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May 19, 2017

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The Oregonian
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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-GA0092-17

Dear Ms. Woolington and Ms. Hale:

This letter is the Attorney General's order responding to Ms. Woolington's May 12, 2017, petition for disclosure under the Oregon Public Records Law, ORS 192.410 to 192.505. 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 Myrtle Creek Police Department officer Adam Butler.

As discussed below, we grant Ms. Woolington's petition because the public interest requires disclosure of these records. Information detailing the disciplinary actions against Butler is already publicly available, which indicates a diminished privacy interest in nondisclosure of additional records, and more complete information on DPSST's decision not to revoke Butler's certification will further the public interest in monitoring a public body's actions.

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 an officer's certification. ORS 181A.630(1), 181A.640(1). DPSST is required by rule to revoke an officer's certification if DPSST finds that the officer had been discharged for cause, a standard that is defined by DPSST in rule. OAR 259-008-0070(3)(a).

In this case, the publicly available portions of DPSST's file show that Myrtle Creek PD discharged Butler for disobeying orders not to use his personal cell phone or otherwise contact a romantic interest while on duty. DPSST administratively closed its investigation after concluding that Butler's discharge was not based on gross misconduct, and by rule did not qualify as a discharge for cause. DPSST produced portions of its file to Ms. Woolington in response to her public records request, but withheld the disciplinary file received from Myrtle Creek PD under 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 in the particular instance. In doing so, DPSST relied on information from Chief Don Brown of Myrtle Creek PD that there was no publicity surrounding Butler's discharge (other than inquiries from Butler's prospective employers) and that the discharge was related to Butler's personal life, not to his job performance or work integrity.

As a threshold matter, we find that Myrtle Creek's disciplinary action against Butler 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).

Protecting a public employee's privacy is 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 DPSST's publicly available file reveals the discharge action taken against Butler, a previous disciplinary action based on similar conduct, and the basic details surrounding both actions. *See 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"). DPSST's file shows that Butler had previously been disciplined for, among other things, leaving his patrol area while on duty to visit a romantic interest and "allowing his personal life to interfere substantially with his work." Butler was subsequently discharged after he continued this conduct and misused LEDS, a law enforcement information system, for personal reasons. While we will not reveal the information contained in the records DPSST withheld from disclosure, they mainly provide more details on the conduct already revealed in DPSST's publicly available file. This indicates that the harm to Butler in disclosing these records is diminished.

Turning to the public interest in disclosing these records, Ms. Woolington contends that there is a public interest in understanding DPSST's administrative closure process, as closed investigations do not provide the public with the same detailed information that results from DPSST cases that proceed to an administrative hearing or from the discretionary violations discussed at a public meeting of a DPSST policy committee. She explains that there is also an interest in whether DPSST's conclusion that Butler was not discharged for gross misconduct is supported by the investigatory materials contained in Myrtle Creek PD's file, and whether Butler's conduct potentially allowed DPSST to proceed along a discretionary track to suspend or revoke Butler's certification.

Ms. Woolington notes 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. She adds that "the Public Records Law expresses the legislature's view that members of the public are entitled to information that will facilitate their understanding of how public business is conducted." *Guard Publ'g Co. v. Lane County School District No. 4J*, 96 Or App 464, 469–70 (1989), *rev'd on other grounds*, 310 Or 32 (1990).

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 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 had been disciplined for "allowing his personal life to interfere substantially with his work." While DPSST has already produced the documents it generated, the substance of its investigatory file consists of Myrtle Creek PD's disciplinary file. For the public to effectively review the information underlying DPSST's decision, it must have access to this disciplinary file.

Because the records DPSST received from Myrtle Creek PD are not exempt from disclosure under ORS 192.501(12), we grant Ms. Woolington's petition for those records. DPSST must produce the records within seven days or issue a notice to the Attorney General and by certified mail to Ms. Woolington of its intent to institute proceedings for injunctive or declaratory relief. ORS 192.450(2). DPSST may make redactions to victims' names and personal identifying information of parties that are contained in reports incidentally related to the disciplinary actions against Butler. 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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