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DEPARTMENT OF JUSTICE
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June 4, 1996

Wim de Vriend
573 South 12th
Coos Bay, OR 97420

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

Dear Mr. de Vriend:

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 May 21, 1996,[1/] asks the Attorney General to direct the Oregon Department of Corrections (ODOC) to make available to you copies of the following records:

> Records of three, perhaps more, inmates of the Department of Corrections who were convicted of rape, sexual assault or sexual abuse allegedly committed on the same woman, under the same or substantially similar circumstances, though at different times. The sexual assaults allegedly took place at the same location (some sort of "lovers' lookout"), the woman has an unusual name, and the prosecutor in all cases was the same. For each of the convicted men I wish to obtain records that show the name of the accuser, the name and address of the convicted man, date an (sic) place of conviction, sentence, and a description of the alleged crime. I was informed these incidents occurred in the coastal area. It's possible that this means Coos County, but I don't know this for a fact.

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 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).

[1/] We appreciate your courtesy in extending the time for our issuance of the order in this matter.

Your petition states that you requested copies of the public records described above on two separate occasions by separate letters directed to Michael Norvel, identified in your petition as Manager of Mental Health Services for ODOC at the Eastern Oregon Correctional Institution (EOCI). Your petition further states that you have received no reply to your separate requests for records from Mr. Norvel.

We have spoken with Mr. Norvel regarding your petition. Mr. Norvel informs us that he is neither an ODOC employee, nor a custodian of ODOC records. Therefore, he has no authority to provide to you any copies of ODOC records. Rather, Mr. Norvel advises that he is an employee of the Oregon State Hospital (OSH) assigned to its Correctional Treatment Services program (CTS) at EOCI. In that capacity, he administers the provision of mental health services to inmates at EOCI pursuant to an intergovernmental agreement between ODOC and OSH. He informs us that he has no knowledge of the existence of the cases described in your petition or of any records that might remotely fall within the scope of your request. Mr. Norvel further states that he has never discussed the cases described in your petition with anyone, neither ODOC inmate Les Whaley nor any Assistant Attorney General in this office.

We have also reviewed your petition with Larry Daniels, Manager of ODOC's Institutions Based Records Office (IBRO). Mr. Daniels is a custodian of ODOC institution file records containing the type information described in your petition. He informs us that records containing the type of offender and criminal history information described in your petition (i.e., name of victim, offender's name and address, date of conviction, county of conviction, sentence, description of crime) would be maintained in ODOC's institution files and computer databases. In order to determine if ODOC has any records containing the specific cases described in your petition, however, Mr. Daniels advises that after identifying in its computer databases all inmates with convictions for the particular sexual offenses identified in your petition,[2/] ODOC would be required to conduct a costly and time-consuming hand search of individual records maintained in the agency's institution files pertaining to these inmates. Based upon a cursory review of information contained in ODOC's computer databases, Mr. Daniels estimates that there are approximately 650 inmates currently serving sentences in Oregon for convictions for sexual offenses of rape or sexual abuse as their principle offense. Even if a hand search of ODOC file records pertaining to these inmates resulted in the identification of records containing the information you seek, Mr. Daniels advises us that information expressly identifying a victim would be withheld

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[2/] There is no crime of "sexual assault" in the Oregon Criminal Code. *See* ORS 163.305 to 163.465 (Sexual offenses defined in Code).

from disclosure to you by ODOC pursuant to applicable statutory disclosure exemptions,[3/] although the other information you seek would likely be disclosable.

Notwithstanding the above, should you still desire to obtain copies of ODOC records, Mr. Daniels informs us that ODOC will conduct any search necessary to determine whether records exist that contain the information you seek and, if so, make available to you copies of non-exempt records, upon receiving a written request for the records directed to him and your prepayment of ODOC's estimate costs in making the records available to you.[4/] Your records request may be sent to Larry Daniels, Institution Based Records Office, 2575 Center St. N.E., Salem, OR 97310.

As noted above, your correspondence directed to Mr. Norvel was not a proper request for ODOC records because Mr. Norvel is not an ODOC employee or custodian of ODOC records. Absent a request to, and a denial by, ODOC for its records, the Attorney General has no authority to order ODOC to disclose the records. *See* ORS 192.450(1). Therefore, we deny your petition as premature.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the Attorney

ESH:JVV:AV:jpl:33911369
c: Larry Daniels, ODOC

[3/] Mr. Daniels informs us that records identifying crime victims would in all likelihood be contained in either a presentence investigation report (PSI) or a victim notifier record. PSI reports are not public records and are subject to an express disclosure exemption under the Public Records Law. *See* ORS 192.502(6). ODOC maintains that victim notifier records are exempt from disclosure under ORS 192.502(4).

[4/] The Public Records Law permits state agencies to establish and recover fees reasonably calculated to reimburse them for their actual cost in making public records available. *See* ORS 192.440(3). ODOC has adopted OAR 291-37-020(3)(b), which provides that no inspection and/or duplication of records is authorized until payment has been received.

Mr. Daniels informs us that ODOC will provide you with an estimate of its costs for staff time in locating and making copies of non-exempt records available to you after receiving your proper written request for the records directed to him. Because of the number of records involved and the need for a hand search of those records, he advises that ODOC's costs in responding to your records request will likely be several thousand dollars.