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April 28, 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-GA0043-20

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 it created or received relating to a subpoena issued to one of your clients, as well as any records it created or received after a meeting with you related to that subpoena. 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).

According to your petition, TSPC's Deputy Director, Trent Danowski, denied your request on April 17, 2020, asserting the records are confidential under ORS 342.176(4). We contacted Mr. Danowski and he explained TSPC's position that the records you seek pertain to the same professional standards investigation that we considered as part of an earlier petition filed by you. *See* Public Records Order, Feb 5, 2020, Upham. In that instance, you asked us to order TSPC to disclose any records it possessed regarding the same client, including records pertaining to its investigation against him. We denied your petition with respect to the investigative records after concluding they were confidential under ORS 342.176(4).[1] Specifically, we concluded:

[1] ORS 342.176(4) states in relevant part:

> 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. ORS 192.355(9)(a).

Id. at 2 (footnote omitted).

In this instance, it is apparent from the terms of your request that you are seeking records that relate to TSPC's investigation against your client. Consistent with our prior analysis, those records are confidential unless TSPC has made a final determination to take action against your client. According to Mr. Danowski, TSPC has not made such a final determination in this instance. We therefore conclude that the records are exempt from disclosure at this time and respectfully deny your petition.[2]

Sincerely,



Frederick M. Boss
Deputy Attorney General

FMB:pjn/DM10209703
c via email only: Trent Danowski (TSPC)

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(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.

[2] As with our prior order, this order only addresses your client's rights to TSPC's investigative records under the Public Records Law. It does not address his 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.