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August 15, 2001

Mr. Vincent Padgett
Ms. Pamela Eller
P.O. Box 69
Lorane, OR 97451-0069

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

Dear Mr. Padgett and Ms. Eller:

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 August 9, 2001, asks the Attorney General to direct the Oregon State Police to make available for inspection and to produce copies of the following records:

> Polygraph questions and charts taken on September 8, 1998, on Vincent Padgett, case #98-291652, by Detective Hebner #1296 WD 411.

We respectfully deny your petition on the ground that the records you requested constitute "[i]nvestigatory information complied for criminal law purposes" that are exempt from disclosure under ORS 192.501(3).

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 195.420. 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. *Turner v. Reed,* 22 OR App 177, 186 n 8, 538 P2d 373 (1975).

ORS 192.501(3) exempts "[i]nvestigatory information complied for criminal law purposes" from disclosure "unless the public interest requires disclosure in the particular instance." The investigatory information exemption advances the public interest in preventing interference with ongoing law enforcement proceedings, including pending criminal prosecutions. *Jensen v.*

Schiffman, 24 Or App 11, 16, 544 P2d 1048 (1976). We have previously observed that the governmental interest favoring nondisclosure in these situations "is the general public's interest in having persons who have violated the law successfully prosecuted." Public Records Order, August 30, 1995, Heinz. Accordingly, "information compiled in investigations connected with *pending* or contemplated prosecutions ordinarily will remain confidential because disclosure likely would interfere with law enforcement proceedings." *See* ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1999) (MANUAL) at 29 (emphasis added) (citing *Jensen*, 24 Or App at 16).

On August 10, 2001, Lane County Deputy District Attorney Caren Tracy informed Assistant Attorney General Herbert F. Lovejoy that Mr. Vincent Padgett was convicted of multiple counts of Attempt to Commit Aggravated Murder, Conspiracy to Commit Aggravated Murder, and Assault in the First Degree in Lane County Circuit Court on August 6, 1999. *See State v. Padgett,* No. 209900241 (Lane Cir Ct, Indictment filed January 7, 1999). Deputy DA Tracy further informed AAG Lovejoy that the polygraph examination conducted on Mr. Padgett was part of the criminal investigation leading to those charges and that Mr. Padgett has appealed his convictions. *See State v. Padgett,* No. A107486 (Or Ct App, Notice of Appeal filed August 26, 1999).

On August 14, 2001, Lane County Chief Deputy District Attorney Kent Mortimore advised AAG Lovejoy that the Lane County District Attorney's Office objects to the release of this information so long as the criminal case against Mr. Padgett is pending, including the appeal. Information concerning polygraph examinations is generally inadmissible in criminal trials. *See, e.g., State v. Neal,* 143 Or App 183, 922 P2d 717 (1996) (citing *State v. Farrar,* 309 Or 132, 164, 786 P2d 161, *cert den* 498 US 879, 111 S Ct 212, 112 L Ed2d 171 (1990)) ("The admission of polygraph evidence may constitute reversible error if its is used to undermine, buttress or rehabilitate a witness's credibility."). In the event that the Court of Appeals vacates Mr. Padgett's convictions and retrial of Mr. Padgett becomes necessary, both Mr. Padgett and the State are entitled to a jury unaffected by Mr. Padgett's prior polygraph examination.

The exemptions listed in ORS 192.501 are conditional in that they exempt specific types of records or information "unless the public interest requires disclosure in the particular instance." ORS 192.501. You have not asserted a public interest requiring disclosure of the polygraph questions and chart in this instance, and in reviewing your petition and original request for disclosure of this information, we can discern none.

Consequently, because the records you seek are investigatory information that was compiled for a pending criminal law purpose, i.e., the prosecution of Mr. Padgett, ORS 192.501(3) exempts those records from disclosure. For that reason, we deny your petition to compel disclosure.

Sincerely,

Peter D. Shepherd

PETER D. SHEPHERD
Deputy Attorney General

AGS08359
c: Chief Deputy District Attorney Kent Mortimore