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DEPARTMENT OF JUSTICE

Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400

January 13, 1987

Philip Wade McClure
Box 45494
2605 State Street
Salem, Oregon 97310

Re: Request for Public Records Order to Oregon Board of Parole

Dear Mr. McClure:

This letter is in response to your petition requesting that the Attorney General order the Oregon Board of Parole to produce records of psychiatric evaluations of you by Dr. Wiessert during the years of 1981 and/or 1982. Your petition was dated January 5, 1987, and received by the Department of Justice on January 6, 1987. Your petition is denied.

The records you requested are exempt from disclosure under ORS 192.500(2)(d), which exempts:

> "(d) Information or records of the Corrections Division, including the State Board of Parole, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the division or substantially prejudice or prevent the carrying out of the functions of the division, if the public interest in confidentiality clearly outweighs the public interest in disclosure."

The public interest test is applied to each particular instance. We believe that the public interest does not require disclosure in your case, based on the case of Turner v. Reed, 22 Or App 177, 538 P2d 373 (1975). In Turner v. Reed, with respect to a former prisoner's request for psychiatric evaluation reports, the Oregon Court of Appeals held that

> ". . . disclosure of reports of psychiatric examinations that are part of the records of the Corrections Division would 'substantially prejudice . . . the carrying out of the functions of the division,' and that 'the public

interest in confidentiality clearly outweighs the public interest in disclosure.'"

We also believe that the records you requested are exempt from disclosure under ORS 192.500(2)(a), which establishes as confidential

> "(a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employes of public bodies clearly outweighs the public interest in disclosure."

According to our files, on April 11, 1986, you submitted a petition identical to your January 5, 1987 petition. Your petition was denied for the same reasons described in this letter, in an order dated April 21, 1986, a copy of which is enclosed. We also note that on June 17, 1986, you filed a petition for judicial review of our April 21, 1986 order in the Marion County Circuit Court. The court dismissed your pleading on December 1, 1986.

For the reasons stated above, your present petition is denied.

Very truly yours,

James E. Mountain Jr.

JAMES E. MOUNTAIN, JR.
Special Counsel to the
Attorney General

JEM:cm
Enclosure