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January 17, 2020

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-GA0004-20

Dear Mr. Upham:

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 certain records to you. For the reasons that follow, we respectfully deny your petition.

The first part of your request to OSP was for "any records OSP created regarding the issue of Jehnni," to include a search of all "data seized from Dylan Sullivan for emails and text messages exchanged between Jehnni and Dylan." Those records appear to be the same records, or a subset thereof, that we considered as part of several petitions previously submitted by you.[1] We denied each of those petitions. Your current petition does not offer any new arguments in support of your belief that the public records law requires disclosure. We therefore decline to reconsider those matters and respectfully deny this aspect of your petition.

You also requested OSP disclose any records OSP created and sent to the Attorney General relating to Public Records Order, Apr 1, 2019, Upham, as well as any records OSP sent to the Attorney General relating Public Records Order, Nov 6, 2019, Upham. Your petition

[1] Public Records Order, Apr 1, 2019, Upham; Public Records Order, Nov 6, 2019, Upham; and Public Records Order, Nov 12, 2019, Upham. *See also* Public Records Order, Sep 12, 2019, Upham (the public records law does not require OSP to conduct unreasonable searches of evidence seized as part of a criminal investigation); and Public Records Order, Aug 28, 2019, Upham (same).

indicates that OSP disclosed some records to you but withheld other communications that OSP claimed were exempt under the lawyer-client privilege. You now ask us to order OSP to disclose those communications.

We contacted Laura Heathcock, Administrative Specialist in OSP's Central Records Section. She indicated that OSP withheld four emails that it claims are exempt from disclosure under ORS 192.355(9), incorporating the lawyer-client privilege codified at ORS 40.225.[2] We have reviewed those emails and – consistent with the analysis applied by us in Public Records Order, Sep 23, 2019, Upham – find that they qualify for the privilege. Each is a communication between OSP and OSP's DOJ-assigned contact counsel (not with DOJ staff responsible for processing public records petitions) and each clearly relates to the provision of legal services to OSP by DOJ. According to Ms. Heathcock, OSP intended that all of the emails remain confidential. Under the circumstances, we find that the communications were made to facilitate the rendition of legal services, were made among parties who are entitled to assert the privilege, and were intended to be confidential. Accordingly, we conclude that OSP was permitted to withhold the emails as lawyer-client privileged communications. We therefore respectfully deny your petition.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn/DM10055792
c: via email only: Laura Heathcock, OSP

[2] The lawyer-client privilege provides that "[a] client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client." ORS 40.225(2). Accordingly, ORS 192.355(9)(a) permits public bodies to withhold public records that are protected by the lawyer-client privilege. *See, e.g., Port of Portland v. Ore. Center for Environ. Health*, 238 Or App 404, 409 (2011) (ORS 192.355(9)(a), then codified at ORS 192.502(9)(a), encompasses lawyer-client privilege); *Klamath County School Dist. v. Teamey*, 207 Or App 250, 259 (2006) (same).