



**DEPARTMENT OF JUSTICE**

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

June 29, 1990

Vern L. Faatz, Chairperson  
Oregon State Board of Parole  
2575 Center Street, N.E.  
Salem, OR 97310

Daniel and Mary Henkes  
5603 S.E. Gladstone  
Portland, OR 97206

Re: Petition for Public Records Disclosure Order;  
Oregon State Board of Parole Records

Dear Mr. Faatz and Mr. & Mrs. Henkes:

This letter is the Attorney General's order on the petition from Mr. and Mrs. Henkes for disclosure of records under the Oregon Public Records Law, ORS 192.410 through 192.505. The petition, which we received on June 19, 1990,<sup>1</sup> asks the Attorney General to order the Oregon State Board of Parole (board) to disclose certain Oregon State Hospital records relating to the participation of inmate Benjamin Frank Ireland in a sex offender program as a condition of probation. The records in the board file are (1) two letters from Dr. John B. Cochran, a clinical psychologist at the Oregon State Hospital; (2) the inmate's "sexual offense history log"; and (3) the inmate's "fantasy log." The board based its refusal on the grounds that disclosure would interfere with the rehabilitation of the inmate and would compromise the inmate's privacy. For the reasons that follow, we grant the petition.

The victim in one of the inmate's convictions is the minor child of Mr. and Mrs. Henkes. Thus, they as parents are "victims" under ORS 144.120(7) for purposes of "access to the information that the board \* \* \* will rely upon." OAR 255-05-005(46). In this instance, however, we need not address ORS 144.120(7). The requested records are nonexempt public records under the Public Records Law and, therefore, must be disclosed.

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The inmate stands convicted of two counts of sodomy in the first degree and one count of sexual abuse in the first degree. After his conviction, the inmate was placed on probation, on condition that he successfully complete a sex offender treatment program at the Oregon State Hospital. His probation was revoked for violating this condition. The trial court declared him a dangerous offender, and imposed minimum consecutive sentences totalling 25 years. The records in question were admitted into evidence at the probation revocation and sentencing hearings to prove the violation of probation, the inmate's dangerousness, and the need for maximum imprisonment. Dr. Cochran and others testified from these documents. These proceedings were open to the public and attended by members of the news media. Because these records were admitted into evidence, they constitute matters of public record in the court files. The board has these records solely because they were submitted by the district attorney's office under a cover letter of January 5, 1990, as an exercise of the district attorney's prerogative under ORS 144.120(7) "to submit a written statement adequately and reasonably expressing any views concerning the crime and the person responsible." The district attorney submitted this evidence to the board with no restriction on disclosure.

These records already have been subjected to substantial public disclosure. Under these circumstances, the records cannot be considered confidential under any provision in the Public Records Law.

Accordingly, we grant the petition. ORS 192.450(2) affords the board seven days from the date of this order in which to comply. The board may charge its actual costs for providing the requested copies of these documents.

Sincerely,



PAMELA L. ABERNETHY  
Special Counsel to the  
Attorney General

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<sup>1</sup> We appreciate the courtesy of Mr. and Mrs. Henkes in allowing us to exceed the statutory deadline for responding to the petition.