ELLEN F. ROSENBLUM
ATTORNEY GENERAL

MARY H. WILLIAMS
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

Justice Building
1162 Court Street NE
Salem, Oregon 97301-4096
Telephone: (503) 378-4400

January 9, 2013

Bill C. Carroll
PO Box 126
Grand Ronde, OR 97347

Re: Public Records Request for Disclosure Order
Oregon Department of Public Safety Standards and Training
DOJ File No. 259001-GA0001-13

Dear Mr. Carroll,

This letter is the Attorney General's order in response to your petition under the Oregon Public Records Law, ORS 192.410 to 192.505. You ask our office to direct the Oregon Department of Public Safety Standards and Training to disclose to you its "investigation of the OIR Group which investigated the Portland Police Bureau for officer involved shootings." As explained below, we conclude that the records you requested are exempt from disclosure at this time, and respectfully deny your petition.

Under the Oregon Public Records Law, "[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). Exemptions from the general requirement of disclosure are construed narrowly, meaning that "if there is a plausible construction of a statute favoring disclosure of public records that is the construction that prevails." *Colby v. Gunson*, 224 Or App 666, 676 (2008).

You requested the records at issue by letter on November 28, 2012. On December 10, DPSST returned the check that you had enclosed with your request, informing you that the records were unavailable at that time because the investigation at issue was still ongoing. We have spoken to DPSST about your petition. We are informed that DPSST has not yet made any determination with respect to the complaint to which your request relates. ORS 703.480(2)(a) requires DPSST to "[i]nvestigate alleged violations of ORS 703.401 to 703.490 [which are private investigator licensing statutes] and of any rules adopted by the board or department." The same provision goes on to provide that "when the department conducts an investigation under this paragraph, all information about the alleged violation and the investigation is confidential and is not subject to disclosure under ORS 192.410 to 192.505 if the department

determines that the allegation is false." The complaint in question appears to allege a possible violation of ORS 703.405, which provides that "A person may not act as an investigator or represent that the person is an investigator unless that person is licensed under ORS 703.430." We readily conclude that DPSST's investigation falls within the scope of ORS 703.480(2)(a). Consequently, if DPSST concludes that "the allegation is false" it follows that the records you request are "not subject to disclosure under ORS 192.410 to ORS 192.505."

We do not think it is plausible to construe ORS 703.480(2)(a) to mean that records pertaining to such an investigation are subject to disclosure during the pendency of the investigation. The context provided by related statutes makes it clear that the legislature envisioned a process of investigations that are confidential while they are ongoing. Specifically, ORS 703.480(2)(a) operates in large part as an exception to the rule that investigatory information becomes publicly available at the conclusion of DPSST's investigations of licensees and applicants under ORS 703.473(3). The scope of ORS 703.480(2)(a) appears to be broader than the scope of ORS 703.473(3) in that the former applies to any investigations of violations of investigator licensing statutes while the latter applies only to investigations of licensees and applicants. Overall, however, this context persuades us that the legislature did not intend for information to be publicly available while investigations are proceeding, only to subsequently become exempt from disclosure if DPSST were to conclude that the allegations are "false." We also note that it is difficult to envision any reason why the legislature would have intended such a scheme. *See* ORS 174.020 (statutory interpretation should "pursue the intention of the legislature if possible").

In sum, because DPSST's investigation is ongoing, we conclude that the records you have requested are currently exempt from public disclosure by virtue of ORS 703.480(2)(a). We respectfully deny your petition on that basis.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

MHW:bw1/3905909-v1
c: Suzy Herring, DPSST
Todd Mitchell, DPSST