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October 8, 1997

Leumal Fred Hentz
#6750414
3405 Deer Park Drive S.E.
Oregon State Correctional Institution
Salem, OR 97310

Re: **Petition for Public Records Disclosure Order: Risk Management Division Records**

Dear Mr. Hentz:

This letter is the Attorney General's order on your petition for the disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on October 3, 1997, asks the Attorney General to direct the Risk Management Division (division) to make available for inspection or to produce copies of the following records:

1. A copy of their completed investigation from tort claims filed May 21, 1997 and June 5, 1997 by Leumal Fred Hentz;[1/]

2. A copy of their completed investigation under tort claim # L71047, filed by Leumal Fred Hentz.

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[1/] In the copy of the letter addressed to the Risk Management Division requesting these records, you identified the dates of the tort claims letters as June 5, 1997 and June 11, 1997. The Division considers all claims filed in late May or early June of 1997, regardless of the date, to be consolidated under the claim number L71047. That is the only open, pending file with you as the claimant.

For the reasons stated below, we respectfully deny your petition. The division's Inmate Claims Unit informed you by letter dated August 27, 1997, that the material in the file for claim L71047 was not subject to disclosure. ORS 192.501(1) conditionally exempts from disclosure:

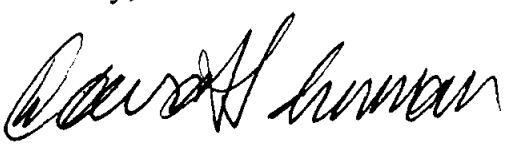
> Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this subsection shall limit the right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation[.]

This exemption applies "unless the public interest requires disclosure in the particular instance." *Id.*

The filing of a notice of tort claim is sufficient to show that litigation is reasonably likely to occur. Public Records Order, June 8, 1990 (Madrid). You have filed a notice of tort claim, and the claim is still pending. We conclude that any documents developed as part of an investigation by the division of a tort claim would be prepared by DAS for litigation that is reasonably likely to occur. Such records, therefore, fall within the exemption.

Because this exemption is conditional, we must determine whether the "public interest requires disclosure in the particular instance." You provided no information on the public interest that would be served by disclosing the information in the division's files. An interest in private litigation does not qualify as a public interest requiring disclosure. Public Records Order, June 8, 1990 (Madrid). We conclude, therefore, that investigative information for claim L71047 is exempt from disclosure under ORS 192.501(1). On that basis, we deny your petition.

Sincerely,



DAVID SCHUMAN
Deputy Attorney General

JAA026BA/DS/jh
c: Inmate Claims Unit, Risk Management Division
155 Cottage Street, NE
Salem, OR 97310-0319