THEODORE R. KULONGOSKI
ATTORNEY GENERAL

THOMAS A. BALMER
DEPUTY ATTORNEY GENERAL



DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400
TDD: (503) 378-5938

January 23, 1996

Carl Smith, SID #3575024
Oregon State Penitentiary
2605 State Street
Salem, OR 97310-0505

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

Dear Mr. Smith:

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 January 17, 1996, asks the Attorney General to direct the Oregon Department of Corrections ("ODOC") and its employees to produce a copy of the audio recording of ODOC's disciplinary hearing pertaining to you, held in Agency No. 09-95-100 on September 13, 1995, (at 1:09 p.m.), September 15, 1995, (at 1:55 p.m.) and September 18, 1995, (at 1:20 p.m.). 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/or copying of the records 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 the protection of the records and to prevent interference with the regular discharge of duties of the custodian. 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. *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(3)(b) and (7), which provide in pertinent part:

> (3)(b) * * * [n]o inspection and/or duplication of record(s) is authorized until payment has been received.
>
> * * * * *
>
> (7) Proper and reasonable opportunity for inspection and/or duplication of record(s) will be provided, consistent with security requirements at each Department facility and functional unit and as circumstances warrant.

Your petition states that you requested a copy of the audio recording of ODOC's disciplinary hearing pertaining to you on the dates set forth above, but that your request was denied by Connie Barnett, who is employed as a Hearings Secretary at the Oregon State Penitentiary ("OSP").

We have spoken with Ms. Barnett, Hearings Secretary at OSP, concerning your petition. She has confirmed to us that you made a request to produce a copy of the audio recording specified herein. Ms. Barnett informs us that she responded to your request by memorandum dated November 9, 1995. That response, a copy of which is enclosed, informs you that you have insufficient funds in your Trust Account to cover ODOC's cost to furnish you a copy of the record you requested. Ms. Barnett informs us that, as of January 19, 1996, you still have insufficient funds in your Trust Account to cover such cost. Ms. Barnett also advises us that OSP will make a copy of the audio recording available to you upon your prepayment to ODOC of $18, an amount sufficient to cover its costs in doing so at a rate of $13 per labor hour and $5 for the tape. See OAR 291-37-020(3)(b).

Because OSP has informed you that you may obtain copies of audio records upon prepayment of its costs to furnish a copy to you as provided by ODOC rule, OSP has not denied a request for disclosure of public records. Under these circumstances, we have no authority to order ODOC, OSP or any of their respective employees to provide a copy of the requested record to you. ORS 192.450(1). Accordingly, we deny your petition.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to
the Attorney General

ESH:MLS:AV:tjh/JGG0D040
Enclosure
c (w/out encl): S. Frank Thompson, Superintendent, OSP
Connie Barnett, Hearings Secretary, OSP