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

February 28, 2019

VIA EMAIL ONLY: troy@salemreporter.com

Troy Brynelson
2925 River Road S. Suite 280
Salem, OR 97302

Re: Petition for Public Records Disclosure Order
Oregon State Police
DOJ File No. 257001-GA0014-19

Dear Mr. Brynelson:

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, which we received February 15, 2019,[1] asks the Attorney General to order the Oregon State Police (OSP) to disclose the initial report of a crime involving two state employees who were placed on paid administrative leave in November 2018. 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. Even express exemptions are to be narrowly construed, meaning that "if there is a plausible construction of a statute favoring disclosure of public records, that is the construction that prevails." *Colby v. Gunson*, 224 Or App 666, 676 (2008). 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.*

You contend that OSP is required to disclose the report of a crime under ORS 192.345(3) absent a clear need to delay disclosure. We contacted Wendy Landers, Director of OSP's Central Records Section, regarding your petition. She explained that although OSP initially denied your request under ORS 192.345(3) (criminal investigatory information), OSP now asserts the reports are confidential under ORS 419B.035. That statute makes confidential

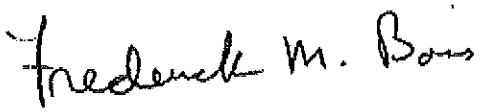
[1] We thank you for granting an extension on the deadline to issue this order.

records compiled under Oregon's Child Abuse Reporting Statutes, ORS 419B.010 to 419B.050.[2] And under ORS 192.355(9)(a), records made confidential under state law are expressly exempt from disclosure.

After discussing the particulars of the report with Ms. Landers, we find that it is a report of child abuse to OSP submitted by the Department of Human Services in accordance with ORS 419B.015.[3] It is therefore confidential under ORS 419B.035 and exempt from disclosure under ORS 192.355(9)(a). Although ORS 419B.035 contains exceptions that permit law enforcement agencies to disclose confidential records to specified parties in limited circumstances, none of those exceptions apply in this instance.

For the foregoing reasons, we conclude the report you seek is confidential under ORS 419B.035, and thereby exempt from disclosure under ORS 192.355(9)(a). We therefore respectfully deny your petition.

Sincerely,



Frederick M. Boss
Deputy Attorney General

FMB:pjn/DM9457732
c: via email only: Wendy Landers, OSP

---

[2] ORS 419B.035 states in relevant part:

> (1) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.478 and 192.610 to 192.810 relating to confidentiality and accessibility for public inspection of public records and public documents, reports and records compiled under the provisions of ORS 419B.010 to 419B.050 are confidential and may not be disclosed except as provided in this section. ***

[3] We note that the facts in this case are distinguishable from those in the recently decided case of *Pamplin Media Group v. City of Salem*, 293 Or App 755 (2018). In *Pamplin*, the City denied a request under ORS 192.345(3) for the "record of an arrest" on the grounds that the record was confidential under ORS 419B.035. The court rejected the City' argument after it concluded that a law enforcement agency's "record of an arrest" is not a record "compiled under the provisions of ORS 419B.010 to 419B.050." *Id.* at 765 (internal quotations omitted). The court observed that the provisions of Chapter 419B "do not govern or even address the arrest of a perpetrator" and they "neither authorize nor require any agency to keep records of such arrests." *Id.* at 765-66. In contrast to the "record of an arrest" in *Pamplin*, ORS 419B.0101 to 419B.050 clearly mandates and governs the child abuse report at issue in this case.