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January 10, 1995

Donald Lee Toney, Jr.
SID #3797255
Oregon State Penitentiary
2605 State Street
Salem, OR 97310-0505

Re: ***Petition for Public Records Disclosure Order - Oregon Department of Corrections Records, and for Fee Waiver***

Dear Mr. Toney:

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 December 28, 1994,[1/] asks the Attorney General to direct Catherine Knox, Administrator of Health Services for the Oregon Department of Corrections (ODOC), to make available to you certified copies of ODOC's complete medical file pertaining to you, inclusive of any records compiled while you were incarcerated in various Department of Corrections facilities.[2/] You also ask the Attorney General to order ODOC to waive its fees for making copies of the records available to you. For the reasons that follow, we respectfully deny your combined petition for disclosure of public records and fee waiver.

1. Public Records

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). 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).

Summarizing the relevant representations made in your petition, you state that you have made numerous requests of the Health Services Manager at the Oregon State Penitentiary (OSP) to review ODOC's medical file pertaining to you, but that except for one unspecified occasion in which you were permitted to review the file, you have been denied access to the records. We have spoken with Catherine Knox, Administrator of ODOC Health Services, concerning your petition. Ms. Knox advises us that ODOC's records reflect that you have requested and been provided several opportunities to review and to receive copies of records from ODOC's Health Services files pertaining to you over the years you have been incarcerated at OSP. Ms. Knox further advises us that in response to your most recent request to review the file, dated October 13, 1994, OSP Health Services staff directed you to request copies of medical records provided to ODOC by Multnomah County and Wyoming corrections agencies directly from those agencies. That request did not ask ODOC to provide you with certified copies of the file records.

Upon review of this matter, Ms. Knox advises us that ODOC will treat your petition in this instance as a proper request for a certified copy of public records, and will make available to you a certified copy of its complete Health Services file(s) pertaining to you.[3/] Because ODOC has agreed to make available to you a certified copy of its records, we deny your petition for disclosure of public records as moot.

2. Fee Waiver

A state agency may charge a fee to reimburse it for its actual cost in making copies of the records available, including its photocopy costs and the time spent by agency personnel in reviewing the records. See ORS 192.440(3). ORS 192.440(4) and (5) allow a waiver or reduction of fees and a process for petitioning from unreasonable denials of fee waivers or reductions in connection with requests for access to public records under the Public Record Law. Under the statute, a custodian of any public record may furnish copies without charge, or at a substantially reduced fee, if the custodian determines that the waiver or reduction in fees is in the public interest because making the record available "primarily benefits the general public." ORS 192.440(4).

In reviewing ODOC's records, Ms. Knox advises us that you have made no written request to the Health Services Manager at OSP for a waiver of fees. Your petition also

fails to indicate that you have made any such request of ODOC. Because ODOC has not denied a request from you to waive or reduce its fees in making copies of the records available to you, the Attorney General lacks authority to order ODOC to grant you a fee waiver or reduction. See ORS 192.440(4) and (5).

Accordingly, we deny your petition for fee waiver as premature.

Sincerely,

Elizabeth J. Harchenko

ELIZABETH HARCHENKO
Special Counsel to
the Attorney General

JVV:AV:jvv/jpl:JAA01625J
c: Catherine Knox, Administrator
Oregon Department of Corrections
Health Services

[1/] We appreciate your extending the time within which the law would have otherwise obligated us to respond.

[2/] Included among the records specifically listed in your petition are records from a Multnomah County corrections facility, and the Wyoming State Prison.

[3/] Ms. Knox advises us that, contrary to your apparent belief in this matter, ODOC has not been provided, and does not have in its possession or control, the complete medical records maintained or generated by the Multnomah County corrections facility, the Wyoming State Prison or the private health care providers listed in your petition.