Kelly Carlson

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
TTY: (503) 378-5938

May 8, 2006

Marc M. Carlton
Williams, Kastner & Gibbs PLLC
888 SW Fifth Ave., Suite 800
Portland, OR 97204-2025

Re: Petition for Public Records Order
ODOT Motor Carrier Crash Unit Records

Dear Mr. Carlton:

This letter is the Attorney General's order on your petition for review of the denial by the Motor Carrier Crash Unit of the Oregon Department of Transportation (ODOT) for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. We received your petition on May 2, 2006. It seeks an investigative report prepared by the Motor Carrier Transportation Division of ODOT regarding a two-vehicle accident that occurred on December 24, 2005, on Interstate 84 near Hood River, Oregon and that involved Edwin Montoya, a driver employed by your client, United Road Services, Inc. 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. ORS 192.420. Any person denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld. ORS 192.450(1). The exemption relevant to the records at issue is ORS 192.501(3), which conditionally exempts from disclosure "[i]nvestigatory information compiled for criminal law purposes."

The "criminal investigatory" exemption ordinarily protects "information compiled in investigations connected with pending or contemplated prosecutions * * * because disclosure likely would interfere with law enforcement proceedings." ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 34 (2005) (AG'S MANUAL). The exemption extends to records held by a public body that is not a law enforcement agency, and a public body may apply the exemption in reliance on a law enforcement agency's representation that disclosure of the records would interfere with a pending or contemplated criminal prosecution. AG'S MANUAL at 36; Public Records Order, July 8, 2004, Meyer (exempting from disclosure records of Board of

Accountancy provided to Portland Police Bureau); Public Records Order, December 18, 2002, Crombie (exempting from disclosure records of Department of Human Services based on representation by prosecutor that public disclosure would interfere with pending criminal prosecution).

John Onda of the District Attorney's Office in Hood River County has informed us that he is using the report at issue for the criminal investigation and prosecution of Mr. Montoya and that disclosure of the report would interfere with that prosecution.

Because ORS 192.501(3) is a conditional exemption, the records you request are exempt from disclosure "unless the public interest requires disclosure in the particular instance." Your petition does not identify a public interest in the disclosure of these records and, in this particular instance, we do not have a basis to conclude that the public interest requires disclosing information that is being used in an ongoing criminal prosecution.

For the foregoing reasons, we therefore respectfully deny your petition.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS17332
c: Jackson Shepard, ODOT Motor Carrier Crash Unit