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April 7, 2020

VIA EMAIL ONLY: stevenbmayberry@gmail.com

Steven Mayberry
806 Rumsey Court NW
Salem, OR 97304

Re: Petition for Public Records Disclosure Order
Department of Public Safety Standards and Training
DOJ File No. 259001-GA0036-20

Dear Mr. Mayberry:

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, dated March 31, 2020, asks the Attorney General to order the Oregon Department of Public Safety Standards and Training (DPSST) to disclose certain emails of two DPSST employees. For the following reasons, we respectfully deny your petition.

Your petition explains that you submitted two requests for these emails, one for each DPSST employee, on March 27, 2020. DPSST provided separate acknowledgments to each request on March 30, 2020, including separate fee estimates of $87.50 for processing each request. Both acknowledgments also indicated that any responsive emails that relate to an open professional standards case are temporarily exempt from disclosure under ORS 192.345(35).[1] Your petition followed. You assert that DPSST unlawfully denied your requests because you do not believe ORS 192.345(35) applies to any of the emails you requested. In response to your petition, DPSST asserts that your requests were not denied and that they will be processed once payment is received.

The Attorney General may order a state agency to disclose records only when the agency has denied a records request. *See* ORS 192.411(1). Here, we cannot conclude that the references to ORS 192.345(35) in DPSST's initial acknowledgments constituted explicit denials. Rather,

[1]ORS 192.345(35) conditionally exempts "[r]ecords of the Department of Public Safety Standards and Training relating to investigations conducted under ORS 181A.640 or 181A.870 (6), until the department issues the report described in ORS 181A.640 or 181A.870."

we find those references to be consistent with our longstanding advice that when an agency provides a fee estimate, it is best practice to inform a requester beforehand if the agency anticipates that significant portions of the records are likely to be exempt from disclosure. *See Attorney General's Public Records and Meetings Manual* at 21 (2019). And because DPSST has not yet identified any actual records that it believes are exempt under ORS 192.345(35), it is premature for us to evaluate your claim that that provision does not apply to the records you seek. Finally, we note that DPSST's obligation to process your request is suspended until the fees are paid or waived. *See* ORS 192.329(3). We therefore respectfully deny your petition.

Sincerely,



Frederick M. Boss
Deputy Attorney General

FMB:pjn/DM10179146
c via email only: Rebecca Hannon, DPSST