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November 4, 2015

SENT VIA EMAIL ONLY
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Kyle Iboshi
KGW News
1501 SW Jefferson St
Portland, OR 97201

Re: Petition for Public Records Disclosure Order:
Department of State Police
DOJ File No. 257001-GA0134-15

Dear Mr. Iboshi:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. We received your petition on October 19, 2015. You agreed to extend the deadline for issuance of this order to November, 4, 2015. Thank you.

Your petition asks the Attorney General to direct the Oregon State Police (OSP) to provide you with copies of the following records:

> Any audio or video recordings and/or written transcripts of interviews with Detective Sergeant Joe Kaney and Detective Todd Spingath from the Roseburg Police related to their response to the active shooter on the Umpqua Community College Campus.

For the reasons that follow, we respectfully deny your petition.

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; ORS 192.430. Any person denied the right to inspect a 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). The Public Records Law primarily is a disclosure law, not a confidentiality law. The public body has the burden of demonstrating that withholding a requested public record from inspection is permitted by the Public Records Law. ORS 192.450(1).

OSP denied your request on the ground that the records were exempt from disclosure under ORS 192.501(3), the criminal investigatory materials exemption. That provision exempts from mandatory disclosure "investigatory material compiled for criminal law purposes" unless the public interest requires disclosure in the particular instance. The exemption does not expire when law enforcement officials have closed an investigation or decided not to prosecute, however, the government interest in maintaining confidentiality of the records is diminished in those circumstances. OREGON ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL at 43 (2014) (MANUAL); Public Records Order, July 3, 1995 (Garrettson).

The Court of Appeals has opined that information compiled in investigations connected with pending or contemplated prosecutions ordinarily will remain confidential, because disclosure likely would interfere with law enforcement proceedings. *Jensen v. Schiffman,* 24 Or App 11, 16, 544 P2d 1048 (1976); *see also,* MANUAL at 43; Public Records Order, February 27, 2007 (Zaitz). The exemption may apply when the information is not connected with a pending or contemplated prosecution if the public body establishes that disclosing the information would result in specific harms. *Jensen v. Schiffman,* 24 Or App at 16; MANUAL at 43.

The records you stem from OSP's investigation into the use of deadly force by two Roseburg Police officers against the Umpqua Community College shooter. OSP has concluded its investigation in regard to the shooting of the shooter and presented the relevant information to the Douglas County District Attorney's Office. On October 7, 2015, Douglas County District Attorney Wesenberg announced that his office would not prosecute the officers as he had concluded that the use of deadly force was justified. District Attorney Wesenberg also provided some details concerning the officers' use of deadly force. OSP subsequently denied your request for its records on that subject, stating that they were tied to an active investigation. OSP invited you to resubmit your request when the investigation had concluded.

We spoke with the District Attorney Wesenberg, OSP Lieutenant Steve Mitchell, and Douglas County Undersheriff Brian Sanders. They informed us that the sheriff's office continues to actively investigate the incident at Umpqua Community College. Undersheriff Sanders also informed us that the investigation is connected with contemplated criminal prosecution. The OSP investigation is part of the broader ongoing investigation. We conclude that the records you seek were compiled as part of an investigation that is still active and connected with pending or contemplated prosecution. The records, therefore, may be withheld unless the public interest in this circumstance requires disclosure.

The criminal investigatory information exemption advances the public interest in preventing interference with ongoing law enforcement proceedings, including pending or contemplated criminal prosecutions. *Jensen,* 24 Or App at 16. The exemption serves the purposes of protecting the integrity of criminal investigations and avoiding any compromise of a potential criminal prosecution that might result from such investigations. Public Records Order, October 10, 1996 (Reed). The interest favoring nondisclosure in these situations "is the general public's interest in having persons who have violated the law successfully prosecuted." Public Records Order, February 27, 2007 (Zaitz) (internal quotation marks omitted).

Although we agree that the public has a strong interest in obtaining the requested information, we are not persuaded that the public interest in this circumstance requires immediate disclosure of these records. Law enforcement officials continue to actively investigate the mass shooting at Umpqua Community College and have indicated that criminal prosecution may result from that investigation. In this circumstance, we conclude that the public interest in protecting the integrity of the criminal investigation and any potential criminal prosecution outweighs the public's interest in immediate disclosure.

For the reasons discussed above, we respectfully deny your petition.

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

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cc via email only:
Erin Redding, OSP
Eric Davenport, OSP