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August 26, 2020

VIA EMAIL ONLY: emailjennica@gmail.com

Jennica Burks
59400 Cherrywood Drive
Saint Helens, OR 97051

Re: Petition for Public Records Disclosure Order
Oregon Department of Corrections
DOJ File No.: 291011-GA080-20

Dear Ms. Burks:

This letter is the Attorney General's order responding 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 Department of Corrections (ODOC) to disclose the lists of all past cell mates for two current inmates. For the 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).

Your petition explains that ODOC denied your request citing ORS 192.345(3). That provision conditionally exempts "investigatory information compiled for criminal law purposes" unless the public interest requires disclosure in the particular instance. You assert that ORS 192.345(3) does not apply in this instance because you do not believe these records are relevant to any ongoing criminal investigations.

We contacted Jason Brown, ODOC's Assistant Inspector General, regarding your petition. He explained that Washington County District Attorney's Office ("DA's Office") requested this information from ODOC as part of an ongoing criminal investigation and that ODOC has provided it to investigators. He also indicated that in response to your records

request, the DA's Office requested that ODOC not disclose these lists to you because disclosure could materially interfere with its ongoing investigation.

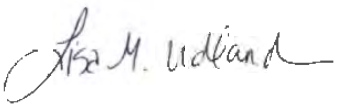
After discussing the cell mate records with Mr. Brown, we conclude that they were compiled by the DA's Office for criminal law purposes. Although the information was not initially created for a criminal law purpose, we have long held that the criminal investigatory information exemption applies to non-law-enforcement 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) (citations omitted); *see also* Public Records Order, Jan 27, 2020, Bial (it is not necessary that a public record have originated as part of a criminal investigation to qualify for exemption under ORS 192.355(3)).

When applying ORS 192.345(3), we have also long 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); *see also* Public Records Order, Jul 8, 2016, Iboshi (investigatory information compiled for pending criminal cases is exempt because the public has a strong interest in protecting the integrity of investigations and prosecutions). However, such records are generally not exempt once the criminal process concludes, unless disclosure would result in a particular harm. *Id.*

According to Mr. Brown, the DA's Office has represented that disclosure at this time could materially interfere with an ongoing criminal investigation and we find that ODOC is entitled to rely upon that representation. *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); and Public Records Order, Jul 29, 2015, Budnick (if a law enforcement agency gathers records from another public body as part of a criminal investigation, that public body may rely upon the law enforcement agency's representation that public disclosure would interfere with the pending criminal proceedings).

We now 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 cell mate records at this time. And we are not aware of any public interest in this information that would require a departure from the "ordinary" rule that such information 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,



for
FREDERICK M. BOSS
Deputy Attorney General

FMB:nog/DM10401900
c via email only: Michelle Dodson, ODOC