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

August 7, 2012

Stan Sugarman
PO Box 1766
Coos Bay, OR 97420

Re: Public Records Request
Oregon State Police Records
DOJ File No. 257001-GA0059-12

Dear Mr. Sugarman:

This letter is the Attorney General's order in response to your July 31, 2012 petition asking our office to direct the Oregon State Police to provide you with public records you assert you requested on March 30, 2012. You argue that OSP's lack of response to your request constitutes a constructive denial of your request. We conclude that OSP has not constructively denied your request and therefore respectfully deny your petition.

Your original request sought "information of all police contacts and/or investigations concerning [you] or [your] property." On May 15, 2012, OSP provided you with several pages of records at no cost. At the same time, OSP stated that other records could exist and estimated that a thorough review of its records would entail costs of $575 to $1125, and instructed you to send a check in the lower amount if you wanted OSP to proceed with a comprehensive search of its records. *See* ORS 192.440(4); ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2011) at 14-15 (public bodies may charge fees reasonably calculated to recover their actual costs of responding to public records requests and may require prepayment of their estimated fees, even in cases where the public body ultimately determines that no non-exempt documents are responsive to the request). You did not pay the amount estimated by OSP. Nor did you request a waiver or reduction of OSP's estimated fees, which is permitted if disclosure would be "in the public interest because making the record available primarily benefits the general public." ORS 192.450(5).[1]

[1] It certainly appears that you personally are the primary beneficiary of your request. As such, we are skeptical that your request meets the statutory requirements for a fee waiver or reduction.

Instead of addressing OSP's request for payment of its fees, you replied to OSP's letter by complaining that other records existed – a possibility that OSP's response to you had explicitly acknowledged in setting out OSP's fee estimate. In doing so, you provided OSP with specific information about a particular category of records you were interested in obtaining. OSP effectively treated this specific information as a new request. You have objected that the records fall within the scope of your initial request. That may be so, but because you never agreed to pay the fee estimate associated with your original request, OSP is under no obligation to provide you with public records responsive to that request. Nevertheless, OSP has been processing that more specific request without requiring payment from you.

In fact, OSP informs us that OSP staff continues to process the materials you specifically identified, and OSP employees have had numerous communications with you concerning your request since it was initially made. OSP informs us that your request requires more time than a typical request because it implicates ORS 181.854(3), a statute that generally prohibits public bodies from disclosing information about personnel investigations of law enforcement officers when no discipline results. You have not suggested any public interest that would overcome the prohibition of ORS 181.854, and no such public interest is apparent to us. OSP understandably does not want to violate this statutory disclosure prohibition. Given that OSP continues to process specific parts of your request despite your failure to pay the estimated fee amount, and considering that OSP is statutorily prohibited from disclosing material that falls within the scope of ORS 181.854(3), we cannot conclude that OSP has constructively denied your request. Your petition is respectfully denied.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

MHW:nog/JUSTICE-#3558984.doc
c: Cecily Brown, OSP