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October 28, 2014

Nigel Duara, Senior Editor
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The Associated Press
121 SW Salmon Street, Suite 1450
Portland, Oregon 97204

Re: Petition for Public Records Order
Oregon Department of Corrections
DOJ File No. 291011- GA0100-14

Dear Mr. Duara,

This letter is the Attorney General's order on your petition for public records order under the Oregon Public Records Law, ORS 192.410 *et seq*. Your petition, which we received on October 21, 2014, asks the Attorney General to order the Oregon Department of Corrections (ODOC) to disclose the following records:

"conflict reports submitted by Michael Clarence Hagen in 2011and early 2012."

For the reasons that follow we respectfully deny your petition.

The Public Records Law confers a right to access any public record of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. The law requires generally that the custodian of public records furnish proper and reasonable opportunities for inspection and/or copying of the record in the office of the custodian. ORS 192.430. 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 to review the public record to determine if it may be withheld from public inspection. ORS 192.450(1).

In your petition, you state that ODOC denied your request for the records, asserting that the records are exempt from disclosure under ORS 192.501(3) as "criminal investigatory materials." You contend in your petition that the records withheld by ODOC do not meet the requirements of ORS 192.501(3) because, in your view, the documents were generated by ODOC in the ordinary course of its general operations and not for a criminal investigation. In

the alternative, you suggest that ODOC has not met its burden of demonstrating that the public interest favors nondisclosure of the records under the circumstances.

We have spoken with ODOC officials regarding your petition. They told us that the records at issue were compiled for state investigators at their request as part of an on-going criminal investigation and prosecution being conducted by the Oregon State Police and the Malheur County District Attorney's Office. ODOC officials confirmed to us the representation that they made to Mr. Dubois of the AP in the agency's letter denying his request for the records, specifically that ODOC officials had contacted Malheur County District Attorney Dan Norris and that he had provided them with reasonable assurances that the public disclosure of the requested records at this time would interfere with his office's pending criminal investigation and prosecution in Malheur County. We turn to application of the criminal investigatory material exemption in ORS 192.501(3).

1. The records are criminal investigatory materials.

For the reasons expressed in Public Records Order, November 17, 2013, Zaitz, we respectfully disagree with your arguments that the criminal investigatory exemption is inapplicable to the information you are seeking. A copy of that order is attached for your reference.

2. On balance, the public interest does not require immediate disclosure.

The exemption invoked by ODOC to deny your request is typically of limited duration. As the Oregon Court of Appeals has concluded, "(1) investigations connected with pending or contemplated proceedings will ordinarily remain secret because disclosure would likely interfere with enforcement proceedings * * *; but (2) investigations not connected with pending or contemplated proceedings will remain secret only if the government establishes that disclosure would produce [one of the negative consequences the exemption is designed to avoid.]." *Jensen v. Schiffman*, 24 Or App 11, 16 (1976); ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2011) ("MANUAL") at 37.

Your petition offers several public interests that you assert will be served by disclosure. However, you do not contend that those interests require an immediate disclosure of the records, and we discern no reason why the public interests that you offer compel immediate disclosure. We conclude that in this instance the public interest does not require immediate disclosure.

Conclusion

For the reasons explained above, ODOC officials are entitled to rely on the reasonable assurances of the District Attorney that public disclosure of the requested records at this time would interfere with his office's pending criminal investigation and prosecution in Malheur County. MANUAL at 38 ("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."). Under these circumstances, we conclude that ODOC properly invoked the criminal investigatory information exemption. ORS 192.501(3). For the foregoing reasons, your petition is respectfully denied.

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

cc via email only:
Elizabeth Craig, DOC
John Nees, DOC