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April 22, 2005

Jeffrey J. Rosas
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Re: Public Records Disclosure Order:
Department of Public Safety Standards and Training Records

Dear Mr. Rosas:

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 April 15, 2005, asks the Attorney General to order the Department of Public Safety Standards and Training (DPSST) to produce a copy of: "Reports and incident logs received from Eugene Police regarding John Henry's and Horsehead bar." For the reasons that follow, we respectfully deny your petition.

Your petition indicates that you requested DPSST to disclose records related to its investigation of John Henry's and the Horsehead bar, and that DPSST granted your request except for the records that are the subject of your petition. Your request for those records was denied by Karen Evans of DPSST.

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:

> Investigatory information compiled for criminal law purposes. The record of an arrest or the report of a crime shall be disclosed unless and only for so long as there is a clear need to delay disclosure in the

> course of a specific investigation, including the need to protect the complaining party or the victim.

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 33 (2004) (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 35; 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). This exemption is qualified with respect to "the record of an arrest or the report of a crime," which must be disclosed unless there is "a clear need to delay disclosure in the course of a specific investigation."

We have reviewed the records provided to DPSST by the Eugene Police Department (EPD). They consist of records compiled by EPD in the course of investigations of a number of individuals and therefore are potentially within the scope of ORS 192.501(3). Lisa Long, Records Supervisor of EPD, has informed us that some of EPD's investigations have been closed while others are continuing, and that disclosure of records relating to the ongoing investigations, other than those portions which constitute "the record of an arrest or the report of a crime," would interfere with those investigations.

Because ORS 192.501(3) is a conditional exemption, the records of the ongoing investigations identified by Ms. Long are exempt from disclosure "unless the public interest requires disclosure in the particular instance." Your petition does not identify a pubic 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 investigation. Therefore, we deny your petition as to those records being used in ongoing criminal investigations, except for those portions of the records that are a "record of an arrest or the report of a crime."

Ms. Evans of DPSST has informed us that the agency intends to disclose to you the records of closed investigations and the records of "an arrest or the report of a crime" included in the records of ongoing investigations, upon receipt of payment

of its costs to reproduce the records.[1] She told us that DPSST will contact you next week to inform you of its costs and that the agency anticipates having the records available to you on or about April 29th. Because DPSST has agreed to provide you with a copy of the non-exempt records responsive to your request, we deny the remainder of your petition as moot.

Sincerely,

PETER D.SHEPHERD
Deputy Attorney General

PDS/gvk:AGS15387
cc: Karen Evans, DPSST
Lisa Long, Eugene Police Dept.

[1] DPSST may charge a fee to reimburse it for its actual costs in making records available. ORS 192.440(3); AG'S MANUAL at 13-14.