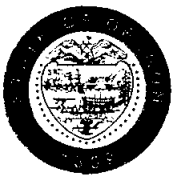
HARDY MYERS
ATTORNEY GENERAL

PETER D. SHEPHERD
DEPUTY ATTORNEY GENERAL



DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97301-4096
Telephone: (503) 378-4400
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October 3, 2001

John Snell
THE OREGONIAN
1320 S.W. Broadway
Portland, OR 97201

Re: Petition for Public Records Disclosure Order:
Department of Public Safety Standards and Training

Dear Mr. Snell:

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 September 26, 2001,[1] asks the Attorney General to direct the Department of Public Safety Standards and Training (DPSST) to provide to you a copy of the archived file for James Brooks, who you identify as currently employed as the chief of police in King City. For the reasons that follow, we respectfully deny your petition as premature.

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. If a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material.

In your petition, you state that you have requested from DPSST, and DPSST has provided to you, a redacted copy of its file on Chief Brooks, but that there is nothing in that file pertaining to "his employment prior to being hired in King City as a reserve officer." You then

[1] Your petition, which you sent by email to a general information email address at the Department of Justice (DOJ) on September 7, 2001, was not retrieved until September 26, 2001. Kevin Neely, DOJ Public Affairs and Legislative Assistant, contacted you by voice- and email on September 27 to explain this. You informed Mr. Neely that you agreed to an extension of time, until October 3, 2001, for issuance of our order.

Because that email mailbox is not checked daily, we will be putting additional clarifying information on our website to state that petitions for public records orders should be faxed, mailed or delivered to the Attorney General at the Department of Justice 1162 Court Street NE, Salem, Oregon 97310.

"asked DPSST to search its records for another James Brooks with the same date of birth." It is this prior file, if it exists, that is the subject of your petition.

You state that you made your request for this information to DPSST on September 6 and 7, 2001, and that your requests were denied on those same days by Alan Sharn, DPSST Deputy Director. Mr. Sharn informed Assistant Attorney General Keith Kutler that he had not denied a request for public records. Rather, he stated that he understood you to be requesting DPSSST to investigate whether any other officer with the name James Brooks had the same birth date, and how long such an investigation would take. Mr. Sharn reported that he responded that DPSST would do such an investigation, but that he did not know how long the investigation would take. Mr. Sharn stated that he never understood you to be making a request for the records themselves.

Mr. Sharn's account is consistent with the statement in your petition that you had requested from DPSST "assurance that if there was a DPSST file, the department had examined it and determined to its satisfaction that there was no conflict, that the officer mentioned in the file from 20 years ago was not the same officer now working as the King City chief." You then state, "In light of the oral refusal to provide us with that assurance, we formally request a copy of the archived file for James Brooks."

Based on the above facts, we find that DPSST has not denied a request for public records. Absent a denial of a records request by a state agency, the Attorney General lacks authority to order disclosure of public records. *See* ORS 192.450(1). Accordingly, we deny your petition as premature.

Mr. Sharn informs us that DPSST will treat your petition as a request for any archived DPSST files for James Brooks and that DPSST will provide a response to you within 10 days of the date of this order. That response will inform you whether DPSST has records responsive to your request and any such records will be provided to you unless they are exempt from disclosure under the Public Records Law. If DPSST asserts that any such records are exempt from disclosure, DPSST will notify you of the basis of the exemption.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS08677
c: Alan Sharn, Deputy Director, DPSST