

June 14, 2006

Daniel P. Weick
4373 Sylvia Ct. S.E.
Salem, OR 97301

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

Dear Mr. Weick:

This letter is the Attorney General's order on your petition for disclosure under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on May 10, 2006,¹ asks the Attorney General to direct the Oregon Department of Corrections and its employees to make available to you for inspection and copying the following records:

The completed investigation records, "hard copy," digital recordings of interviews, notes, and other investigatory materials concerning the Weick/Horn investigation that was conducted and concluded by Mr. John R. Nees, Human Resources, ODOC, Mr. Richard Ogden, Captain, ODOC, and Mr. Troy Bowser, Security Manager, ODOC, involving myself, Cpl. Daniel P. Weick and Sgt. Monica Horn in which I was cleared of any disciplinary action.

For the reasons that follow, we respectfully deny your petition.

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).

¹ We thank you for your courtesy in extending the time in which this office would ordinarily have been required to issue its order.

According to your petition, you made requests of Messrs. Nees and Bowser, and also of Oregon State Correctional Institution (OSCI) Superintendent Nancy Howton and other department officials, to inspect the above-described records, but your requests to do so were denied by them.

We have spoken with Mr. Nees regarding your petition. He confirmed to us that your request of ODOC officials to inspect or copy the investigatory report and certain other investigatory records, including the notes of investigatory interviews of other security staff at OSCI was denied. Mr. Nees also told us, however, that ODOC has already made available to you for inspection some of its investigatory file records. Specifically, Mr. Nees told us that he provided you with a copy of a digital audio recording of his investigatory interview with you, and that at the interview he allowed you to review a copy of Sergeant Horn's memorandum to Mr. Bowser. According to Mr. Nees, Sergeant Horn's memorandum detailed her complaints regarding your actions in the Disciplinary Segregation Unit (DSU) at OSCI on the day in question that became the subject of ODOC's personnel investigation. In addition to these records, Mr. Nees told us that the department is willing to make available to you for inspection the following additional records from the agency's investigatory file: memoranda from Mr. Nees to you regarding the closure/outcome of the investigation; a duty roster for the Disciplinary Segregation Unit (DSU) at OSCI for the day of the incident; a Notice of Investigatory Interview previously provided to you; Post Orders for DSU Lead Worker and Security Staff; email correspondence between Sergeant Horn, Brenda Clark and Mr. Nees regarding the initial receipt and processing of her complaint; and various email correspondence between Mr. Nees, Mr. Bowser, you, and union representatives regarding the outcome of the investigation. Consequently, we deny your petition as to these records as moot.

Mr. Nees informed us that ODOC's remaining records responsive to your request consist of the department's internal investigatory report dated March 29, 2006, and notes of investigatory interviews with other OSCI staff. Mr. Nees told us that ODOC is willing to make that portion of the investigative report that summarizes Sergeant Horn's complaint and that reports your investigatory interview concerning the complaint available to you for inspection. However, the department is unwilling to disclose the remainder of the investigative report, which describes investigatory interviews with other OSCI staff, and notes of those interviews, due to ODOC officials' belief that these records are exempt from disclosure under ORS 192.502(5). We review ODOC's claim of exemption for these records below.

We discussed ODOC's claim of exemption for part of its investigatory report and all notes of interviews with other OSCI staff with ODOC's Assistant Director for Human Resources, Shelli Honeywell. She informed us that when an internal ODOC investigation into a complaint of staff misconduct results in a determination by the department to pursue formal disciplinary action against a represented employee, the department's internal investigatory report and investigatory records of interviews with staff are made available to the employee, and to his or her union representative, pursuant to the department's responsibilities under applicable

collective bargaining agreements and the Public Employees Collective Bargaining Act (“PECBA”). However, according to Ms. Honeywell, if upon completing its internal investigation the department determines that no formal disciplinary action against the employee is warranted, the department maintains the investigatory reports and records of staff investigatory interviews as confidential, and withholds them from disclosure to the employee and other persons.

