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Re: Petition for Public Records Disclosure Order
Oregon State Police
DOJ File No. 257001-GA0020-13

Dear Mr. Suo,

This letter is the Attorney General's order in response to your petition asking our office to direct the Oregon State Police to disclose certain public records you requested. Specifically, you seek records that would identify the federally-licensed firearm dealers requesting background checks on would-be purchasers and provide data on the monthly number of checks requested by each. Although OSP provided the Oregonian with other information about the Firearm Instant Check System (FICS), OSP denied this aspect of the Oregonian's request, stating that "OSP FICS cannot provide this information per ORS 166.412(7)(b) and OAR 257-010-0055(3)."

Oregon's Public Records Law, ORS 192.410 to 192.505, provides that "[e]very person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.501 to 192.505." ORS 192.420(1). A "catchall" exemption codified at ORS 192.502(9)(a) incorporates into the Public Records Law other provisions of Oregon law that make information confidential or privileged, or that prohibit or restrict disclosure. Exemptions from disclosure, including exemptions incorporated through the "catchall" provision, must be express in the law and cannot be inferred. *See, e.g., Colby v. Gunson*, 224 Or App 666, 675 (2008). Moreover,

exemptions are construed narrowly, which "means that, if there is a plausible construction of a statute favoring disclosure of public records, that is the construction that prevails." *Id.* at 676.

As noted above, OSP's denial of this aspect of the Oregonian's request cited ORS 166.412(7)(b). That statute provides that "[t]he record of the information obtained during a request for a criminal records check by a gun dealer is exempt from disclosure under public records law." For reasons explained below, we conclude that the information withheld by OSP falls within the exemption of ORS 166.412(7)(b) and can permissibly be withheld from disclosure.[1]

In your petition, you argue that OSP has misapplied ORS 166.412(7)(b):

> This exemption clearly applies to information gathered about the gun purchaser: the person's name and address; his or her criminal history; and information about the weapon he or she purchased. This is information that OSP 'obtains' during a request for criminal records

Although superficially appealing, this proposed construction of the statute ultimately suffers from significant problems. The identity of the firearm dealer is among the pieces of information the dealer provides to OSP pursuant to ORS 166.412(2)(d)(A) and (B). Other information that also must be provided pursuant to that provision includes the identity of the purchaser, ORS 166.412(2)(d)(F), the social security number of the purchaser if it has been voluntarily provided, ORS 166.412(2)(d)(G), and information about the personal identification presented by the buyer, ORS 166.412(2)(d)(H). All of this information is required to be provided by the dealer when it requests We do not think we can plausibly interpret ORS 166.412(7) to exempt from disclosure only some of the information that dealers are required to provide to OSP under ORS 166.412(2)(d) and require disclosure of other information required by the same subsection.

With this observation in mind, the language of ORS 166.412(7)(b) cannot be reconciled to your proposed interpretation of it. Specifically, we note that the exemption reaches "information obtained during *a request for* a criminal records check by a gun dealer" (emphasis added). The interpretation you propose would instead exempt information obtained *during the background check* that has been requested. The request for the background check is the communication described in ORS 166.412(2)(d). The information that a gun dealer must provide "during *a request for*" a check is the information listed at subparagraphs (A) through (H) of ORS 166.412(2)(d). That information includes the business name of the gun dealer and its federal firearms license number.

We recognize that disclosure of the information that is the subject of your petition would not identify would-be purchasers of firearms who have been subjected to checks. Therefore, the disclosure would seem compatible with what may well have been the animating concern of the

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[1] Because public bodies generally are not required to assert exemptions from disclosure, is not prohibited from disclosing the information. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2010) at 23 ("A public body is ordinarily free to disclose a record or information even if an exemption applies to that record or information," citing *Guard Publishing Co. v. Lane County School District No. 4J*, 310 Or 32, 37–38 (1990)).

legislature. But the means by which the legislature articulated its policy preference expressly exempts this information from disclosure. As a result, we must respectfully deny your petition.

Sincerely

MARY H. WILLIAMS
Deputy Attorney General

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c: Patricia Whitfield, OSP