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July 21, 2016

VIA EMAIL ONLY: sjustice@hrglawyers.com

Samuel R. Justice
PO Box 480
McMinnville, OR 97128

Re: Petition for Public Records Disclosure Order
Board of Accountancy
DOJ File No.: 120001-GA0099-16

Dear Mr. Justice:

This letter is the Attorney General's order responding to your July 14, 2016, petition for disclosure under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition asks the Attorney General to order the Board of Accountancy (the Board) to produce the following records from June 1, 2014, to February 10, 2015:

1. Communications . . . with Andrew Leikas concerning Active Tax and Accounting LLC and/or Dan Chapman . . . ;
2. Communications [with] Active Tax and Accounting LLC and/or Dan Chapman regarding Andrew Leikas . . . ;
3. Communications . . . with Patricia Morris (CPA) concerning Active Tax and Accounting LLC and/or Dan Chapman . . . ;
4. Communications . . . with Active Tax and Accounting LLC and/or Dan Chapman concerning Patricia Morris . . . ;
5. Communications . . . with Active Tax and Accounting LLC and/or Dan Chapman and/or Patricia Morris concerning a flash drive . . . ; and
6. Other communications w[ith] Dan Chapman.

We respectfully deny your petition: Records responsive to your first four requests are exempt from disclosure under ORS 673.170(3)(b), which applies to "investigatory information developed or obtained by the board" until the end of the investigation. The Board has now

agreed to produce records responsive to your fifth request; therefore, that portion of your petition is moot. And the Board does not possess any records responsive to your sixth request.

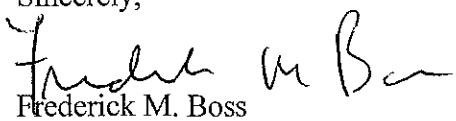
The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exemptions contained in ORS 192.501 to 192.505. *See* ORS 192.420(1). In addition to the express exemptions contained in those sections, any other information that is confidential, privileged, or prohibited from being disclosed under other Oregon laws is also exempt from disclosure. ORS 192.502(9)(a). 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.*

The Board has the authority to take certain disciplinary actions, ORS 673.170(1)-(2), and to investigate alleged violations that would lead to such actions, ORS 673.170(3)(a). Any "investigatory information developed or obtained by the board is confidential and not subject to disclosure by the board unless a notice is issued for a contested case hearing or the matter . . . is finally resolved by board action or a consent order." ORS 673.170(3)(b). Because investigatory information is confidential under Oregon law, that information is also exempt from disclosure under public records law. ORS 192.502(9)(a).

We have spoken with Theresa Gahagan, a Board investigator. She told us that the Board has been investigating Dan Chapman and Active Tax and Accounting LLC since October 2013, and that the investigation is still open. She explained that any communications described in your first four requests were made as part of that ongoing investigation. With respect to your fifth request, although communications about a flash drive arose in the course of the ongoing investigation, they do not actually fall within the scope of that investigation. Therefore the Board has now agreed to produce those records to you within the next several days. With respect to your sixth request, the Board does not have any responsive records.

Based on the above, we respectfully deny your petition: The records responsive to your first four requests are exempt from disclosure because ORS 673.170(3)(a) exempts from disclosure investigatory information developed or obtained by the Board until the investigation is completed. The Board has agreed to produce records responsive to your fifth request; therefore, that portion of your petition is moot. And the Board does not possess records responsive to your sixth request.

Sincerely,



Frederick M. Boss
Deputy Attorney General

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c via email only: Martin Pittioni, Board of Accountancy