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November 12, 2019

VIA EMAIL ONLY: dsupham58@gmail.com

Donald Scott Upham
3906 SW Altadena Ave
Portland, OR 97239

Re: Petition for Public Records Disclosure Order
Oregon State Police
DOJ File No. 257001-GA0139-19

Dear Mr. Upham:

This letter is the Attorney General's response to your petition, submitted on behalf of your client, for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition, received by this office on November 5, 2019, asks the Attorney General to order the Oregon State Police (OSP) to disclose certain records relating to a child abuse investigation. 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.*

This petition stems from your October 30, 2019 request for "any records that were created or received by *** OSP that played any part in the 'truthful' conclusion that any text messages exchanged between Dylan Sullivan and Jehnni were a relevant part of a child abuse investigation." We have evaluated your requests for communications between Mr. Sullivan and a person named Jehnni as part of two petitions previously filed by you. *See* Public Records Order, Nov 6, 2019, Upham; and Public Records Order, Apr 1, 2019, Upham. In each instance, OSP's Central Records Section informed us that Jehnni was a pseudonym used by a minor female with whom Mr. Sullivan had engaged in sexually inappropriate communications. We

concluded that OSP may withhold the communications under ORS 192.345(3) because disclosure would result in the unreasonable invasion of privacy of a child victim.

In response to this petition, we contacted Detective James Kohler, who helped conduct the investigation against Mr. Sullivan. Detective Kohler made an important correction to the record regarding Mr. Sullivan's communications. First, he explained that the child victim did not use the pseudonym Jehnni when she communicated with Mr. Sullivan. Rather, he explained, the child victim forwarded sexually inappropriate text messages she received from Mr. Sullivan to an acquaintance, and her acquaintance changed the sender's name on her phone to Jehnni. During a subsequent interview, the acquaintance showed Detective Kohler the messages that appeared to be between Mr. Sullivan and someone named Jehnni. She explained to him that the messages actually came from the child victim but that she changed the name to Jehnni to protect the girl's identity. Detective Kohler subsequently included a picture of those messages as an exhibit to an application for a search warrant.

In light of this new information, we now turn to your current appeal for any records that OSP considered in determining that those messages were relevant to an investigation of child abuse. Detective Kohler explained that, other than the text messages themselves, he did not consider any records in reaching this conclusion. Rather, he determined the text messages were relevant to a child abuse investigation based upon information disclosed during interviews with the child victim and with the acquaintance who disclosed the messages to him. This appears to be consistent with OSP's previous claim that it does not have any records responsive to your separate request for any documents that OSP considered when assessing the authenticity of the same messages. *See* Public Records Order, Apr 1, 2019, Upham.

Under the circumstances, we have no reason to question OSP's claim that it does not have any records responsive to your request. And because we cannot order OSP to disclose records that do not exist, we respectfully deny your petition.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn/DM9939277
c: via email only: Laura Heathcock, OSP