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September 15, 2004

Mark J. Wilson
SID # 7449142
Oregon State Penitentiary
2605 State Street
Salem, OR 97310-0505

Re: Request for Reconsideration of 08/09/04 Public Records Order

Dear Mr. Wilson:

By letter dated August 19, 2004, you asked that we reconsider the Public Records Order (PRO) issued to you on August 9, 2004, denying your petition for disclosure of a record maintained by the Board of Parole and Post-Prison Supervision (Board). Having reviewed your request, for the reasons discussed below, we affirm our August 9th PRO.

Your original petition asked the Attorney General to order the Board to disclose to you a record containing advice given by this office, which the Board had cited in its notice of temporary rulemaking associated with OAR 255-075-0079. We denied your petition under ORS 192.502(9) because the record is a confidential communication between attorney and client, protected by ORS 40.225.

Your request for reconsideration states that ORS 183.335(5)(d), a provision of the Administrative Procedures Act, provides "an independent statutory basis" for disclosure of the record.[1] However, the Attorney General's authority to order a state agency to disclose a public record derives solely from the Public Records Law, specifically ORS 192.450. Therefore, we do not have authority to compel the Board to disclose a record

[1] ORS 183.335(5)(d) provides:

(5) Notwithstanding subsections (1) to (4) of this section, an agency may adopt, amend or suspend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, if the agency prepares:

* * * * *

(d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection * * *.

unless disclosure is required under the Public Records Law, ORS 192.410 to 192.505. Our August 9th PRO explains why the record you requested is exempt from disclosure. Therefore, without considering the effect of ORS 183.335(5)(d), we affirm our original PRO and deny your request for reconsideration.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

PDS:AGS14488
c: Michael R. Washington, Chair, Board of Parole and Post-Prison Supervision