DAVE FROHNMAYER
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

100 State Office Building
Salem, Oregon 97310
Telephone: (503) 378-4400

March 22, 1982

Mr. John Reid
Assistant Managing Editor
The Mail Tribune
P.O. Box 1108
Medford, OR 97501

Re: Petition for Attorney General Review
Agency: Board of Parole
Records: Typewritten transcript of July 21, 1982, parole review of Manuel Trinidad Cortez

Dear Mr. Reid:

Your petition to the Attorney General to review the typewritten transcript of the July 21, 1982, parole hearing of Manuel Trinidad Cortez has been received and evaluated pursuant to ORS 192.450.

ORDER

Based upon ORS 192.410 to 192.500, your petition is conditionally allowed in substance and in part.

Parole hearings conducted as required by ORS 144.120 are recorded by magnetic tape. Such a tape is a "writing" under ORS 192.410(5), and is clearly a public record. ORS 144.420 thus requires disclosure upon request, unless an exemption from disclosure is specifically allowed by ORS 192.500.

The request was for a typewritten transcript. Your letter of February 19 to the State Board of Parole offered to pay cost of secretarial time and materials needed to provide the transcript. Although there may be an obligation to disclose, there is no statutory obligation to provide a transcript, even with such an offer to pay. The obligation is to disclose, subject to any exemptions under ORS 192.500, and that obligation may be met in the discretion of the Parole Board by allowing you to listen to the tape, or by furnishing you with a transcript (or copy) of the tape at your expense, as you have offered.

At this point it does not appear that the Board of Parole has given consideration to the possible exemption from disclosure of some or all of the contents of the tape under ORS 192.500, and particularly under 192.500(2)(a),(c),(d) and (i).

ORS 192.500(2)(d) exempts records of the State Board of Parole,

> ". . . to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the (Corrections) 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." (Emphasis added).

ORS 192.500(2)(a) grants a conditional exemption for advisory communications. The agency must meet a heavy burden to show applicability of this exemption. ORS 192.500(2)(c) grants a conditional exemption for information received in confidence from outside parties, with a commitment to confidentiality by the agency. ORS 192.500(2)(i) exempts records or information received from another public body or agency, which was or would have been confidential in the hands of that body, and if the considerations giving rise to that confidentiality still apply.

Notwithstanding that this is the last day provided in the statute for entry of this order, the public interest requires that the Board of Parole have an opportunity to consider whether it is appropriate to claim exemption from disclosure, under the above provisions, of any portion of the tape. The Board is therefore directed to disclose those portions of the tape as to which it makes no claim of confidentiality, in any manner convenient to itself. Preparation of a transcript as requested may well be the most convenient method. The Board is further directed to immediately submit to this office those portions of the tape, or a description of the contents, as to which it makes a claim of confidentiality under the above or any other statutory provisions. It should, of course, state the basis for any claim of exemption. The assistance of assigned counsel to the board in determining whether a claim of confidentiality should be made will be furnished if requested.

This office will then enter a supplemental order within one week, no later than April 5, 1982, with respect to the material claimed to be exempt from disclosure.

Our order of disclosure is conditional upon this opportunity given to the Board of Parole to make more specific assertions of confidentiality. The statutes do not contemplate such a conditional order. You are, therefore, entitled to treat this order as a denial of your request, and to initiate proceedings for court review under ORS 192.450(2). However, under ORS 192.450(2) there is no deadline for the filing of your suit for review, and it would be to your advantage to await our supplemental order, if one is necessary.

Sincerely,

DAVE FROHNMAYER
Attorney General

John A. Reuling Jr.