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The Oregonian
1500 SW 1st Ave Suite 400
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Linsay Hale
Professional Standards Division Director
Department of Public Safety Standards & Training
4190 Aumsville Hwy SE
Salem, OR 97317

Re: Petition for Public Records Disclosure Order
Department of Public Safety Standards & Training
DOJ File No.: 259001-GA0112-16

Dear Ms. Brosseau and Ms. Hale:

This letter is the Attorney General's order responding to Ms. Brosseau's August 31, 2016, petition for disclosure under the Oregon Public Records Law, ORS 192.410 to 192.505. We thank Ms. Brosseau for agreeing to extend the deadline to issue an order, and for agreeing to withdraw her petition with respect to names and identifying information of minors mentioned in the records at issue. Her petition asks the Attorney General to order the Department of Public Safety Standards & Training (DPSST) to produce its complete staff report and exhibits from its investigation of former Eugene Police Department Officer Charles P. Caruso.

As discussed below, we grant Ms. Brosseau's petition for the majority of the requested records because they are not exempt from disclosure under ORS 192.501(12) as documents supporting a personnel discipline action: the public interest here requires disclosure because these records provide information on a well-publicized alleged assault of an arrestee by a Eugene police officer. That incident likely contributed to the discharge of that officer, led to a criminal investigation of the officer, and concluded with a $100,000 settlement between the arrestee and

the City of Eugene. We deny the petition with respect to a sample exam and answer key used by DPSST to test officers on the appropriate use of force because that record is exempt from disclosure under ORS 192.501(4).

The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exemptions contained in ORS 192.501 to 192.505. *See* ORS 192.420(1). Any person denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld. ORS 192.450(1). The agency carries the burden to sustain any such denial. *Id.*

DPSST, among other things, has the power to certify police officers and to suspend or revoke those certifications. ORS 181A.630(1), 181A.640(1). In this case, it investigated Charles Caruso, a former police officer with the Eugene Police Department, for his use of force against an arrestee. As part of the investigation, DPSST obtained various documents from the Eugene Police Department, which had discharged Caruso and had also initiated a criminal investigation into his use of force. The grand jury did not indict Caruso, but the City of Eugene did settle with the arrestee for $100,000.

In response to Ms. Brosseau's records request, DPSST produced the file related to its investigation of Caruso, but withheld any records provided by Eugene PD or Caruso, citing ORS 192.501(12), which exempts from disclosure "[a] personnel discipline action, or materials or documents supporting that action" unless the public interest requires disclosure. The withheld records consist mainly of Eugene PD's criminal investigation of Caruso. DPSST also withheld a sample exam used to test police officers on the use of force, the associated answer key, and portions of its curriculum on the use of force; DPSST asserts that these records are exempt under ORS 192.501(4), which applies to test questions and scoring keys used to administer an exam if the public body plans to use the exam in the future.

As an initial matter, we question whether the withheld records qualify as materials supporting a personnel discipline action. While Eugene PD's discharge of Caruso qualifies as a completed discipline action, it's unclear to what extent the police department relied on the criminal investigation to justify that action. It's also unclear whether records from a criminal investigation can subsequently become exempt from disclosure under ORS 192.501(12) if those records are used, in part, to support a discipline action.

However, we do not need to reach that issue here because even if we assume that the withheld records supported Caruso's discharge, the public interest requires disclosure in this instance. To determine whether the public interest requires disclosure, we balance the public's interest in disclosure against the relevant interests in nondisclosure, with the presumption in favor of disclosure. *ACLU of Oregon, Inc. v. City of Eugene*, 271 Or 276, 287 (2015). Oregon's Court of Appeals has applied this balancing test in the context of ORS 192.501(12): in *Oregonian Publishing Co. v. Portland School District No. 1J*, the court concluded that the records at issue were not exempt from disclosure because they related to alleged misuse and theft of public

property by public employees and because the matter had already received publicity, weakening the intrusion into the privacy of the employees. 144 Or App 180, 187 (1996), *modified*, 152 Or App 135 (1998), *aff'd on other grounds*, 329 Or 393 (1999).

The situation here is very similar: Caruso was criminally investigated for an alleged assault that occurred in the course of his job as a public employee. Records containing information about that investigation therefore have a strong public interest. In addition, much of this incident is already in the public domain: the Register Guard ran several stories at the time detailing the alleged assault and revealing that Caruso lost his job. At least some of the records at issue here were disclosed by Eugene PD to the Register Guard in response to a public records request. Given the extent of this prior publicity, disclosing these records bears little risk of further intruding into Caruso's privacy. Therefore, we conclude that the public interest requires disclosure of the records DPSST received from Eugene PD or from Caruso.

We turn now to DPSST's withholding of materials from its use-of-force curriculum under ORS 192.501(4). The materials on the disc labeled "Use of Force I, II, III Curriculum" are not exempt from disclosure: they consist of various materials used in conducting that course, but do not contain any test questions, scoring keys, or other data used to administer an exam. However, we conclude that the document titled "Police Use of Force and Civil Liability Questions and Answers" is exempt: the document contains a sample exam and answer key that is still used by DPSST to test officers. To be clear, this document does not contain Caruso's answers, but rather the answer key used by DPSST to grade exams. We see little public interest in disclosing this document: the substance of the exam and answer key are contained throughout the other curriculum documents DPSST has already disclosed to Ms. Brosseau, and disclosure would potentially allow officers to score well on the exam without learning the material.

To summarize our discussion, we grant Ms. Brosseau's petition with respect to the 80 pages of documents obtained from Eugene PD related to its criminal investigation of Caruso (Exhibit A6). We also grant her petition for the records contained on 7 discs obtained from Eugene PD and Caruso, and for the records contained on the disc labeled "Use of Force I, II, III Curriculum." Because Ms. Brosseau has withdrawn her petition with respect to the names and identifying information of any minors, DPSST may redact that information. DPSST has seven days to produce the records to Ms. Brosseau or give notice of intent to institute proceedings for injunctive or declaratory relief. ORS 192.450(2). We deny Ms. Brosseau's petition with respect to the sample use-of-force exam and answer key (pages 35–46 of Exhibit A11).

Sincerely,

Frederick M. Boss
Deputy Attorney General

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