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May 25, 2005

Brent Bowman
1620 Huckleberry Dr.
Seaside, OR 97138

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

Dear Mr. Bowman:

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 May 18, 2005, asks the Attorney General to direct the Department of State Police (OSP) to make available the following records "[your] written complaint, all photographs, audiotapes, Trooper notes and recorded phone calls with Sgt. Judah and Lt. Peterson" concerning a complaint you filed about Trooper Lawson. 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 192.410. The Attorney General has authority to order disclosure only if the requestor has been denied 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* * *.").

According to your petition, you contacted OSP Sgt. Judah to discuss a letter you received from OSP finding that allegations you made against Trooper Lawson were not sustained. Also according to your petition, following that discussion you asked for disclosure of "a copy of MY written statement, the oral interview and copies of the photographs he took." Sgt. Judah referred you to Lt. Peterson. Your petition states that Lt. Peterson denied the request.

We spoke with Cort Dokken, OSP Risk Manager, about your petition. Based on a discussion with Lt. Peterson, Mr. Dokken told us that your oral request to OSP was for only "a copy of the personnel complaint."[1] Your petition asks for the disclosure of records that appear to

[1] According to Mr. Dokken, you did not submit a written request to OSP. Under its administrative rules, OSP may require public records requests to be made in writing, and may charge fees to cover its reasonable costs in responding to those requests. OAR 257-020-0010.

extend beyond a complaint, namely "photographs, audiotapes, Trooper notes and recorded phone calls with Sgt. Judah and Lt. Peterson." To the extent your petition seeks disclosure of records that you did not request from OSP, it is denied as premature. 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.

Your petition states that Lt. Peterson denied your request because the records were part of Trooper Lawson's personnel record. The records you seek were created in response to your complaint about Trooper Lawson, who was not disciplined as a result of that investigation. ORS 181.854(3) generally prohibits disclosure by a public body of information about a personnel investigation of a public safety employee that did not result in discipline.[2] However, disclosure is not prohibited when it is required by the public interest or if the public safety officer consents to the disclosure in writing. ORS 181.854(4)(a), (b).[3] Mr. Dokken told us that Trooper Lawson has not consented to disclosure of the information you seek. Accordingly, OSP must disclose the records only if disclosure is required by the public interest.

In the analysis of whether the public interest requires disclosure, the term "public" means "the focus is on the effect of the disclosure in general, not disclosure to a particular person at a particular time." *Morrison v. School District No. 48*, 53 Or App 148, 156, 631 P2d 784 (1981). For example, the public interest in confirming a high ranking police officer's integrity and ability to evenhandedly enforce the law required the disclosure of records regarding disciplinary action taken against that officer. *City of Portland v. Anderson*, 163 Or App 550, 554, 988 P2d 402 (1999).

Your petition provides no indication that you are seeking the requested records to further a public, as opposed to a private, interest. Accordingly, we find that OSP is prohibited from disclosing the requested records under ORS 181.854(3). The Public Records Law exempts public records from disclosure if their disclosure is "prohibited or restricted or otherwise made confidential or privileged under Oregon law." ORS 192.502(9).

To the extent that your petition asks for records not previously requested of OSP, we deny your petition as premature. The remainder of the petition we deny due to the records being exempt under ORS 192.502(9), on the basis of the prohibition stated in ORS 181.854(3).

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

PDS/gvk:AGS15549
c: Cort Dokken, OSP

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[2] OSP is a public body and Trooper Lawson is a public safety employee. ORS 181.854(1)(a), (b); ORS 181.854.
[3] Two additional exceptions not applicable here allow disclosure either when necessary for investigation by certain public or citizen review bodies or when the public body determines that nondisclosure would adversely affect public confidence. ORS 181.854(4)(c), (d).