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September 25, 1997

Leumal Fred Hentz, SID #6750414
Oregon State Correctional Institution
3405 Deer Park Drive SE
Salem, OR 97310

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

Dear Mr. Hentz:

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 September 19, 1997, asks the Attorney General to direct the Minority Affairs Manager of the Oregon State Correctional Institution (OSCI), Joseph Kline, to make available to you copies of the following records:

1. Discrimination complaint filed by resident James A. Humphrey #7631894 January 21, 1997 with its completed investigation and final report;

2. Discrimination complaint filed by ex-resident Diallo Keaton #8179083 dated January 21, 1997 with its completed investigation and final report;

3. Discrimination complaint filed by resident Leumal Fred Hentz #6750414 April 12, 1997 with its completed investigation and final report.

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).

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. 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.[1/] *See* ORS 192.440(3); *see also* Public Records Order, April 7, 1989 (Martin).

Your petition states that you requested a copy of the above-referenced records on August 25, 1997, but that your request was denied by OSCI Minority Affairs Manager Joseph Kline.

We have spoken with Mr. Kline regarding your petition. He us that the records you requested do not exist. OSCI has no record of any discrimination complaints filed by James A. Humphrey or Diallo Keaton and cannot find their names in its system. In addition, Mr. Kline informs us that OSCI has no record of a discrimination complaint filed by you on April 12, 1997.[2/]

[1/] Pursuant to these statutes, the Oregon Department of Corrections has adopted administrative rules, 291-37-020(3)(b), which provides that "no inspection and/or duplication of record(s) is authorized until payment has been received."

[2/] Mr. Kline states that you have filed discrimination complaints on the following dates: (1) September 8, 1997 (complaint #457), which the department is currently investigating and no final report is available; (2) March 21, 1997 (complaint #412) for which the department provided you the final report of the completed investigation on April 30, 1997; (3) February 20, 1997 (complaints #406 and #407) for which the department provided you the final report of the completed investigation on April 3, 1997; and (4) December 10, 1996 (complaint #378) for which the department provided you the final report of the completed investigation on January 1, 1997.

This office has no authority to order an agency to disclose records that do not exist. Accordingly, we respectfully deny your petition.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

DS:MAC:MAS:AV:mac/JGG109ED
c: Joseph Kline, Minority Affairs Manager
Oregon State Correctional Institution