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October 16, 1996

William J. Birhanzl, SID #6410207
Oregon State Penitentiary
2605 State Street
Salem, OR 97310

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

Dear Mr. Birhanzl:

This is 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 18, 1996,[1/] asks the Attorney General to direct the Oregon State Penitentiary (OSP) and its employees to make available to you for inspection the following records:

1. The record of proceedings in the Disciplinary Court of the Oregon State Penitentiary on August 29, 1996 and September 9, 1996, before Terrance Anderson, the so-called Hearings Officer. (O.S.P. Disciplinary Court Case No. 08-96-166).

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

The Public Records Law confers a right to inspect 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

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

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 the agency 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 protecting the records and preventing 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, the Oregon Department of Corrections (ODOC) has adopted administrative rules, OAR 291-37-020(3)(b) and (7), which provide in pertinent part:

> (3)(b) No inspection and/or duplication of record(s) is authorized until payment has been received.
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> * * * * *
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> (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 asked both OSP and ODOC to inspect the above-listed record on September 11, 1996, but that your request was denied by Terrance Anderson and Superintendent S. Frank Thompson at OSP and by ODOC's Director, Dave Cook.

We have spoken with Connie Barnett, Hearings Secretary at OSP, regarding your petition. Ms. Barnett advises us that your request to inspect the records of the proceedings in the disciplinary case referenced in your petition was recently forwarded to her by Mr. Anderson for response. Ms. Barnett further advises that the disciplinary case referenced in your petition is still under investigation. Notwithstanding the pendency of the disciplinary case, Ms. Barnett advises us that she has just responded in writing to your request to inspect the record, informing you that in order to receive copies of the requested records you will be required to pay for them at the rate of $.50 per page for documents, and $5.00 for the tape recording of the hearing record, and an additional sum calculated at the rate of $14.00 per hour for her time in reviewing and excising from the tape recording any information that is

exempt from disclosure under the Public Records law, and for making a copy of the tape available.

In a previous public records order directed to ODOC's predecessor agency, the former Corrections Division, we concluded that the right to inspect public records under the Public Records Law was satisfied by the Division's furnishing copies of the requested records at a cost of 50 cents per page. Public Records Order, July 19, 1982 (Baucom). We have subsequently reaffirmed our conclusion that the right to inspect ODOC records is satisfied by the furnishing of copies of the requested records upon payment to ODOC of its costs in making the records available. Public Records Order, July 21, 1992 (Kell).

The ODOC rules provides that the manner in which the agency makes records available for inspection is by providing copies at a cost of 50 cents per page. ODOC has determined that the cost of the alternative to making copies, which would require a responsible employee to supervise the actual inspection and to return the records to the files, would be at least as great as the cost of furnishing copies, and that greater administrative inconvenience would result. Based upon ODOC's representations, and the fact that the agency could charge for its costs in making the records available, we conclude that ODOC's policy of providing copies in lieu of making the records available is not unreasonable. *See* Baucom Order at 2.

OSP has informed you that you may obtain copies of the requested records as provided by ODOC rule at a cost of 50 cents per page for documents, and ODOC's actual costs in making available to you a copy of the tape recording of the hearing record. Accordingly, OSP has not denied your request for disclosure of public records. Under these circumstances, this office has no authority to order ODOC or OSP to provide copies of the requested records to you. ORS 192.450(1). Accordingly, we respectfully deny your petition.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

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c: S. Frank Thompson, Superintendent
Terrance Anderson, Hearings Officer
Connie Barnett, Hearings Secretary
Oregon State Penitentiary