5) conditionally 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 prevent the carrying out of the functions of the department, if the public interest in confidentiality clearly outweighs the public interest in disclosure.

Pursuant to this exemption, ODOC has withheld from disclosure copies of 12 pages of the hearing record in an inmate disciplinary case involving inmate Steven Robinson. These records consist of form documents labeled "CONFIDENTIAL INFORMANT CHECKLIST" which contain information on the identity of confidential informants, their verbatim statements and information concerning the informants' reliability or the truthfulness of their statements. Upon further review of these records, ODOC officials advise us that they are willing to make available to you redacted copies of the form records, absent the names and State Identification Numbers (SID) of the inmate informants and their verbatim statements. Because ODOC is willing to make the redacted CONFIDENTIAL INFORMANT CHECKLIST records available to you, we deny your petition as moot with respect to the information that ODOC has now agreed to disclose.

ODOC officials inform us that, in their experience, disclosure of information permitting identification of inmate informants, i.e., names, SID numbers and verbatim statements, would put the inmate informants and their families at risk of harm at the hand of other inmates incarcerated in ODOC facilities or by their confederates in the community. ODOC officials explain that as a necessary result of the disclosure of this information, ODOC's ability to protect the personal safety of the inmates and to gather information vital to maintaining internal order and discipline in the state's correctional facilities would be substantially threatened or impaired.

The legislature has charged ODOC with a number of varied functions and duties concerning those offenders committed to its jurisdiction by the courts. *See* ORS 423.020(1) 179.040 and 179.321(2). At the core of its statutory functions and duties is ODOC's responsibility for exercising custody over such persons until they are subject to lawful release, by safely confining them in one of the state's correctional facilities. *Id.* As a necessary adjunct to this responsibility, ODOC has adopted administrative rules for the governance of its correctional facilities, including rules of prohibited conduct for inmates. *See* OAR 291-105-0005 to 291-105-0073 (Prohibited Inmate Conduct and Processing of Disciplinary Actions). The rules are designed to preserve and promote internal order and discipline within ODOC

institutions and to maintain the safety and security of ODOC employees, inmates and property. *See* OAR 291-105-0005. In pursuit of these objectives, ODOC has a legitimate and substantial interest in gathering intelligence from the inmate population concerning violation of its internal rules of inmate conduct.

We find that disclosure of the withheld informant information would jeopardize and substantially impair ODOC's ability to protect the personal safety of the inmate informants and to gather information vital to maintaining internal order and discipline in the state's correctional facilities and that disclosure would thus "substantially prejudice or prevent ODOC from the carrying out of the functions of the department." *See* ORS 423.020(1), 179.040 and 179.321(2); *see also* OAR 291-105-0005 to 291-105-0073. Based on ODOC's experience, we conclude that knowledge of the identity of inmate informants and of their verbatim statements would be used by certain inmates and their confederates in the public to threaten, intimidate and subject the inmate informants or their families to bodily harm. The natural consequence of such threats and acts of violence is to impair ODOC's ability to obtain information from inmates that is essential to the maintenance of internal order and discipline, and the safety and security of ODOC employees, inmates and property.

We conclude therefore that the public interest in maintaining the confidentiality of information that would permit the identification of inmate informants clearly outweighs any public interest in its disclosure. This information is exempt from disclosure under ORS 192.502(5). Accordingly, we deny your petition as to the names, SID numbers and verbatim statements of the inmate informants contained in the CONFIDENTIAL INFORMANT CHECKLIST form records withheld by ODOC.

Inmate Medical Records

ORS 192.502(9) exempts from disclosure:

> Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law.

In responding to your request for records of past claims of misconduct and associated reports concerning former ODOC Corporal Gary G. Adams, ODOC officials have withheld from disclosure two pages of a medical record that pertain to a past claim of misconduct made by ODOC inmate Gary Tripp against former Corporal Adams. We understand from ODOC officials that you have not provided to ODOC either a court order or a release signed by inmate Tripp authorizing ODOC to release the medical records to you. ODOC officials assert that these records are exempt under ORS 192.502(9) because another state law, ORS 179.495, prohibits ODOC from releasing the medical records to a third party in the absence of a court order or a statutory form of release signed by the inmate.

ORS 179.495 provides that inmate medical records

> shall not be subject to inspection except upon permission given by the Department of Corrections in compliance with ORS 179.505(3), (4), (6), (7), (9), (11), (12), (14) or (15), or upon order of a court of competent jurisdiction. The restriction contained in this section shall not apply to inspection or release of written accounts made under ORS 170.505(3) with the consent of the individual concerned, or in the case of the incompetence of the inmate, by the legal guardian of the inmate.

None of the above-cited subsections of ORS 179.505 would permit disclosure to you of inmate Tripp's medical records, except subsection (3), which requires voluntary and informed consent as provided in that subsection.

Because ORS 179.495 prohibits disclosure of these records to you without a court order or a properly release from inmate Tripp, we find that they are exempt from disclosure under ORS 192.502(9). Accordingly, we deny your petition as to these records

Names of ODOC Employees Who are Related by Blood or Marriage to Corporal Adams

ODOC officials assert that information concerning the familial relationships between and among ODOC employees is categorically exempt from disclosure under ORS 192.502(5) because disclosure of this information would permit inmates and their confederates in the community to threaten or take action against related staff and their families in order to gain advantage or retaliate against particular ODOC employees. As such, ODOC officials urge that disclosure of this information would "substantially prejudice or prevent the carrying out of the functions of the department," i.e., maintaining the safety, security and good order of ODOC correctional facilities, staff and inmates, by putting ODOC employees and their families at increased risk of harm from inmates and those who would act in their stead.

We need not resolve in this order whether the disclosure of information that would identify familial relationships between ODOC employees is categorically exempt from disclosure under ORS 192.502(5). *See Turner v. Reed*, 22 Or App 177, 538 P2d 373 (1975) (holding that certain categories of public records or information, due to their nature and context, may be determined to be exempt from disclosure under the Public Records Law without analyzing the disclosure of the records in the particular instance). We understand from ODOC officials, and from the correspondence attached to your petition, that your request for the names of ODOC employees related by blood or marriage to Mr. Adams is in connection with your representation of an ODOC inmate, Steven Robinson, who was allegedly physically assaulted by Mr. Adams. Because of the alleged assault, there exists an inherent potential for Mr. Robinson or persons associated with him, either inside or outside the correctional facility, to take retributory or retaliatory action against Mr. Adams and related family members. It is sufficient for purposes of our order that we agree with ODOC officials that under these circumstances information about the identity of persons related by blood or marriage to Mr. Adams, if it exists and were disclosed, would "substantially prejudice or prevent the carrying

out of the functions of the department" and that the public's interest in maintaining the confidentiality of the information would clearly outweigh the public's interest in its disclosure. *See* MANUAL at 56-57. We therefore conclude that the names of ODOC employees who are related to Mr. Adams by birth or marriage are exempt from disclosure under ORS 192.502(5). Accordingly, we deny your petition as to this information.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

AGS00870
c: Mrs. Les Dolecal, Inspector General
Mr. S. Frank Thompson, Assistant Director
for Institutions Division
Oregon Department of Corrections