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DEPARTMENT OF JUSTICE
Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4[illegible]

April 21, 1986

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

Re: Public Records Requests: Oregon State Penitentiary, Board of Parole

Dear Mr. McClure:

This letter constitutes an order of the Attorney General in response to the public records petitions you filed on April 11, 1986. These petitions requested that the Attorney General order the release of the following Oregon State Penitentiary and Oregon Board of Parole records:

> "1. Any and all evaluations conducted on Philip Wade McClure, institutional number 41551, by doctor Weissert, during the year of 1981 and/or 1982."

The records in question consist of reports of psychiatric evaluations conducted while you were incarcerated and apparently were intended to assist the Parole Board and Corrections officials in making decisions. The reports, consisting of two pages, were prepared by Dr. Weissert as part of his professional evaluation of you. These evaluations come within the scope of ORS 192.500(2)(d) which exempts from disclosure:

> "(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, . . ."

However, this exemption from disclosure does not apply if the public interest requires disclosure in the particular instance.

In Turner v. Reed, 22 Or App 177, 538 P2d 373 (1975), the Court of Appeals considered a former prisoner's request to obtain prison and parole records. As to the psychiatric evaluation reports contained in these records the Court 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.

Based on this, we find that ORS 192.500(2)(d) exempts from disclosure the records you have requested. We also believe that the records would be confidential under ORS 192.500(2)(a) which makes 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;"

This order may be appealed as provided in ORS 192.450.

Sincerely,

DONALD C. ARNOLD
Special Counsel to the
Attorney General

DCA:cm
cc: Eloise E. January, Oregon State Penitentiary
Erma Hepburn, Board of Parole