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April 29, 1998

Lemuel Hentz, SID # 6750414
Eastern Oregon Correctional Institution
2500 Westgate
Pendleton, OR 97801

Re: *Petition for Public Records Disclosure Order: Eastern Oregon Correctional Institution Records*

Dear Mr. Hentz:

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 April 22, 1998, asks the Attorney General to direct George Baldwin, Superintendent of the Eastern Oregon Correctional Institution (EOCI), to make available to you the following records:

1. A copy of c/o Powell's written response to grievance #G-02-98-21;

2. A copy of Lt. Petherson's notes in reference to his investigation's (sic) under grievance number's G-02-98-06, G-02-98-21, G-02-98-20 and G-02-98-04;

3. A copy of c/o Duphis written response to my communication dated February (sic) 21, 1998

4. I am requesting copies of Letter's of reprimand, copies of grievance filed by other Staff against the parties mentioned herein, Letter's of suspension, and sanctions and probation information. This information is requested from the personal files of the following (EOCI) staff: c/o J. Roe, Sgt. Harsin, Sgt. Hegge, c/o Powell and C/o Dupuis;

5. A copy of a entry made on 2/14/98 at 1:52 pm in reference (sic) to Mr. Hert. In the staff Post Information Log, by c/o J. Roe.

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). 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 it 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 the records and preventing interference with the regular discharge of duties of the custodian. Pursuant to this statute, the Oregon Department of Corrections (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," and OAR 291-37-020, which provides in pertinent part:

> (1) The functional unit manager will designate one (1) or more employees to review record(s) for release.
>
> (2) Upon direction from the functional unit manager, the designated staff member(s) will review the record(s) as necessary and will determine whether the record(s) are exempt from disclosure * * * .
>
> (3) * * * [T]he designated staff member will advise the person requesting a public record, within a reasonable amount of time, whether the record(s) may be disclosed * * *.

"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). ODOC officials inform us that for purposes of its rules, the term "functional unit manager" here refers generally to facility superintendents.

In your petition you state that you asked to inspect and copy the above-listed records on April 1 and April 4, 1998, but that your requests were denied due to Mr. Baldwin or his designated staff's failure to respond to your requests by the date of your petition, and by written response from an unspecified EOCI official.

We have spoken with EOCI Superintendent George Baldwin regarding your petition. Mr. Baldwin has provided us with copies of two letters you sent to him requesting copies of the records listed in your petition. Both letters are dated April 3, 1998, and stamped as received by the EOCI Superintendent's office on April 8, 1998. The letters are further stamped as noted by G.H. Baldwin, JR., Superintendent, EOCI, on April 10, 1998.

Mr. Baldwin has also provided us with a copy of an ODOC Inmate Communication from you addressed to "Archives Department" and dated April 1, 1998. In the Inmate Communication you request a copy of a log book entry by a J. Roe with respect to a cell inspection on Cell No. 16B F3. This request appears to be a duplicate of the request made to Mr. Baldwin in one of the two letters dated April 3, 1998, and listed as item # 5 in your petition. Although the inmate communication purports to have been copied to Mr. Baldwin, he informs us that he received a copy only recently on April 24, 1998, upon inquiring of his staff regarding your petition's unspecified assertion that EOCI staff had denied your requests in writing. Our review of a copy of the Inmate Communication discloses that a Corporal K. Crawford purported to deny the request "due to the critical nature of information it contains." Mr. Baldwin states that he was not aware you had made a separate request for public records in the Inmate Communication and that he did not designate Corporal Crawford to respond to it. Because the records request in your Inmate Communication was not made to the functional unit manager, here, Superintendent Baldwin, and because Mr. Baldwin did not designate Corporal Crawford to respond to this records request, we do not impute to Mr. Baldwin or to EOCI any response you received from Corporal Crawford purportedly denying your request for the log entry record. OAR 291-37-015(2), 291-37-020(1), (2) and (3).

Mr. Baldwin informs us that he has yet to respond to your requests to him for copies of EOCI records because of other more pressing work demands and because he has requested, and has not yet received, advice from legal counsel in this office regarding certain of your requests. Mr. Baldwin informs us further that he will be responding to your requests for copies of public records after receiving advice from legal counsel.

Under these circumstances, Mr. Baldwin has not denied a request for public records. *See* Public Records Order, May 9, 1989, Hribernick (public body does not actually or constructively deny a request for public records by seeking advice of counsel before responding, nor does a public body deny a request merely because it fails to comply with a deadline the requestor seeks to impose); *see also Morse Bros. v. ODED*, 103 Or App 619, 798 P2d 719 (1990) ("Public Records Law clearly contemplates that agencies have the

Because Mr. Baldwin has not denied your request for public records, we have no authority to order him to make copies of the records available to you. *See* ORS 192.450(1). We therefore deny your petition as premature.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

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