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November 15, 2016

VIA EMAIL ONLY: charltonlegal@gmail.com

Michael B. Charlton
Law Office of Michael B. Charlton
PO Box 51075
Eugene, OR 97406

Re: Petition for Public Records Disclosure Order
Oregon State Police
DOJ File No.: 257001-GA0105-16

Dear Mr. Charlton:

This letter is the Attorney General's order responding to your August 15, 2016, petition for disclosure under the Oregon Public Records Law, ORS 192.410 to 192.505. Thank you for agreeing to extend the deadline to issue an order. Your petition asks the Attorney General to order the Oregon State Police (OSP) to produce the following records pertaining to *State of Oregon v. Bruce Turnidge*, Marion County Case No. 08C53913: "Any and all forensic lab reports together with bench notes and communications logs . . . including all similar records produced by other . . . law enforcement agencies [and] post offense reviews of [OSP] procedures for dealing with explosives and bombs."[1]

We respectfully deny your petition: OSP has now agreed to produce most of these records, but continues to assert an exemption for confidential submissions over certain portions of the FBI's after-action report; those portions contain excerpts from documents that the FBI treats as sensitive material and does not make available to the public, and were produced to OSP

[1] Although you seeks these records for use in representing Mr. Turnidge in a potential action for post-conviction relief, this order is concerned only with your rights under the Public Records Law, and does not discuss what material would or would not be discoverable in that action. *See State ex rel. Frohnmayer v. Oregon State Bar*, 307 Or 304, 310 (1989) (Attorney General's role in reviewing public records petitions does not affect Bar's discovery rules).

on the condition that they be kept confidential. As discussed below, we conclude that these excerpts are exempt from disclosure.

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.*

OSP initially denied your records request under ORS 192.501(3), an exemption that applies to "investigatory information compiled for criminal law purposes," because Mr. Turnidge's appeal of his conviction is still pending. However, OSP has now agreed to withdraw that earlier denial, and produce these records to you, with one exception: OSP asserts that certain portions of the FBI's after-action report, dated February 23, 2012, are exempt from disclosure and that the report should be produced in redacted form. Therefore, we turn to the merits of OSP's proposed redactions.

The FBI report at issue was created at OSP's request to review procedures for handling bomb threats: the report reviews the events leading to the December 2008 bomb explosion at a Woodburn branch of West Coast Bank, and makes recommendations to OSP on how to improve bomb squad operations.

OSP asserts, at the FBI's request, that the following information in the report is exempt from disclosure: 1) names of certain police officers, civilian witnesses, and FBI agents; and 2) excerpts from the *National Guidelines for Bomb Technicians*, and from the FBI's *Bomb Technician Recertification Study Guide*. You have agreed to withdraw your petition with respect to the redacted names, so we focus solely on the excerpts from the *Guidelines* and *Study Guide*.

OSP contends that these excerpts are exempt from disclosure under ORS 192.502(4), which applies to 1) information submitted to a public body in confidence; 2) and not otherwise required by law to be submitted; 3) where such information should reasonably be considered confidential; 4) the public body has obliged itself in good faith not to disclose the information; and 5) when the public interest would suffer by the disclosure.

We find that OSP has met its burden in showing that this exemption applies to the requested information: In May 2012, prior to receiving the report, Criminal Investigation Division Captain Cal Curths obliged OSP to confidentiality based on the FBI's request that these excerpts be redacted. The FBI told Captain Curths that the excerpts contain sensitive information regarding bomb squad operations, and that the *Guidelines* and *Study Guide* are treated as Law Enforcement Sensitive and are not available to the public. Therefore, Capitan Curths had a good-faith reason to oblige OSP to confidentiality, and the FBI submitted the report to OSP in reliance on this promise. The FBI was not required by law to submit this report, or the excerpts at issue, to OSP. The FBI's treatment of this information as confidential and exempt from disclosure under FOIA indicates that it is reasonable to consider the information confidential.

Finally, OSP has shown that the public interest would suffer by disclosure: disclosing information that the FBI treats as sensitive and does not make publicly would likely discourage the FBI from assisting OSP in the future. This assistance was particularly valuable here because the FBI has specialized knowledge with respect to bomb squad operations: it runs the Hazardous Devices Operations Center, which among other things certifies bomb technicians, accredits bomb squads, and provides training and operational support to local law enforcement. Also, redacting this information from the report does not detract from the report's key portions, that is, the FBI's assessment of the explosion and its recommendations to OSP. Therefore, we find that the public interest would suffer by disclosure.

Because OSP has shown that all the elements of the exemption for confidential submissions are met, we conclude that these excerpts are exempt from disclosure.

To summarize, OSP has agreed to produce the requested records, with the exception of certain portions of the FBI after-action report: we respectfully deny your petition for those portions because they are exempt from disclosure under ORS 192.502(4) as confidential submissions.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:ne2/DM7785206
c via e-mail only: Holly Bolton, OSP