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July 15, 2014

SENT VIA EMAIL ONLY

Mr. Les Zaitz
The Oregonian
Via email: lzaitz@oregonian.com

Erin Redding
Oregon State Police
Via email: erin.redding@state.or.us

Re: Petition for Public Records Disclosure Order
Oregon State Police
DOJ File No. 257001-GA0068-14

Dear Mr. Zaitz and Ms. Redding:

This letter is the Attorney General's order on Mr. Zaitz's petition for review of the partial denial by Oregon State Police ("OSP") of petitioner's request for records under the Public Records Law, ORS 192.410 to 192.505. The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. If a state agency denies a request for disclosure of records, the requestor may petition the Attorney General for review of the denial. ORS 192.450.

Mr. Zaitz requested that OSP disclose to him the original employment application of Jeff Lanz and internal reports, documents, e-mails, and memos regarding any allegation of any misconduct or violation of OSP policies and procedures relating to Jeff Lanz. Mr. Zaitz's request excluded allegations pertaining to Mr. Lanz's use of fuel cards. OSP disclosed the application to petitioner with redactions, and declined to disclose any records relating to prior misconduct allegations against Mr. Lanz. In responding to petitioner's request, OSP explained that it had made the redactions to the employment application pursuant to ORS 192.502(2), the personal-privacy exemption, and ORS 192.502(8), regarding social security numbers. OSP

declined to provide reports pertaining to prior allegations against Mr. Lanz based on ORS 181.854(2).

We first will discuss our conclusions regarding the employment application redactions, and then will discuss the investigation reports.

In petitioner's petition to the Attorney General for a public records order, petitioner stated he had "narrowed [his] focus to selected redactions." (Zaitz letter to Attorney General dated June 16, 2014, page 2). Petitioner then sought disclosure of the following redacted information:

1. On page 7 of the application, "* * * the record of an arrest for a relative."

2. On page 8 of the application, "all information for references except the home telephone number."

3. On page 14 of the application, "all of the answers."

ORS 192.502(2) exempts from disclosure:

> Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

We have concluded that the information on pages 7 and 8 is not exempt from disclosure under OSP's cited statute—ORS 192.502(2)—but that the information on page 14 *is* exempt from disclosure under that statute.

Specifically, we conclude that disclosure of the specified redacted information on page 14 would be an unreasonable invasion of privacy, and that petitioner has not shown the public interest clearly and convincingly requires disclosure. In petitioner's petition to the Attorney General, petitioner explains that Mr. Lanz's answers on page 14 of the application "shed light on any financial or other potential problems prior to his employment. Given the financial issues that developed soon after his employment, there is substantial public interest in Lanz's answers and whether they were truthful. He is asked, for instance, whether any debt had ever been turned over to a collection agency and whether he had been sued over debt." (Zaitz petition dated June 16, 2014, page 4).

However, the application itself is dated September 17, 1997. The information it contains is thus approximately 17 years old and bears little if any relationship to Mr. Lanz's more recent financial status. Moreover, whether Mr. Lanz has ever been "sued over debt" would be a matter of public record. Under the circumstances, we conclude that the disclosure of the two answers petitioner specified in the paragraph quoted above would be an unreasonable invasion of privacy and is not clearly and convincingly in the public interest. As for the remainder of the redacted information on page 14, petitioner has not articulated why the public interest clearly and convincingly requires disclosure.

As for the internal reports, documents, e-mails, and memos regarding any allegation of any misconduct or violation of OSP policies and procedures relating to Mr. Lanz, OSP has provided us with two responsive reports, which it declined to disclose to petitioner citing ORS 181.854(2). That statute exempts from disclosure records pertaining to personnel investigations of a public-safety employee that do not lead to discipline of the employee. The exemption does not apply if the public interest requires disclosure, or if the public-safety agency concludes that withholding the information would harm the agency itself.

Neither of the two investigations the reports of which OSP provided us resulted in Mr. Lanz being disciplined. However, we conclude that under the circumstances of this particular case, the public interest weighs in favor of the two reports being disclosed to petitioner.

Mr. Lanz has been convicted of official misconduct related to his employment with OSP. That conviction significantly increases the public interest in understanding what allegations were previously made to OSP about Mr. Lanz, and whether those allegations were appropriately investigated by OSP. To the extent the records document serious allegations against Mr. Lanz, the public would have an interest in seeing the nature of those allegations and whether OSP handled the allegations appropriately. On the other hand, if the records do not show serious allegations against Mr. Lanz, assuring the public that OSP did not overlook prior problems would also serve the public interest.

We do not foreclose the possibility that, in some cases, disciplinary records of convicted officers might remain exempt pursuant to ORS 181.854. If the contents of a convicted officer's disciplinary file contained information that was wholly unrelated to the officer's conviction and that more squarely implicated the apparent policy aim of protecting officers from being subject to unwarranted public criticism over unfounded complaints, we might well conclude that the public interest did not require disclosure of that information. In this case, however, our review of the materials suggests that disclosure of these materials will not subject Mr. Lanz to much, if any, public criticism. In light of his conviction and the nature of the information, we believe that the public interest in disclosing these particular records outweighs any interest in keeping them confidential.

Thus, for the reasons explained above, we partially deny and partially grant petitioner's petition. We order OSP to disclose to petitioner Mr. Lanz's employment application, *without* the redactions on pages 7 and 8; we uphold OSP's redactions to page 14 of the application. OSP also will disclose to petitioner its documents pertaining to previous internal investigations of Mr. Lanz, subject to any redactions OSP may deem appropriate under other disclosure exemptions. If petitioner is not satisfied with any such redactions, he may of course appeal the redactions to this office. OSP has seven days within which to comply with this order or announce its intention to institute court proceedings. ORS 192.450(2).

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

MCK:tmt/5451393