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February 12, 2020

VIA EMAIL ONLY: dsupham58@gmail.com

Donald Scott Upham
3906 SW Altadena Ave
Portland, OR 97239

Re: Petition for Public Records Disclosure Order
Teacher Standards and Practices Commission
DOJ File No.: 584001-GA0020-20

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 Teacher Standards and Practices Commission (TSPC) to disclose any records in its possession regarding one of your clients, including records pertaining to an open investigation against that client. For the reasons that follow, 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 its actions. ORS 192.411(1).

Your petition explains that you requested these records on February 4, 2020. That same day, Trent Danowski, TSPC Deputy Director, informed you that the investigative records relating to your client are not subject to public inspection at this time. Your petition followed.

We contacted Mr. Danowski in response to your petition. First, he indicated that TSPC is processing your request for any non-confidential records in TSPC's custody. With respect to those records, we deny your petition because TSPC has not denied that aspect of your request. *See* ORS 192.411(1) (in general, the Attorney General may order disclosure only when a request

has been denied). Regarding the investigative records, Mr. Danowski explained TSPC's position that they are exempt from disclosure under ORS 342.176(4), which states in relevant part:

> (4)(a) Except as provided in paragraph (b) of this subsection, the documents and materials used in the investigation undertaken as provided by this section and the report related to the investigation are confidential and not subject to public inspection unless the commission makes a final determination to:
>
> (A) Refuse to issue a license or registration, as provided under ORS 342.143;
>
> (B) Suspend or revoke a license or registration, discipline a person holding a license or registration, or suspend or revoke the right to apply for a license or registration, as provided under ORS 342.175; or
>
> (C) Discipline a person for failure to provide appropriate notice prior to resignation, as provided under ORS 342.553.
>
> * * *

Although ORS 342.176(4) contains several exceptions to the confidentiality rule, each is contingent upon TSPC making a final determination to take certain licensing or disciplinary action. Mr. Danowski explained TSPC's position that none of those exceptions apply to your request because TSPC has not made a final determination to take any licensing or disciplinary action in your client's case.

After discussing your petition with Mr. Danowski, we conclude that TSPC may withhold the investigative records in this instance. TSPC is responsible for licensing and disciplining teachers. *See* ORS 342.121 and 342.175. When TSPC investigates a complaint about a teacher, the materials used in the investigation and the final report are confidential and not subject to public inspection unless TSPC makes a final determination to take licensing or disciplinary action. ORS 342.176(4). In this instance, Mr. Danowski informs us that the investigation is ongoing and TSPC has not made a final determination to take any action against your client. The records are therefore confidential at this time. And records made confidential under state law are expressly exempt from disclosure under the Public Records Law.[1] ORS 192.355(9)(a). We therefore respectfully deny your petition.

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn/DM10088392
c via email only: Trent Danowski (TSPC)

[1] We emphasize that this order only addresses your client's rights to TSPC's investigative records under the Public Records Law. It does not address your client's access to such information under administrative discovery rules should TSPC initiate licensing or disciplinary action against him. *See, e.g.,* OAR 137-003-0566 to 137-003-0569.