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April 7, 2014

SENT VIA EMAIL & REGULAR MAIL

Heather R. Martin
Beery Elsner & Hammond, LLP
1750 SW Harbor Way, Suite 380
Portland, OR 97201

Dear Ms. Martin,

This letter is the Attorney General's public records order in response to a petition you filed on March 31, 2014 asking our office to order the Oregon State Police (OSP) to disclose certain records under the Oregon Public Records law, ORS 192.410 to 192.505. You initially filed an almost identical petition on March 28 in your capacity as City Attorney for the City of Sherwood. After being informed that the City of Sherwood could not use the public records law to compel OSP to disclose records, you resubmitted the petition, substituting a sentence indicating that your petition was made "as an individual" whereas it was initially submitted in your official capacity.

Despite changing that single sentence, your letter very strongly suggests that you continue to seek to compel OSP to provide documents for the City of Sherwood to use. It focuses on Sherwood's need to make informed employment decisions about particular employees whose conduct is implicated by the documents you have sought. You indicate that Sherwood will continue to treat the document as generally exempt from public disclosure pursuant to the "transferred records" exemption of ORS 192.502(10) – a statute that does not apply to you in your personal capacity. And you explain that your petition is being filed simultaneously with a request made in your individual capacity "because the City cannot afford to wait."

Even assuming, however, that your petition is made in your personal capacity, we would respectfully deny it. OSP explains that the records you are seeking relate to at least one pending criminal matter. Consequently, they are exempt from disclosure pursuant to ORS 192.501(3) unless the public interest requires disclosure in the particular interest. Although you suggest a

number of ways in which disclosure to Sherwood would serve the public interest, you do not explain how disclosing the records to a member of the general public would serve the public interest. In fact, your suggestion that the City would withhold this information from public disclosure, relying on ORS 192.502(10), indicates that you do not necessarily think public disclosure would be in the public interest. "[I]nformation compiled in investigations connected with pending or contemplated prosecutions ordinarily will remain confidential because disclosure likely would interfere with law enforcement proceedings." ATTORNEY GENERAL'S PUBLIC RECORDS & MEETINGS MANUAL (2011) at 37 (citing *Jensen v. Schiffman*, 24 Or App 11 (1976)).

Consequently, to the extent that your petition is made in your personal capacity, it is respectfully denied. To the extent that your petition is made in your capacity as City Attorney for the City of Sherwood, it is denied because a public body is not a "person" entitled to public records under the Oregon Public Records Law. MANUAL (2011) at 1. We understand, however, that OSP may be willing to discuss with Sherwood the extent to which some information might be shared once the related criminal proceedings have concluded.

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

c: Jeff Lanz, OSP