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January 28, 2016

SENT VIA EMAIL ONLY
gobrien@heraldandnews.com

Gerald O'Brien
2701 Foodhills Blvd.
Klamath Falls, OR 97603

Re: Petition for Public Records Disclosure Order
Oregon State Police
DOJ File No. 257001-GA0018-16

Dear Mr. O'Brien,

You have petitioned our office to order the Oregon State Police (OSP) to disclose public records to you under the Oregon Public Records Law, ORS 192.410 to 192.505. This letter respectfully denies your petition. You describe the record you are seeking:

> Oregon State Police investigation of the death of a felon on probation, who was involved in a chase by the Klamath County Sheriff's Department on Nov. 2, 2015. [Matthew Stephen] Colligan, 28, died on the 1200 block of Lakeshore Drive, Monday, Nov. 2 in a collision with a sheriff's deputy.
> Results of the traffic accident have still not been released nor the deputy named, yet it has been more than three months since the incident.

You requested this information from OSP on January 6, 2016. In your petition you state that "[t]here has been no re[s]ponse from OSP." However, OSP provided us with a copy of the letter they sent you by email the same day as your request, denying the request on the ground that "[t]he Oregon State Police report you have requested is still an active investigation." Your petition followed on January 21, 2016.

The Oregon Public Records Law provides that "[e]very person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS

192.501 to 192.505." ORS 192.420(1). The law is a disclosure law, and exemptions from its public disclosure requirement must be express. Even express exemptions are construed narrowly to further the public purposes served by disclosure. The narrow construction rule means that "if there is a plausible construction of a statute favoring disclosure of public records, that is the construction that prevails." *Colby v. Gunson*, 224 Or App 666, 676 (2008).

OSP cited ORS 192.501(3) as the basis for its denial of your request. That exemption from the disclosure requirements of the Public Records Law allows public bodies to withhold "[i]nvestigatory information compiled for criminal law purposes." This exemption is conditional in that it applies "unless the public interest requires disclosure in the particular instance[.]" The Oregon Court of Appeals has indicated that information compiled as a part of investigations "connected with pending or contemplated proceedings will ordinarily remain secret because disclosure would likely 'interfere with enforcement proceedings[.]'" *Jensen v. Schiffman*, 24 Or App 11, 16 (1976). However, information related to criminal proceedings that have concluded, or that have been abandoned, remains exempt only if disclosure would work some particular harm. *Id.*

We have consulted Erin Redding, OSP's Central Records Supervisor, who confirmed that the investigation of this matter remains ongoing. While the criminal investigatory exemption must give way if the public interest requires disclosure in the particular instance, you identified no such public interest in this case, and none occurs to us that would compel disclosure before completion of the criminal investigation and any ensuing prosecution.

For the foregoing reasons, your petition is respectfully denied.

Sincerely,

FREDERICK M BOSS
Deputy Attorney General

DM7118934
cc via email only:
Erin Redding, Oregon State Police
Eric Davenport, Oregon State Police