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DEPARTMENT OF JUSTICE

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March 20, 2012

Curtis Bunch
543 Clay Street East, Suite 10
Monmouth, OR 97361

RE: Petition for Public Records Disclosure Order
Oregon State Police Records
DOJ File No. 257001-GA0022-12

Dear Mr. Bunch:

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 March 13, 2012. The petition asks the Attorney General to direct the Oregon State Police (OSP) to make available the records identified in your request to OSP dated September 17, 2011. For the reasons that follow, we disagree with your conclusion that OSP ignored your request, thereby effectively denying it. We do not understand you to be challenging OSP's fee decision or its determination that certain records you requested are exempt from disclosure. Accordingly, 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. A custodian of public records must provide "proper and reasonable opportunities for inspection and examination." *See* ORS 192.430. The law also authorizes a public body to establish fees "reasonably calculated to reimburse it for its actual cost" in making records available. ORS 192.440(3). A public body may require pre-payment of estimated fees before acting on a request. ATTORNEY GENERAL'S PUBLIC RECORDS AND PUBLIC MEETINGS MANUAL (2008) at 15. ORS 192.440(4) authorizes a public body to waive fees if it determines that the waiver is in the public interest "because making the record available primarily benefits the general public." ATTORNEY GENERAL'S MANUAL at 18. However, even if a public body determines that waiving fees is in the public interest, "the decision to waive or reduce fees is discretionary with the public body, although it must act reasonably." ATTORNEY GENERAL'S MANUAL at 20.

According to your petition and the materials you submitted in support of it, you submitted a records request to the OSP on September 17, 2011. In the request, you agreed "to pay reasonable duplication fees for the processing of this request."

We spoke to Cecily Brown, OSP Central Records Supervisor and Lieutenant David Gifford of OSP. Lt. Gifford responded to your request by letter on September 30, 2011. (ATT-1, ATT-2). The letter stated that OSP may be the custodian of at least some of the requested records, and that you would be provided with an estimate of the time needed to prepare the records and an estimate of the fees that had to be paid before the documents could be processed and produced.

Lt. Gifford's letter also responded specifically that some of the requested documents (the records requested in items #4, 8, and 9) were exempt from disclosure under the Public Records Act. In item #4, you asked for copies of "all reports * * * and all other items used in the process of the prosecution of Erik West." In item #8, you also requested: "All laboratory reports on the water pollution that was committed by Eric [*sic*] West." In addition, your item #9 requested:

> "Copies of all communication, i.e. Citation #N123047, Officer Reports, copies of the citations, emails, letters, notes, personal notes, dated September, 10-14 2011; for Officer Thompson and the other two office that respond to a call at Ennis Rifle on the Rogue River near Galice Oregon making contact with a Erik West[.]"

Lt. Gifford's letter stated that the records you requested were either part of or related to an active investigation or a pending prosecution. As such, those documents are exempt from disclosure under ORS 192.501(3). As to the exempt documents, the letter stated: "You may resubmit your request at a later date when the investigation and prosecution are concluded or you may contact the District Attorney." Your petition does not challenge the determination that those documents are exempt from disclosure.

Your item #5 asked for "Officer Thompson Judicial interpretation of suction dredge." Lt. Gifford's letter responded to that request as follows: "Oregon State Police does not provide legal assistance or interpretation. For Judicial interpretations of the law you will need to contact the appropriate court. Judicial interpretations fall under the authority of judges." Your petition does not challenge that determination.

Lt. Gifford's letter informed you that, in accordance with ORS 192.440(4) and OSP policy, all fees to process your request would be determined under OSP Policy 201.3, and it provided the internet address for accessing that policy. In addition, the letter stated that, prior to the release of any of the records, you needed to provide a reason for your request.

On November 27, 2011, you re-submitted your prior request and added the following:

> This is a request pursuant to the Oregon Public Records Law (ORS 192.410, et seq.) for copies of public records, including, but not limited to letters,

> correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, or any other materials pertain [*sic*] to Suction Dredge in Oregon, held by the Oregon State Police.

In addition, in your November 27, 2011, letter, you requested "a waiver of all fees associated with the copying of these records pursuant to ORS 192.440(4)." Your letter also stated: "The production of these records is 'in the public interest because making the record available primarily benefits the general public.' (ORS 192.440(4)) In addition to, the Mining districts within Oregon."

On December 19, 2011, Ms. Brown responded by letter to your November 27, 2011, records request. (ATT-3, ATT-4). In her letter, Ms. Brown provided an estimate of the fees that you must pre-pay for records requested under items #1-3, #6, and #7. The estimate did not include records that had previously been determined to be exempt from release under ORS 192.510(3). There were no records responsive to item #5. In the letter, OSP denied your request for a fee waiver, but agreed to a fee reduction by using the least expensive methodology: a flat fee rather than an hourly wage calculation. As itemized in Ms. Brown's letter, the estimated cost of producing the non-exempt requested documents is $7,547.50. Your petition does not challenge OSP's denial of a fee waiver or the amount of the estimated fee.

Ms. Brown informed you that payment was required in advance. Once payment was received, the agency would begin locating, compiling, and preparing the records requested.

Your petition asserts that your requests for disclosure of records were not denied, but that both requests have been ignored by OSP. Based on the letters sent to you by Lt. Gifford and Ms. Brown, we cannot agree with your conclusion. OSP has agreed to produce the nonexempt documents that it may have, pursuant to your requests. In order to do so, OSP requires advance payment of the estimated costs of the production, which it has not received from you. Therefore, we conclude that your request for a Public Records Order from the Attorney General ordering disclosure of the nonexempt documents is premature. As stated above, we do not understand your petition to be challenging any of the OSP's other determinations. Accordingly, we respectfully deny the petition.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

MHW:smg/3283760-v1
c: Cecily Brown, OSP
David Gifford, OSP