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July 2, 1996

Randal S. Davis, SID #7048912
Oregon State Penitentiary
2605 State Street
Salem, OR 97310-0505

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

Dear Mr. Davis:

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 25, 1996, asks the Attorney General to direct the Oregon Department of Corrections (ODOC) to make available to you for inspection or provide you with copies of the following records:

1. Any and all documents that indicate Superintendent S.F. Thompson or his designee have in fact approved earned time restoration pursuant to OAR 291-97-030, or in the alternative a signed statement from SUPT. S.F. Thompson that he has in fact approved such restoration of formerly lost earned time credits, and has recollection of such event occurring at least once since his tenure as Superintendent of Oregon State Penitentiary.

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 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). The right to access public records granted by the Public Records Law extends generally to records in an agency's possession; it does not require an agency to create

records not already in existence. *See* Letter of Advice dated June 1, 1987, to Jim Keeney (OP-6216); *see also* Attorney General's Public Records and Meetings Manual, Appendix A-1 (1995).

Your petition states that you asked to inspect and/or copy the public records listed in your petition above, but that your request was denied by S.F. Thompson, OSP's Superintendent, and again by Willie Watkins, Minority Affairs/Grievance Investigator at OSP.

We have spoken with Tamara Blair, Support Services Manager at the Oregon State Penitentiary (OSP) regarding your petition. According to Ms. Blair, you were mistakenly advised by Superintendent Thompson in response to your request for records that ODOC did not maintain or possess statistical or other records on the restoration of earned time credit ordered by Superintendent Thompson.

Ms. Blair states that since the filing of your petition in this office, she has discovered that ODOC does maintain information in its computer databases regarding the restoration of earned time credit by ODOC. Ms. Blair advises us that, in response to your records request, she caused a search of the computer databases to be conducted for records indicating that Superintendent Thompson has approved the restoration of earned time credit for any inmate pursuant to ODOC' administrative rules. Ms. Blair informs us that no such records were found.

The Attorney General has no authority to order an agency to produce records that do not exist. *See* ORS 192.450(1). Because ODOC does not maintain or possess the records identified in you seek, your petition is denied.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel
to the Attorney General

ESH:AV:JVV:cfs/JGG0E0C0
c: S.F. Thompson, Superintendent
Tamara Blair, Support Services Manager
Oregon State Penitentiary