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December 11, 2013

SENT VIA EMAIL ONLY

Les Zaitz
The Oregonian
PO Box 837
John Day OR 97845
lzaitz@oregonian.com

Re: Petition for Public Records Disclosure Order
Department of Public Safety Standards & Training
DOJ File No. 259001-GA0126-13

Dear Mr. Zaitz,

This letter is the Attorney General's order in response to your petition asking that we order the Department of Public Safety Standards and Training to disclose certain public records you requested. Specifically, you seek the following exhibits from hearings concerning three public safety officers against whom DPSST took licensing actions:

Nielsen: A11a, A11b, 12, 13, 14, 15 and A20
Kruse: A5 series, A12, and portions of A9, A10, and A10.
Dunsworth: A2, A14 and A20

Petition at 1. We respectfully deny your petition as moot, for the reasons that follow.

In denying your request for these records, DPSST initially explained that the records were originally records of the Oregon Department of Corrections, and asserted that the records were exempt from disclosure pursuant to ORS 192.502(10). That statutory provision provides that exempt public records of one public body do not lose their exempt status simply by being transferred to another agency, so long as the original reasons for confidentiality still apply. DPSST stated that "the law enforcement agency that conducted the investigation remains the custodian of those records and would best be able to determine if their records are disclosable."

DPSST subsequently supplemented its denial by citing the "personnel discipline" exemption of ORS 192.501(12). That exemption applies to "A personnel discipline action, or materials or documents supporting that action." DPSST again reiterated that the purpose of its denial was to direct you to make your request of ODOC:

> Due to the nature of internal investigatory documents received from public safety agencies and the high probability that the agency relies on those investigations to impose disciplinary action, DPSST refers members of the public requesting those documents to the originating agency.

Your petition followed.

DPSST's desire to have you obtain these records from ODOC is understandable, possibly even efficient. As DPSST's correspondence with you indicates, ODOC, rather than DPSST, is probably in the best position to determine whether a disclosure exemption applies to the particular records. But, as you point out in your petition, DPSST is a custodian of the public records that you request. That is because DPSST possesses those records for its own programmatic purposes, and not merely as ODOC's agent. See ORS 192.410(1) (defining the term "custodian" for purposes of the Oregon Public Records Law). As such, DPSST is responsible for replying to requests for these public records in its possession. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2010) at 9 ("More than one public body can be a custodian of a given public record, and each custodian is responsible for responding to public record requests directed to it.")

DPSST certainly may encourage requesters to go to the originating agencies for documents. But in order to actually deny a request based on the transferred records exemption, DPSST must determine that an exemption from public disclosure requirements actually applies to the records. MANUAL at 9 ("When a public body that is a custodian of public records has received the records from another public body, it should consult with the originating body regarding whether the records may be exempt from disclosure.")

Following your petition, DPSST has agreed to do exactly that. We now understand that DPSST is willing to provide you with the records that you requested. In doing so, DPSST may make some redactions to the materials. To the extent you believe that any redactions are not justified, you are naturally free to petition our office to review those redactions. Your petition is respectfully denied as moot.

Sincerely,

Mary H Williams

MARY H. WILLIAMS
Deputy Attorney General

MCK:tmt/4840628
cc via email only:
Linsay Hale, DPSST