ELLEN F. ROSENBLUM
ATTORNEY GENERAL

FREDERICK M. BOSS
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

Justice Building
1162 Court Street NE
Salem, Oregon 97301-4096
Telephone: (503) 378-4400

April 28, 2017

VIA EMAIL ONLY: cbrosseau@oregonian.com and linsey.hale@state.or.us

Carli Brosseau
The Oregonian
1500 SW 1st Ave Suite 400
Portland, OR 97201

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-GA0083-17

Dear Ms. Brosseau and Ms. Hale:

This letter is the Attorney General's order responding to Ms. Brosseau's April 25, 2017, petition for disclosure under the Oregon Public Records Law, ORS 192.410 to 192.505.[1] Her petition asks the Attorney General to order the Department of Public Safety Standards & Training (DPSST) to produce its full certification review file for former Beaverton Police Department officer Evin Eustice.

As discussed below, we grant Ms. Brosseau's petition as it relates to records DPSST received from Beaverton Police Department after concluding that the public interest requires disclosure of these records. DPSST has agreed to produce the other records in its file, and therefore we deny that portion of Ms. Brosseau's petition as moot.

[1] We thank Ms. Brosseau for agreeing to an extension on the deadline to issue an order.

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 a certification. ORS 181A.630(1), 181A.640(1). In this case, Ms. Brosseau notes, DPSST investigated Evin Eustice after he was discharged for cause from the Beaverton Police Department following an incident involving Eustice's high-speed pursuit (up to 144 miles per hour) that went through a construction zone with workers present. DPSST is required by rule to revoke an officer's certification if DPSST finds that the office had been discharged for cause for various reasons. OAR 259-008-0070(3)(a). While DPSST initially notified Eustice that it intended to revoke his certification, DPSST later closed its file after determining that Eustice's certification should not be revoked.

Ms. Hale, DPSST's Professional Standards Division Director, told us that DPSST did not intend to withhold records that were not received from Beaverton PD, and that DPSST will now produce those. However, she confirmed that DPSST, after consulting with Beaverton PD, withheld any records received from the police department under ORS 192.501(12), which exempts "a personnel discipline action, or materials or documents supporting that action" unless the public interest requires disclosure in the particular instance.[2]

As a threshold matter, we find that Beaverton PD's disciplinary action against Eustice and the associated investigatory file qualify as a personnel discipline action, or materials or documents supporting that action. Therefore, these records are exempt unless the public interest requires disclosure. To make that determination, we balance the public's interest in disclosure against the relevant interests in nondisclosure, with the presumption in favor of disclosure. *ACLU of Or., Inc. v. City of Eugene*, 360 Or 269, 280 (2016).

The interest in confidentiality presented by DPSST and Beaverton PD is protecting Eustice from harm. Protecting an employee's privacy has been recognized as the primary interest underlying this exemption for disciplinary actions. *Attorney General's Public Records & Meetings Manual* 50 (2014). However, that interest is weaker here where Ms. Brosseau already has received a DPSST memo containing detailed information on the disciplinary action and the facts underlying it. *E.g.*, *ACLU*, 360 Or at 299 (public body's interest in protecting officers' privacy was "substantially diminished because the identity of those officers and their alleged misconduct had already been made a matter of public record").

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[2] DPSST also asserts under ORS 192.502(10) that these records remained exempt when transferred from Beaverton PD. Because we conclude that the records aren't exempt under ORS 192.501(12), we don't reach the issue of whether they remained exempt under ORS 192.502(10) when transferred from Beaverton PD to DPSST. In response to Ms. Brosseau's argument that ORS 192.502(10) doesn't apply to the records here, we note there is a distinction between whether transferred records remain exempt and whether the receiving public body is those records' *custodian* as a defined in ORS 192.410(1). We don't understand DPSST to be arguing that it is not the custodian of these records.

Turning to the public interest in disclosing these records, Ms. Brosseau asserts that there is an interest in better understanding DPSST's administrative closure process. She explains that unlike other types of cases, cases administratively closed are never presented in the open at a public meeting, so that "the only way to fairly and accurately assess DPSST's handling of [this] case is to have access to the full . . . file." She adds that there is a heightened interest in understanding DPSST's decision here where it initially sought to revoke Eustice's certification, but subsequently decided not to, particularly because ORS 181A.640(4) states that a post-hearing finding by DPSST that an officer was discharged for cause would result in the denial, suspension, or revocation of the certification. We find these interests compelling. The Oregon Supreme Court has noted that "the public interest in the transparency of government operations is particularly significant when it comes to the operation of its police departments and the review of allegations of officer misconduct." *ACLU*, 360 Or at 298. We also note that the bulk of DPSST's investigatory file here consists of Beaverton PD's disciplinary file. The legislature has not enacted any exemption explicitly applying to DPSST's investigations, yet withholding the disciplinary file here would have the effect of shielding that investigation from public view.

Weighing the competing interests, we conclude that the public interest requires disclosure in this particular instance. The typical interest in protecting an employee's privacy is weakened here where detailed information on the events underlying the disciplinary action is already public record, while the public has a heightened interest in monitoring DPSST's investigation of a police officer who was discharged, in part, for not showing the appropriate regard for public safety.

Because the records DPSST received from Beaverton PD are not exempt from disclosure under ORS 192.501(12), we grant Ms. Brosseau's petition for those records. DPSST must produce these records within seven days or issue a notice to the Attorney General and by certified mail to Ms. Brosseau of its intent to institute proceedings for injunctive or declaratory relief. ORS 192.450(2). We respectfully deny Ms. Brosseau's petition for the other records in DPSST's file as DPSST has now agreed to produce those. DPSST may make redactions to both categories of records based on other exemptions, although based on our review these redactions will likely be limited. If you wish to contest any of those redactions, you may submit a new petition to this office.

Sincerely,

Frederick M. Boss
Deputy Attorney General

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