According to Ms. Honeywell, the department maintains these internal investigatory records as confidential in the absence of formal discipline in order to maintain an environment where those who report and cooperate in an investigation are not subject to discrimination, retaliation or a hostile work environment. She explained that the department is committed to maintaining a workplace environment within ODOC correctional facilities that will assist and encourage staff to come forward with information of possible unethical, unlawful or otherwise improper conduct by staff in their treatment of inmates and other staff, and in the carrying out of their job duties. Ms. Honeywell explained to us that disclosure of the records in the absence of formal discipline would provide staff that become the subject of an internal investigation, access to information that could be used contrary to the department’s commitment to foster an environment where those who report misconduct or otherwise cooperate in investigations are not subject to discrimination, retaliation or a hostile work environment.

According to Ms. Honeywell, the department is not willing to disclose the records at issue because doing so would discourage staff from reporting misconduct by other staff and from cooperating fully with internal department investigations into reports of staff misconduct. Further, she noted that disclosure could polarize security staff that perform critical security functions within Oregon’s prisons, eroding staff’s sense of common purpose and shared experience and their confidence and reliance upon one another, which are essential in order for department staff to maintain internal order and security, and to protect against staff abuse of inmates and other staff.

ORS 192.502(5) expressly exempts from disclosure under the Public Records Law:

Information or records of the Department of Corrections * * * to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the department or substantially prejudice or prevent the carrying out of the functions of the department, if the public interest in confidentiality clearly outweighs the public interest in disclosure.

In examining the contours of the ODOC records exemption we have previously concluded that if disclosure of records would threaten or impair the department’s ability to preserve internal order and discipline in its correctional facilities, to maintain facility security against escape or unauthorized entry, or to protect the public’s safety, the public interest in confidentiality will, in most circumstances, clearly outweigh the public interest in disclosure. Public Records Order, January 26, 1993, *Patten*.

The legislature has charged ODOC with a number of varied functions and duties concerning those offenders committed to its jurisdiction by the courts. *See* ORS 423.020(1).² At the very core of its statutory functions and duties is the responsibility to exercise custody over convicted felons sentenced to a term of imprisonment until they are subject to lawful release, by safely confining them in one of the state's correctional institutions. ODOC has a legitimate and substantial interest in the conduct of internal investigations into complaints of staff misconduct within ODOC's correctional facilities, whether that misconduct is directed at inmates or at other staff, to ensure against staff abuse and mistreatment of inmates and other staff, and to maintain the safe, secure and orderly operation and management of those institutions.

For the reasons explained to us by Ms. Honeywell, we agree with ODOC that disclosure of the department's unredacted internal investigatory report and investigatory records of interviews with security staff would jeopardize and substantially impair ODOC's ability to receive and act effectively upon complaints of staff abuse and misconduct within Oregon's prisons, and would thus, "substantially prejudice or prevent ODOC from the carrying out of the functions of the department." ORS 423.020(1); ORS 192.502(5).

The ODOC records exemption applies if "the public interest in confidentiality clearly outweighs the public interest in disclosure." ORS 192.502(5). We believe that the public interest in maintaining the confidentiality of ODOC's internal investigatory reports and records clearly outweighs any public interest in knowing the specifics of the department's investigation in this instance, where the complaint was largely an interpersonal dispute between an individual staff and immediate supervisor, did not involve an allegation of inmate abuse, and was resolved by the department without the need of formal discipline. You have not cited a public interest in disclosure that outweighs this public interest in confidentiality.

² ORS 423.020 (1) states:

- (1) The Department of Corrections is created. The department shall:
 - (a) Supervise the management and administration of the Department of Corrections institutions, parole and probation services, community corrections and other functions related to state programs for corrections;
 - (b) Carry out legally mandated sanctions for the punishment of persons committed to its jurisdiction by the courts of this state;
 - (c) Exercise custody over those persons sentenced to a period of incarceration until such time as a lawful release authority authorizes their release;
 - (d) Provide adequate food, clothing, health and medical care, sanitation and security for persons confined;
 - (e) Provide persons who are motivated, capable and cooperative with opportunities for self-improvement and work;
 - (f) Conduct investigations and prepare reports for release authorities; and
 - (g) Supervise persons sentenced or placed in the community for the period of time specified and in accordance with conditions of supervision ordered by the release authority.

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For the foregoing reasons, we conclude that ODOC properly denied your request to inspect or copy the portions of its internal investigatory report addressing staff interviews and the notes of such interviews pursuant to ORS 192.502(5). Accordingly, we deny your petition as to these records.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS17672

c: Shelli Honeywell, Assistant Director for Human Resources, ODOC
Nancy Howton, Superintendent, OSCI
John R. Nees, Human Resources Manager, ODOC