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February 26, 2019

VIA EMAIL ONLY: ethan.hasenstein@kniferiver.com

Ethan Hasenstein
Knife River Corporation
32260 Old Highway 34
Tangent, OR 97389

Re: Petition for Public Records Disclosure Order
Oregon State Police
DOJ File No. 257001-GA0016-19

Dear Mr. Hasenstein:

This letter is the Attorney General's response to your petition for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition asks the Attorney General to order the Oregon State Police (OSP) to disclose the police report in case number SP19002730. For the reasons discussed below, we respectfully deny your petition.

The Public Records Law confers the right to inspect public records in Oregon, unless such records are exempt under ORS 192.338, 192.345, or 192.355. ORS 192.314(1). The law is a disclosure law, and exemptions from disclosure must be express. 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 192.411(1). The agency carries the burden to sustain any such denial. *Id.*

The report you seek relates to offenses allegedly committed by Vyacheslav Burlachenko. OSP denied your request under ORS 192.345(3) because the report relates to pending criminal proceedings in Marion County.

ORS 192.345(3) conditionally exempts:

> Investigatory information compiled for criminal law purposes. The record of an arrest or the report of a crime shall be disclosed unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation,

including the need to protect the complaining party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, the record of an arrest or the report of a crime includes, but is not limited to:

(a) The arrested person's name, age, residence, employment, marital status and similar biographical information;

(b) The offense with which the arrested person is charged;

(c) The conditions of release pursuant to ORS 135.230 to 135.290;

(d) The identity of and biographical information concerning both complaining party and victim;

(e) The identity of the investigating and arresting agency and the length of the investigation;

(f) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and

(g) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice.

When evaluating the application of ORS 192.345(3), the Court of Appeals has explained that "investigations connected with pending or contemplated proceedings will ordinarily remain secret because disclosure would likely interfere with enforcement proceedings." *Jensen v. Schiffman*, 24 Or App 11, 16 (1976) (internal quotations omitted). However, such records are only temporarily exempt while the criminal justice process continues. *Id.* We have long followed the court's guidance in public records orders examining ORS 192.345(3). *See, e.g.*, Public Records Order, Jul 8, 2016, Iboshi (investigatory information in pending criminal cases is exempt because the public has a strong interest in protecting the integrity of investigations and prosecutions); and Public Records Order, Jan 28, 2016, O'Brien (once criminal proceedings are concluded, investigatory information remains exempt only if disclosure would result in particular harm).

In light of your petition, we confirmed that Mr. Burlachenko is currently pending prosecution in Marion County for matters detailed in the report you seek. We therefore conclude that OSP may withhold the report under ORS 192.345(3) unless the public interest requires disclosure in this particular instance. Your petition does not explain why the public interest requires disclosure in this case. Rather, we understand you seek the report for an insurance claim related to Mr. Burlachenko's actions. Under the circumstances, we conclude the strong public interest in delaying disclosure until the conclusion of Mr. Burlachenko's criminal proceedings outweighs the public interest in immediate disclosure.

Finally, you assert that ORS 192.345(3) requires OSP to disclose non-exempt factual information in the report absent a "clear need to delay disclosure in the course of a specific investigation." However, the required disclosure provision you cite only pertains to a "record of an arrest or the report of a crime." Such records and reports are distinct from the complete report of investigation you seek.[1] ORS 192.345(3) does not otherwise require OSP to disclose the complete report absent a clear need to delay disclosure.

We conclude that OSP has sustained its burden of denying your request, but note that the report is only temporarily exempt while the criminal proceeding continues. We therefore respectfully deny your petition because the report is exempt from disclosure under ORS 192.345(3).

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn/DM9460037
c: via email only: Hyla Burge, OSP

[1] We interpret a "report of a crime" in ORS 192.345(3) to mean the initial complaint, allegation, or report submitted to law enforcement. *See* Public Records Order, Jul 21, 2010, Woodroffe at 5 (to qualify as a "report of a crime" under ORS 192.345(3), the report must "report a crime;" a report that documents the conclusions of a criminal investigation is not a "report of a crime" under ORS 192.345(3)).