5/31/05 C. Kelly Carlson
OR

HARDY MYERS
ATTORNEY GENERAL

PETER D. SHEPHERD
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DEPARTMENT OF JUSTICE

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May 26, 2005

Jeff Bowman
1620 Huckleberry Dr.
Seaside, OR 97138

Re: *Petition for Public Records Disclosure Order*:
Department of State Police Records

Dear Mr. Bowman:

This letter is the Attorney General's order under the Oregon Public Records Law, ORS 192.410 to 192.505, in response to your letter of May 18, 2005, seeking disclosure of records. Your letter, which we received on May 19, 2005, requests copies of a variety of records concerning a March 25, 2005, incident involving Brent Bowman and an Oregon State Police (OSP) Trooper.

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 192.410. The duty to make non-exempt public records available for inspection and copying is on the "custodian" of the public records. The "custodian" is defined as the public body mandated to create, maintain, care for or control the records. ORS 192.410(1)(b). The Attorney General has authority to order a state agency to disclose public records only if it has denied a requestor access to the records. *See* ORS 192.450 ("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 * * *.").

Your letter, addressed to the Department of Justice (DOJ), states that you are "requesting copies" of specified public records. It makes no statement as to whether you have previously requested records from a state agency, or that any such request has been denied. Because we are uncertain whether your intent is to request disclosure of DOJ records or to petition the Attorney General to order another agency, presumably OSP,[1] to disclose the records cited in your letter, this order responds to both possibilities.

DOJ does not possess the requested records, nor is this agency under any mandate to create, maintain, care for or control the requested records. Therefore, to the extent that you

[1] Your petition states that you do not intend to comply with OSP's Request for Oregon State Police Report form.

intended to request disclosure by DOJ, your request is denied because DOJ is not a custodian of the requested records.

To the extent that the records you seek exist, it appears that OSP would be the proper custodian under the Public Records Law.[2] However, there is no indication in your letter that you have requested these records from OSP, and Cort Dokken, OSP Risk Manager, told us that OSP has not received a request for these records from you. As already stated, the Attorney General has authority to order an agency to disclose records only if it has denied a request for disclosure. ORS 192.450. To the extent your letter is a petition seeking an order for OSP to disclose records, it is denied as premature.

To the extent that you intended to request disclosure of DOJ records, your request is denied because DOJ is not a custodian of the records under ORS 192.410(1)(b). To the extent you intended to petition the Attorney General to order OSP to disclose records not previously requested of that agency, we deny your petition as premature. ORS 192.450.

Sincerely,

Peter D. Shepherd

PETER D. SHEPHERD
Deputy Attorney General

PDS/gvk:AGS15554
c: Cort Dokken, OSP

[2] We do not know whether OSP maintains a copy of the requested Seaside Police Department Citizen Complaint, given that such a record would have originated with another agency.