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January 27, 2006

Mr. James W. Laws
Attorney at Law
449 Hood Avenue
Metolius, OR 97741

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

Dear Mr. Laws:

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 January 17, 2006,[1] asks the Attorney General to direct the Oregon State Police (OSP) to produce a copy of "The Mobile Response Team (MRT) Plan or Special Operations Plan for the multi-agency enforcement action conducted at or in the vicinity of the Cove Palisades State Park (Cove Palisades) in Jefferson County, Oregon over Memorial day weekend, May 27-30, 2005." 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 who is 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 to determine if it may be withheld from disclosure. ORS 192.450(1). Your petition states that OSP denied your request in a letter dated December 9, 2005 and signed by Betsy Enos, Risk Manager for OSP.

We talked with OSP Lieutenant Mike Peterson, MRT Commander, and Ms. Enos about your petition. Lt. Peterson provided us with the following background information. During the Memorial Day weekend of 2004 a large crowd of young adults gathered at Cove Palisades and the surrounding area. Some members of this crowd became intoxicated, possessed and used controlled substances, started fires, discharged firearms, threatened law enforcement personnel and disturbed other park users. Anticipating that another large crowd might gather for the

[1] We appreciate your agreeing to extend the time period within which we otherwise would be obligated by law to respond to your petition.

Memorial Day weekend, May 27-30, 2005, OSP and other law enforcement agencies agreed to assist the Jefferson County Sheriff's Office in providing crowd control and law enforcement activities at Cove Palisades during the holiday weekend. Lt. Peterson told us that OSP prepared an operational plan (Plan) that MRT officers implemented through enforcing traffic and criminal laws and conducting crowd management activities at Cove Palisades and the surrounding area during the 2005 Memorial Day weekend. Finally, Lt. Peterson told us that OSP intends to re-use the Plan when it again provides assistance to the Jefferson County Sheriff's Office in enforcing applicable laws at Cove Palisades during the 2006 Memorial Day weekend.

OSP denied your request on the basis of ORS 192.501(18), which, unless the public interest requires disclosure in the particular instance, exempts from disclosure under the Public Records Law:

> Specific operational plans in connection with an anticipated threat to individual or public safety for deployment and use of personnel and equipment, prepared or used by a public body, if public disclosure of the plans would endanger an individual's life or physical safety or jeopardize a law enforcement activity.

Four criteria must be met for a public record to qualify for exemption under ORS 192.501(18):

1. The record is a specific operational plan for the deployment and use of personnel and equipment;

2. The record is connected with an anticipated threat to individual or public safety;

3. The record is prepared or used by a public body; and

4. Public disclosure of the record would endanger an individual's life or physical safety or jeopardize a law enforcement activity.

With regard to the first criterion, the Plan addresses the deployment and use of personnel and equipment specific to the Memorial Day weekend operations at Cove Palisades. It was prepared for use at an identified event during particular time periods. Among other factors, the plan specifies how and where personnel are deployed in and around the park, enforcement priorities, tactical policies, chain of command, hours of operation, and staging locations.

With regard to the second criterion, the activities that occurred during the 2004 Memorial Day weekend at Cove Palisades threatened the safety of both individuals and the public more generally, *e.g.*, a large crowd gathered in one area with people intoxicated by alcohol and other controlled substances discharging firearms, starting fires, and threatening law enforcement personnel. The law enforcement activity provided for in the Plan took place in order to alleviate the anticipated threat to safety the following year. According to Lt. Peterson, OSP is employing the Plan again in 2006 because it has determined that a significant law enforcement presence is needed to address what they anticipate to be the same type of threat experienced in 2004 and

curtailed in 2005. This set of facts satisfies the second criterion. Because OSP both prepared and is using the Plan, the third criterion is also met.

Finally, the fourth criterion requires that public disclosure of the Plan would endanger an individual's life or public safety, or jeopardize a law enforcement activity. In light of the fact that OSP will use the Plan to conduct virtually the same law enforcement activities at Cove Palisades in May 2006 as were accomplished in 2005, Lt. Peterson told us that public disclosure of the Plan at this time would allow individuals to learn the tactical procedures and deployment methods that OSP personnel will use, and to take measures to defeat them. Given that possibility, he told us that disclosure would jeopardize the success of the planned law enforcement activity and endanger the safety of law enforcement personnel and civilians in and around Cove Palisades. We agree that disclosure of the Plan would jeopardize the planned law enforcement activity and, given the types of behaviors that the Plan is focused on preventing and curtailing, *e.g.*, intoxication through use of legal and illegal controlled substances, starting of fires and discharging of weapons within a large crowd of people, we also concur with Lt. Peterson's assessment as to disclosure endangering individual lives and public safety.

Based on the preceding analysis, we conclude that the Plan is exempt from disclosure under ORS 192.501(18), "unless the public interest requires disclosure in the particular instance." You have not identified a public interest requiring disclosure of the Plan in this instance. In reviewing your petition and weighing the safety risks and jeopardy to a law enforcement activity if the Plan is disclosed, we can discern none.

Consequently, because the Plan is exempt under ORS 192.501(18), we deny your petition to compel disclosure.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

PDS/gvk:AGS16904
c: Lt. Mike Peterson, OSP
Betsy Enos, OSP