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ATTORNEY GENERAL

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September 18, 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 September 12, 1996, asks the Attorney General to direct the Oregon Department of Corrections (ODOC), and its employee, Dave Schumacher, to make available to you for inspection or provide you with copies of the following records:

1. Any Rule(s) that prohibit an inmate from making the following statement:

   Outgoing mail is monitored. This is allowed by case law and the DOC Rule on mail. Do not order contraband by mail or you will receive a Disciplinary Report.

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).

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 Dave Schumacher, Administrator of ODOC's Rule/Compliance/Hearings Office.

We have spoken with Mr. Schumacher regarding your petition. Mr. Schumacher informs us that he is not aware of any administrative rule adopted by ODOC that expressly prohibits an inmate from making the statement set forth in your petition. As he advised you in his memorandum dated September 2, 1996, ODOC's administrative rules relating to inmate mail are available for your review in the Oregon State Penitentiary law library, or you may obtain a copy of the rules from Mr. Schumacher's office at a cost of $.50 per page. Mr. Schumacher informs us that ODOC's administrative rules relating to inmate prohibited conduct and the disciplining of ODOC inmates is similarly available to you in the OSP law library, or from his office.

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 your petition, your petition is denied.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel
to the Attorney General

ESH:JVV:AV:clr/JAA02057

c: Dave Schumacher, Administrator
Rules/Compliance/Hearings
ODOC

S.F. Thompson, Superintendent
Oregon State Penitentiary