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June 26, 1996

Brent C. Whitmore, SID #8409080
Oregon State Penitentiary
2605 State Street
Salem, OR 97310-0505

Re: ***Petition for Public Records Order: Oregon State Penitentiary***

Dear Mr. Whitmore:

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 June 20, 1996, asks the Attorney General to direct the Oregon State Penitentiary (OSP) to make available the following records:

> Mineral right property to be seized ben box of property box to be seized (all records under the name of Brent C. Whitmore, Brent C. Laners, 544-86-3876 SSS, SID #8409080).

For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to access any public records 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. To that end, the Public Records Law 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. *Id.* 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).

Pursuant to the Public Records Law, the Oregon Department of Corrections has adopted administrative rules, OAR 291-37-015(2) and 291-37-020(1) and (2), which provide in pertinent part:

> (2) The request must be in writing, addressed to the Department's functional unit manager where the record(s) is located * * *.

OAR 291-37-015(2).

> (1) The functional unit manager will designate one (1) or more employee to review record(s) for release.
>
> (2) Upon direction from the functional unit manager, the designated staff member(s) will review the record(s) as necessary and will determine whether the record(s) are exempt from disclosure * * *.

OAR 291-37-020.

Your petition alleges that the "Sweit Lough Research Foundation" denied your request for records. We have been unable to identify such a foundation within OSP.

However, we have spoken with Corporal Tom Schavland concerning your petition. Corporal Schavland is the Property Officer of your records in the Intensive Management Unit of OSP. Corporal Schavland informs us that he has never received a request for any records from your property box. You will need to make your request in writing to Corporal Schavland on a kyte form.

Because you have not made a proper written request for records from Corporal Schavland, the Oregon State Penitentiary has not denied a request for disclosure of public records. Under these circumstances, the Attorney General has no authority to order OSP to provide copies of the requested records to you. ORS 192.450(1). Therefore, we deny your petition as premature.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH HARCHENKO
Special Counsel to the
Attorney General

ESH:MAC:AV:mc/JGG0E02D
c: Corporal Tom Schavland
Property Officer, IMU
Oregon State Penitentiary