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March 9, 1995

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GENERAL COUNSEL
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SALEM, OREGON

Jon V. Bates, SID #10646501
Oregon State Penitentiary
2605 State Street
Salem, OR 97310

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

Dear Mr. Bates:

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 March 6, 1995, asks the Attorney General to direct the Oregon State Penitentiary (OSP) and Oregon Department of Corrections (ODOC) to make available to you for inspection and copying the following records:

1. All files and records related to petitioner's interstate transfer maintained by the [OSP and ODOC].

2. The contract and other written agreement between the State of Montana and the State of Oregon under which petitioner's transfer has been approved.

3. All files and records related to petitioner's custody, classification, and time served credits maintained by the Oregon prison officials.

For the reasons that follow, we deny your petition as moot.

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).

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. ORS 192.430. 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) * * * [n]o inspection and/or duplication of record(s) is authorized until payment has been received.
>
> * * * * *
>
> (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.

You state in your petition that you have requested to inspect and/or copy the above-referenced records, but that, as of the date of your petition, you had been denied access to the requested records. Copies of your written requests and the responses are attached to your petition.

We have spoken with Tamara Blair, Support Services Manager at OSP. Ms. Blair informs us that she has shepherded your request to the correct functional units in ODOC where the records are maintained, and has recently informed you by written memorandum that ODOC will make available to you copies of the requested records upon your prepayment to ODOC of its costs in accordance with its fee schedule of 50 cents per page.

Because Ms. Blair has informed you that ODOC will make available to you copies of the records you have requested, upon

prepayment of the department's costs scheduled at 50 cents per page, we deny your petition as moot.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to
the Attorney General

JVV:jvv:clr/JGG0B3FA
c: Tamara Blair, Support Services Manager, OSP