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DEPARTMENT OF JUSTICE
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September 23, 1998

Mark Lawson
SID #4738552
3405 Deer Park Dr. SE
Salem, OR 97310-9385

Re: *Public Records Disclosure Order*
Oregon State Police Records, Oregon Department of Corrections Records

Dear Mr. Lawson:

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, which we received on September 16, 1998. For the reasons that follow, 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. ORS 192.420. A person who is denied the right to inspect or receive a copy of a public record of a state agency may petition the Attorney General to review the record, determine if it may be withheld from public inspection, and issue an order granting or denying the petition. ORS 192.450. If a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material. ORS 192.505.[1/]

[1/] Specifically in regard to Oregon State Police records, payment of fees for making records available is required in advance. OAR 257-020-0005; *see also* ORS 192.440 (public body may establish fees reasonably calculated to reimburse it for making records available). Specifically in regard to Department of Corrections records, a records request must be "in writing, addressed to the functional unit manager where the records are located, and must specify the record(s) from which information is requested, if known." OAR 291-37-015(1); *see also* ORS 192.430 (custodian of records may adopt rules necessary for protecting records and for preventing interference with the regular discharge of the duties of the custodian). The requestor also must pay in advance any costs associated with the inspection or duplication of Department of Corrections records. OAR 291-37-020(3)(b).

Your petition first asks the Attorney General to direct the Oregon State Police (OSP) to make available to you "information in connection with my case here #9806C023F01," and information about the timing of the OSP investigation of your case.

Your petition also asks the Attorney General to direct the Oregon Department of Corrections (ODOC) to make available to you certain documents that you asked ODOC Inspector General Les Dolecal to return to you, including

> findings of facts, a notarized letter from Larry Eggers, and also a letter from me stating why my case (9806C023F01) should be dismissed.

Finally, you ask the Attorney General to direct ODOC to make available to you copies of the following documents:[2/]

> [A]ny and all written statements to include all verbal, written and taped information and any other information including and [*sic*] exhibits, inmate communication, staff communication[,] witness communication and informant information, involved with case # 9806C023F01. And specifically beginning 5-5-98, 5-6-98, 5-9-98, 5-11-98, 5-21-98, and 5-22-98. Any and all statements made in their entirety.
>
> Any statements made by inmate, Douglas Roofener, Steven Chase, Leroy Smith, and Greg Claussen, and any other inmates. In their entirety.

We have spoken with OSP Sergeant Mike Gower regarding your first request. Sgt. Gower advised us that he has not received any request from you for this information.[3/] Thus, he has not had a chance to consider and respond to your request. Until a state agency

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[2/] These documents also were the subject of a petition we received from you on July 21, 1998. We denied the previous petition because we concluded that the requested records were then exempt under ORS 192.501(3) (exempting investigatory information compiled for criminal law purposes unless the public interest requires disclosure in the particular instance). *See* Public Records Order, August 4, 1998, Lawson.

[3/] It appears that your request to Sgt. Gower may have been misdirected. Your petition indicates that you addressed your communication to Sgt. Gower at 3710 NE Portland Road in Salem. Sgt. Gower is assigned to the OSP Division II Headquarters at 4760 Portland Road NE in Salem.

denies a request for public records, the Attorney General has no jurisdiction to order disclosure. *See* ORS 192.450(1). As to this request, therefore, we deny your petition as premature.

Although we conclude that your petition for this information is premature, we have consulted with ODOC, which also possesses the information you are seeking from OSP. ODOC has consented to our disclosure of the following information to you. At the time of your July 19, 1998, petition to this office, your case was under investigation by the ODOC Drug Investigations Unit. OSP formally requested that your case be submitted to it for review and possible referral for criminal prosecution on August 3, 1998. The OSP investigation was completed on August 13, 1998.

We next consider your request for public records from ODOC. ODOC Inspector General Les Dolecal informs us that she received two Inmate Communications from you. The first, dated August 14, 1998, asked Ms. Dolecal to return to you "findings of facts" and letters that you previously provided to her. The second, dated August 30, 1998, asked Ms. Dolecal to return "all the materials I sent you." Ms. Dolecal has informed us that the described documents were sent to you on September 22, 1998. Because you will be receiving those materials from Ms. Dolecal, we deny that portion of your petition as moot.

Finally, we consider your re-dated petition relating to the records previously addressed in our August 4, 1998, order. That order concluded that, at that time, the requested records were exempt from disclosure under ORS 192.501(3), the exemption for investigatory information compiled for criminal law purposes. As noted above, the criminal investigation was completed on August 13, 1998. Although the criminal investigation exemption does not automatically expire when the investigation closes, the governmental interest in maintaining confidentiality is diminished once law enforcement officials have closed the investigation or decided not to prosecute. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 27-28 (1997). Therefore, the completion of the criminal investigation of your case may affect our analysis under ORS 192.501(3).

As noted above, however, the Attorney General has authority to order disclosure of public records only after the records have been requested from, and denied by, a state agency. *See* ORS 192.450(1). Your petition does not allege that you have requested these records from ODOC since our August 4, 1998, order, and ODOC has advised us that it has no record

of having received any new request for those records.[4/] Because you have not requested the records from ODOC, and because ODOC has had no opportunity to grant or deny your request, we deny that portion of your petition as premature.[5/]

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

AGG00764
c: Sgt. Mike Gower, Oregon State Police
Les Dolecal, Inspector General, Oregon Department of Corrections

[4/] The only requests you made to any functional unit of ODOC since the issuance of our August 4, 1998, order, appear to be your August 14 and 30, 1998, requests to Inspector General Dolecal, which we discuss above.

[5/] Because we conclude that the portion of your petition relating to investigation records is premature, we do not determine at this time whether the criminal investigation exemption under ORS 192.501(3) continues to apply. Moreover, we express no opinion as to whether the investigation records, even if not exempt under ORS 192.501(3), may be exempt under some other provision of the Public Records Law.