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March 26, 1997

Bradley Cunningham, SID #10456927
Snake River Correctional Institution
777 Stanton Blvd.
Ontario, OR 97914

RECEIVED
MAR 27 1997
GENERAL COUNSEL
DEPT. OF JUSTICE
SALEM, OREGON

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

Dear Mr. Cunningham:

This 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 March 19, 1997, asks the Attorney General to direct the Oregon Department of Corrections (ODOC) and its employees to make available to you for inspection the following records:

1. Financial statements and summaries for the past three (3) years of the Inmate Welfare Fund (IWF) including ASSET/LIABILITY statements, sources and uses of funds reports, and related reports, contracts, audits, or notes to these statements and the IWF.

2. Copies of contracts concerning the use and operation of prison telephones, including fee sharing provisions.

3. Copies of contracts concerning copy machines and other concessions that are to contribute to the IWF.

4. Reports, studies, or other writing that documents fire-life-safety violations at any DOC prison facility that houses inmates, including any known seismic deficiency(ies).

5. Decrees or operative court orders that pertain to inmates and the DOC, in effect, since, or at, January 1995, to present. (These court orders or agreements may pre-date Jan. 1995).

6. Canteen contracts at DOC facilities in effect as of January 1995 to present. (This does not exclude personal service contracts).

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 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. ORS 192.430. Additionally, 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, ODOC has adopted administrative rules, OAR 291-37-020(2) and (3)(b), which provide in pertinent part:

> (2) The request [for public records] must be in writing * * *.
>
> * * * * *
>
> (3)(b) * * * [n]o inspection and/or duplication of record(s) is authorized until payment has been received.

Your petition states that you asked to inspect the above-listed records more than a year ago and again in January 1997, but that your requests to inspect the records have been ignored by ODOC's Director, Dave Cook, and by the Superintendent at the Snake River Correctional Institution (SRCI), Dan Johnson.

As you acknowledge in your current petition, this is not the first contact you have made with this office regarding your request for ODOC records. In a previous order issued February 19, 1997, we denied an earlier petition from you as premature based on your representation to us that you had made your request for records of ODOC as part of the discovery process in a civil rights action you had filed in the United States District Court. Public Records Order, February 19, 1997, *Cunningham*. As we explained in that order, a request for records in the context of discovery in litigation is not a request for records under the Public Records Law. *Id.* at 3.

We have contacted Perrin Damon, ODOC's Communications Manager, regarding your current petition. Although your petition states that you made requests of Director Cook and Superintendent Johnson to inspect the records more than a year ago, and again most recently in January, 1997, Ms. Damon informs us that Director Cook and Superintendent Johnson have only recently received correspondence from you requesting copies of the public records described in your petition -- a letter dated February 12, 1997. She further informs us that upon inquiry, and to the best of her knowledge and belief, neither Director Cook nor Superintendent Johnson received any prior correspondence from you requesting these records.

Ms. Damon has responded in writing to your letter to Director Cook of February 12, 1997, requesting public records. Copies of your February 12 letter to Director Cook, and Ms. Damon's reply letter dated March 24, 1997, are attached.

Ms. Damon's letter states that, with one exception, ODOC will make available to you copies of the requested records upon your prepayment to ODOC of its costs in making copies of the records available to you. The exception pertains to item number 6 listed in your petition (item #7 in your letter of February 12, 1997), i.e., your request to inspect operative court orders and consent decrees pertaining to ODOC and ODOC inmates in effect on or after January 1995. Ms. Damon's letter states that pursuant to ODOC administrative rules you will not be permitted to possess within an ODOC facility legal materials (including court orders and judgments) pertaining to another inmate's case(s), absent a court order.[1/] The letter also states that ODOC is willing to furnish copies of these records to a third person

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[1/] Although Ms. Damon's letter refers to OAR 291-117-010(1)(c) and 291-117-020(1)(e) as the applicable rules, she advises us that the latter reference to OAR 291-117-020 is properly to subsection (2)(e) of that rule, and not to subsection (1)(e). The rules provide generally that inmates are permitted to possess only "authorized legal property" within an ODOC facility. "Authorized legal property" is defined in OAR 291-117-008(1) to include, in pertinent part, "court orders and judgments * * * in or directly pertaining to an inmate's ***own*** pending and active case(s), lawsuit(s) before the courts or paroling authorities." (Emphasis added.)

designated by you who is not an inmate to receive and maintain the records on your behalf outside of an ODOC facility. Finally, Ms. Damon's letter makes clear that upon receipt of your payment of its estimated costs for making the records available, ODOC will review records within the scope of your request and notify you should it determine that any of the records or portions of the record contain exempt material.[2/]

Ms. Damon informs us that, in addition, ODOC is willing in this instance to permit you to inspect copies of any court orders or judgments the agency locates that are within the scope of your request, excepting any exempt materials. In this case, there would be an additional cost beyond the estimate provided in Ms. Damon's letter due to the staff time that would be needed to supervise your inspection of the records.

Because ODOC has not denied your request for the records that are the subject of your petition, the Attorney General has no authority to order ODOC to make those records available to you for inspection. ORS 192.450(1). We therefore deny your petition as premature.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

ESH:JVV:AV:jpl:JAA0231C
Enclosures
c (w/ encl):
David S. Cook, Director
Perrin Damon, Communication Manager
Oregon Department of Corrections

Dan Johnson, Superintendent
Snake River Correctional Institution

[2/] As stated in Ms. Damon's reply letter, ODOC has determined that in order to identify and locate court orders and judgments within the scope of your request ODOC would be required to hand search each of its many thousands of institution working files in which the records would be maintained. Ms. Damon advises us that a hand search of the institution working files would be necessary because ODOC has no central depository for such records.