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November 19, 2001

Lisa A. Maybee
423 Lincoln Street
Eugene, OR 97401

Re: *Petition for Public Records Disclosure Order:*
Oregon State Police Records

Dear Ms. Maybee:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on November 8, 2001,[1] asks the Attorney General to direct the Department of State Police (OSP) to make available "taped interviews and transcribed notes between Lt. Gordon Renskers and Senior Trooper Runk," and "taped interviews and transcribed notes regarding interviews with Lt. Phil George." For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. 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).

You originally requested records from OSP Lt. Stephen P. Ross in a letter dated October 3, 2001. The records you sought from Lt. Ross varied from those identified in your petition, in that you requested records of Lt. George's interviews only to the extent that they were relevant to personnel decisions regarding Trooper Runk.

> I am requesting that you provide me with the taped interviews and transcribed notes between Lt. Gordon Renskers and Senior Trooper Runk, as well as the

[1] We appreciate your extending the time within which the law would have otherwise obligated us to respond.

> taped interviews and transcripts regarding interviews with Lt. Phil George *on which you based [your] recommendations and conclusions*. (emphasis added).

An agency's denial of a records request is a prerequisite to the Attorney General exercising authority under the Public Records Law to order disclosure. ORS 192.450. Because an agency can only deny a records request that it has received, we read your petition to the Attorney General as limited to the records that you requested from Lt. Ross.[2]

OSP denied your request for records on the basis that they are exempt from disclosure. As you state in your petition, the requested records were created as part of an internal OSP investigation of Lt. George. According to Sergeant David G. Scholten, OSP Office of Professional Standards, OSP conducted two investigations of Lt. George, and both were personnel investigations. Sgt. Scholten informs us that, in one investigation, OSP imposed discipline on Lt. George with respect to each investigated allegation. The other investigation, also of multiple allegations, resulted in discipline with respect to some allegations, but not others. According to Sgt. Scholten, the latter investigation was a singular undertaking, rather than an activity in which one allegation was investigated independently from another.

ORS 192.501(12) conditionally exempts from disclosure "[a] personnel discipline action, or materials or documents supporting that action[.]" This exemption applies to a completed disciplinary action when a sanction is imposed. *City of Portland v. Rice*, 308 Or 118, 123, 775 P2d 1371 (1989). These records are exempt from disclosure "unless the public interest requires disclosure in the particular instance." ORS 192.501. The Oregon Court of Appeals has interpreted ORS 192.501(12) as providing that "all of the documents relating to allegations" for which a public body actually imposes discipline upon an employee come within the exemption from disclosure. *City of Portland v. Anderson*, 163 Or App 550, 554, 988 P2d 402 (1999). From our review, we conclude that the requested records of the interviews of Lt. George and your client, for both investigations, relate to allegations against Lt. George that resulted in discipline. For this reason, we find that the requested records are exempt from disclosure under ORS 192.501(12), unless the public interest requires disclosure in this particular instance. *See* ORS 192.501.

In the analysis of whether the public interest requires disclosure, the term "public" means "the focus is on the effect of disclosure in general, not disclosure to a particular person at a particular time." *Morrison v. School District No. 48*, 53 Or App 148, 156, 631 P2d 784 (1981). For example, the public interest in confirming a high ranking police officer's integrity and ability to evenhandedly enforce the law required the disclosure of records regarding disciplinary action taken against that officer. *Anderson*, 163 Or App at 554. The party seeking disclosure must demonstrate that disclosure is in the public interest. *Id.* at 554.

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[2] Your petition also varied from your request to Lt. Ross in that the original request asked for "transcribed notes" of interviews with Trooper Runk and "transcripts" of interviews with Lt. George. With respect to interviews of both men, we interpret your petition to be for a copy of interview tapes, as well as any portion of the tapes that OSP has transcribed into written form.

Your petition provides no indication that you and your client are seeking the requested records to further a public, as opposed to private, interest. You state that "the public interest requires disclosure in this particular instance due to the fact that an adverse employment decision was made against Senior Trooper Runk without proper notice to him, nor giving him an opportunity to respond[.]" But disclosing records due to the effect of any adverse employment decision against Trooper Runk would be in Trooper Runk's personal interest, not in the public interest. Accordingly, we do not find that the public interest requires disclosure in this particular instance.[3]

We find that the requested records are exempt from disclosure under ORS 192.501(12). Therefore, we deny your petition.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS09030
c: Sgt. David Scholten, OSP

[3] Oregon law exempts from disclosure "information about a personnel investigation of a public safety employee of [a] public body if the investigation does not result in discipline of the employee." ORS 181.854(3). Because we determine that the public interest does not require disclosure under ORS 192.501(12), it is unnecessary to determine the extent to which the requested records may be exempt from disclosure under ORS 181.854(3).