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September 30, 2020

Rafael Mora Contreras
Booking ID: #18-05511
215 SW Adams MS35
Hillsboro, OR 97123

Re: Petition for Public Records Disclosure Order
*Oregon Department of Corrections*
DOJ File No.: 291011-GA0091-20

Dear Mr. Contreras:

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 us to order the Oregon Department of Corrections (ODOC) to disclose the adult in custody (AIC) work files for two individuals. For reasons that follow, we respectfully deny your request.

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).

In response to your petition, we contacted Crystal Archdeacon, Legal Coordinator in ODOC's Office of the Inspector General. She indicated that ODOC denied your request for these records on August 31, 2020 because, ODOC asserts, the records are exempt from disclosure under ORS 192.345(3). That provision conditionally exempts "investigatory information compiled for criminal law purposes" unless the public interest requires disclosure in a particular instance. She explained that the Washington County District Attorney's Office ("DA's Office") requested these records earlier this year as part of a criminal investigation and that ODOC has provided them to investigators. She also indicated that in response to your records request, the DA's Office requested that ODOC not disclose these records to you because disclosure could materially interfere with its ongoing investigation.

After discussing the AIC work files with Ms. Archdeacon, we conclude that they were compiled by the DA's Office for criminal law purposes. Although the records were not initially

created for a criminal law purpose, we have long held that the criminal investigatory information exemption applies to non-law-enforcement records that were originally created for ordinary business purposes but that are subsequently compiled in the course of a criminal investigation. *See Attorney General's Public Records and Meeting Manual* at 59 (2019) (*Manual*). When applying ORS 192.345(3), we have also consistently followed guidance from the Court of Appeals that records gathered for "pending or contemplated proceedings will ordinarily remain secret because disclosure would likely interfere with enforcement proceedings." *Jensen v. Schiffman*, 24 Or App 11, 16 (1976) (internal quotations omitted). However, such records are generally not exempt once the criminal process concludes, unless disclosure would result in a particular harm. *See Manual* at 58.

According to Ms. Archdeacon, the DA's Office has represented that disclosing these records at this time could materially interfere with an ongoing criminal investigation. We find that ODOC was permitted to rely upon that representation when it denied your request. *See* Public Records Order, Jan 27, 2020, Bial (it is appropriate for agencies in this position to rely on the guidance of the law enforcement agencies actually responsible for the relevant criminal matter).

Finally, we consider whether the public interest nevertheless requires disclosure in this instance. Your petition does not explain why the public interest requires ODOC to disclose the AIC work files at this time. And we are not aware of any public interest in these records that would require a departure from the "ordinary" rule that information compiled for criminal law purposes will remain secret until the conclusion of any pending criminal proceedings. We therefore conclude that the public interest does not require disclosure at this time and respectfully deny your petition.

Sincerely,



FREDERICK M. BOSS
Deputy Attorney General

FMB:pjn/DM10454522
c: via email only: Crystal Archdeacon, ODOC